

**Gendered
Intelligence**

Our Response to the 2025 EHRC Code of Practice Consultation

June 2025

The EHRC said: “We have updated the legal definition of sex throughout the code of practice. Our previous definition explained that:

‘Legal sex is the sex that was recorded at your birth or the sex you have acquired by obtaining a Gender Recognition Certificate (GRC).’

Following the UK Supreme Court ruling in *For Women Scotland*, this definition is no longer accurate, because a GRC does not change your legal sex for the purposes of the Equality Act 2010. We have therefore updated this definition throughout the code to be:

‘Legal sex is the sex that was recorded at your birth.’”

- **We strongly disagreed that the explanation of the updated legal definition of sex is clear.**
- **We responded:**

While the revised definition of “sex” in the Equality Act 2010 aligns with the technical outcome of the recent Supreme Court ruling, it raises a number of serious concerns that must be addressed to ensure the law is implemented fairly, coherently, and in a way that reflects the realities of people’s lives.

A core issue is the Code’s uncritical use of the term “biological sex,” which it appears to treat as synonymous with “sex recorded at birth.” This framing is both scientifically inaccurate and legally ambiguous. “Biological sex” is not a settled scientific category—it comprises multiple components, including chromosomes, hormone profiles, and anatomical features, many of which are not visible, known, or fixed. The diversity of sex characteristics, particularly in intersex people, means that many – tens, if not hundreds of thousands of people in the UK – fall outside a binary model of sex. Relying on a rigid binary definition excludes and harms those who fall outside the norm, reinforcing inaccurate and discriminatory narratives and leaving them without adequate rights and protections.

In fact, the approach taken by these changes is completely ignorant to the needs, rights, and protections of intersex people and fails to account for non-binary people.

Furthermore, the Code does not clearly state that this definition of “sex” is specific to the Equality Act 2010. It may be misread as applying across the entire legal system, when in fact, other legal frameworks still recognise the significance of a Gender Recognition Certificate (GRC). For instance, GRCs are legally recognised in areas such as pensions, marriage, and the prison system. Minimising the continued relevance of GRCs outside the Equality Act misleads organisations and individuals, potentially causing them to disregard or misunderstand trans people’s rights.

Additionally, the Code overlooks the fact that terms such as “sex” and “gender” are used interchangeably in everyday life. There is no single shared public understanding of what either term definitively means, nor is it within the ambit of the EHRC to enforce social definitions. The Code should respond to social reality and lived experience in its treatment of people with protected characteristics, not seek to change or erase them. The proposed changes do not help to bridge the gap between legal definitions and social realities, and public confusion rather than offering clarity.

This confusion is exacerbated by the existence of other official guidance, including the EHRC’s own Code of Practice for Employers. Without a clear explanation of how these different codes interact, employers and service providers are left to interpret complex and potentially conflicting advice, increasing the likelihood of inconsistent, unlawful, or harmful practices.

The implications of the Code’s exclusionary framing reach beyond trans people. By reinforcing narrow, stereotyped ideas of who “counts” as a man or a woman, the guidance risks harm to many cisgender people as well—especially those who do not conform to normative gender expectations.

The proposed Code is therefore not realistically based on trans status, but on aesthetics. It sets out expectations based on what people think trans people look like, which will inevitably lead to individuals being judged based on stereotypes of masculinity and femininity. This will disproportionately hit members of other

marginalised groups, such as disabled people and Black and racialised people. As an organisation committed to inclusion in its fullest sense, we are alarmed that the EHRC's guidance fails to consider these interconnected impacts.

We have already received reports from cisgender women who have been profiled based on perceived trans status because of their height, voice, or masculine dress/style. Some of this profiling has amounted to harassment. We expect these women to continue to face harassment and exclusion unless the Code is revised to avoid profiling based on appearances.

The proposed changes risk undermining the very purpose of the Equality Act: to protect against discrimination and promote fairness. For example, the proposed changes seem designed to cause blanket exclusion of transgender people from single-sex spaces like toilets, changing rooms, and domestic violence shelters – in some cases from both male and female spaces. This would blatantly disregard transgender people's rights, and risks creating a two-tier system in which fairness and equality of trans people are less important than other protected characteristics. If transgender people are left without access to spaces or services it could easily constitute discrimination and lead to litigation.

For example, a transgender man is told he cannot use the men's toilets in a community centre because he is legally female, but he also cannot use the women's toilets because his appearance is male for all intents and purposes. Is the intention of the Code that this person is excluded from all public toilets? If so, surely this constitutes discrimination on the grounds of gender reassignment?

But this is not just a theoretical issue, it is a material and moral one: exclusion from toilets, changing rooms, or domestic violence shelters can result in humiliation, harassment, or serious danger—especially given the well-documented high rates of violence already experienced by trans people. The outcome of the proposed changes as they stand will be greater exclusion of trans people, increased discrimination and violence against trans people, and reduced social participation of trans people. This is directly counter to the purpose of the EHRC.

The EHRC must do more to ensure that legal definitions support inclusion, protect

human dignity, and are applied in ways that uphold the rights of trans, intersex, non-binary and gender-exploring people across all aspects of public life.

- **When asked “What changes might your organisation make as a result of this update to the code of practice?” we answered:**

At Gendered Intelligence, our core mission is to expand understandings of gender and to improve the lives of trans people across the UK. In light of the EHRC’s proposed Code of Practice, we reaffirm our unwavering commitment to trans inclusion and to ensuring the communities we serve are protected, respected, and empowered.

GI’s Youth and Families Service provides safe youth spaces for trans and gender exploring young people; mentoring in places of education; and support for parents and carers of young trans people. As a UK-wide community it has always been important to create spaces where trans youth can be safe together, alongside supporting trans adults to build hope for the future.

In the last five years our young people have reported an increase in transphobia and negative reactions from services. In our own services we have seen a major increase in young people and families coming to us at a point of mental health crisis - often when public services have failed to provide adequate care and support.

We also offer a broad spectrum of services for professional people including training and consultancy, and we work across many sectors from healthcare, education, youth work, the arts, sport, charities of all kinds and many more. We combine lived experience with a high level of professional skills, knowledge & expertise. We are a trans-led organization with approximately 38 members of staff – over 90% of our staff are trans-identified.

We know that many trans and gender-exploring people—and the organisations that support them—are deeply concerned about the implications of the draft guidance. Fears of being excluded from safe and equal participation in public, community, and civic life are widespread and justified. We will not step back in the face of these fears. We will continue to actively advocate for our rights, our needs, and our access to functional services that welcome us and treat us with dignity.

The proposed Code takes an “exclusion-first” stance. Unless significantly revised, it will entrench and exacerbate the marginalisation of trans, non-binary and gender exploring people—groups who already face multiple systemic barriers to full participation in society. Our aim is to ensure that organisations that we support continue operating in a way that centres trans people’s dignity, agency, and safety. We are proud represent the voices of trans people and are united in this goal to reduce the barriers to services.

Gendered Intelligence works with educators, and professionals to promote greater understanding of how sex, gender, and sexual orientation are experienced in real life. Our experience shows that these characteristics are not fixed or static. People may discover, explore, and express their identities at different stages in life. Many trans people undergo medical or social transition that significantly alters their sex characteristics—making the Code’s insistence on “immutable, birth-assigned sex” not only scientifically inaccurate but practically unworkable in service settings.

Legal protections should be based on how individuals live, present, and are perceived today—not on historic records that may bear no relevance to someone’s current experience. Discrimination happens in the present, based on assumptions and judgments made in the moment. If an individual comes out as gay later in life we do not deny them protections based on sexual orientation because for most of their life they lived and were perceived as straight. Likewise, trans people should be protected based on their deeply held and personal gender identity, regardless of their sex assigned at birth. Trans people—like all people—deserve to be recognised and protected based on who they are now.

At Gendered Intelligence, we will continue to support organisations and communities to challenge exclusionary practices, champion inclusive approaches, and uphold the fundamental rights and humanity of trans, non-binary and gender exploring people.

Chapter 2.1

The EHRC said: “This content explains that the Supreme Court in *For Women Scotland* has ruled that a Gender Recognition Certificate (GRC) does not change a person’s

legal sex for the purposes of the Equality Act 2010 (the Act). It also outlines what protections trans people have under the Act whether or not they have a GRC.”

- **We strongly disagreed that the explanation of the legal rights and responsibilities set out in the new content on Gender Recognition Certificates is clear**
- **We responded:**

The proposed changes significantly undermine the legal status and purpose of Gender Recognition Certificates (GRCs). It conflates “lived gender” with “acquired gender” without providing adequate definition of either or offering a clear account of the protections afforded under the protected characteristic of gender reassignment. In doing so, it strips meaningful legal protection from GRC holders and trans people more broadly, creating confusion and contradiction within equality law. The implication that GRCs are now redundant under the Equality Act is both inaccurate and damaging.

Furthermore, the guidance fails to provide clarity on how services are expected to implement changes regarding the collection of information about a person’s sex as recorded at birth. It is wholly unreasonable to expect service providers to routinely ask for this information. Such a practice would be difficult to standardise, intrusive for service users, and widely perceived as a violation of personal privacy and dignity.

Chapter 2.2

The EHRC said, “This section gives information on how requests about sex at birth should be made. It outlines the circumstances in which making such requests, with or without evidential proof of birth sex, may be unlawful.”

- **We strongly disagreed that the explanation of the legal rights and responsibilities set out in the new content on asking about sex at birth is clear**
- **We responded:**

This section of the draft Code is gravely inadequate, and if implemented by service providers poses a serious threat to the fundamental rights of trans people—particularly their right to privacy. It is deeply alarming that a document produced by the UK’s national human rights regulator would propose or even imply measures that risk such significant violations of established legal protections.

Particularly troubling is paragraph 2.2.8, which refers to a “genuine concern” as a basis for querying someone’s birth sex. The Code fails to define what constitutes a “genuine concern”, and no objective measure or legal threshold is offered to determine what constitutes a “genuine concern”. This vagueness is not a neutral oversight—it opens the door to discrimination, arbitrary decision-making, and systemic bias. There are no safeguards proposed to prevent service providers from making harmful assumptions based on outdated stereotypes about appearance, voice, or behaviour. The absence of protections against inappropriate or invasive questioning will subject trans people—and anyone who doesn’t conform to rigid gender norms—to increased surveillance, scrutiny, and distress.

Likewise, paragraph 2.2.3 creates the dangerous precedent that a person’s presence in a single-sex space may be challenged based on perception alone. This invites discriminatory gatekeeping, and could endanger both trans and cis women. It does not outline policies for single-sex spaces based on trans status, but on aesthetics. It undermines key protections enshrined in the Equality Act 2010 and the Gender Recognition Act 2004, and normalises harassment under the guise of compliance.

It creates a pretext for anyone to be questioned about their birth sex at any time and for any reason. At minimum a rubric for “genuine concern” must accompany this justification, but we note that any attempt to apply such a standard in practice would be ipso facto a blatant violation of rights to privacy and is likely to be discriminatory.

For instance, under this approach, a cisgender woman with a masculine appearance might be subjected to invasive questioning, while a trans woman with a more conventionally feminine appearance might not. Such outcomes serve neither the interests of service users nor the effective delivery of services. They promote arbitrary and biased assessments based on gender expression and what conforms to social norms rather than any relevant or lawful criterion. As such, the recommendation to

ask about birth sex is unenforceable, inappropriate, and discriminatory, and should be removed from the Code.

We note also that most people do not carry their birth certificate as standard, nor has anyone ever been expected to. Under the proposed changes not just trans people, but anyone who might be perceived as trans would be expected to carry their birth certificate at all times. Such requirements disproportionately affect those without easy access to documentation, particularly LGBTQ+ migrants, disabled people, care leavers, and people escaping domestic abuse. These individuals already face barriers in accessing services, and this Code would deepen those inequalities.

Moreover, birth certificates can be legally amended with a GRC and are not accepted as standard identity documents, and GRC status is confidential and protected by law. The suggestion that service providers could or should inquire about it is not only inappropriate—it directly contravenes the Supreme Court’s clarification that this information is legally protected and cannot be demanded.

Any record or request relating to a person’s birth sex or GRC status would fall under the definition of special category data under UK GDPR. This demands the highest level of legal safeguarding. The EHRC’s complete omission of this point is not only negligent, it actively puts organisations and individuals at risk of breaching the law. This contributes not just to the risk of litigation towards the EHRC and orgs subject to the Code, but also increases the risk of damage to the UK’s human rights reputation.

The draft Code fails to recognise this, placing both trans individuals and service providers at risk of violating data protection and human rights legislation. The Code’s implicit suggestion that such checks could become routine is therefore unworkable.

This is not a hypothetical concern. In our work at Gendered Intelligence, we consistently hear from trans people who are profiled, misgendered, or interrogated simply for not “looking” a certain way. This guidance would legitimise those intrusions – not just for trans people, but for anyone who does not meet arbitrary standards of ‘masculine’ or ‘feminine’.

Take the following examples drawn from our work.

A 70-year old trans woman accesses a social group for older women. Under the proposed guidance she would be excluded from this group. However, her trans status is not public and presents in a conventionally feminine way. Regardless of the guidance, she can continue accessing the group without trouble because she will not be profiled or interrogated.

A 30-year old lesbian cis woman uses various women's facilities, including gyms and changing/toilet facilities. She is taller than average and has a very short haircut. Since the For Women Scot judgement she has been profiled as trans several times, and asked to leave women's facilities. Under the proposed guidance it is expected that this profiling will continue. Is the EHRC's intention that women who do not meet certain aesthetic standards should be routinely expected to provide their birth certificate?

Privacy is not an optional or abstract principle—it is a core human right, enshrined in law and central to individual dignity and autonomy. The European Court of Human Rights has repeatedly affirmed this, including in *Christine Goodwin v. UK* (2002), where it held unequivocally that trans people must have their gender identity fully respected as part of their private life under Article 8 of the European Convention on Human Rights. For the EHRC to now advocate a Code that enables or encourages the outing of someone's trans status—through questioning, documentation demands, or profiling—is a flagrant breach of this right.

Even more troubling, the EHRC's own wording concedes that the Code could lead to harmful and unjustifiable interference in individuals' lives. That a national human rights institution would knowingly endorse a framework that could cause such harm is a profound dereliction of its statutory duties and ethical obligations. It undermines the Commission's credibility and raises serious questions about its commitment to upholding universal human rights.

We have already seen this harm occur as a result of the interim statement. Our support line, which provides pastoral and mental health support to trans adults, has received twice as many requests for mental health support, and ten times as many calls relating to suicide and suicidality in the wake of the interim statement. The message we're hearing is that trans people are scared of being turned away from public spaces and services, and don't know where else to go. Some service users have

stopped leaving the house entirely. The EHRC must uphold its duty and ensure that trans people are protected and supported in the forthcoming guidance.

Our young people have also been affected. Since the release of the interim guidance we have had young people who use our services refused access to toilets in school, even when they have been using these facilities without issue previously. We have also seen children being told they will have to be isolated during school residentials, that they will be placed in changing facilities with peers of the same birth-assigned sex despite the risk of outing or bullying, or that they will be forcibly outed to the school as trans.

Our volunteers and youth workers have reported an increase in hostility and harassment towards our young people and our workers since the interim statement was released. Many trans young people coming to us are already isolated, and the reasonable fear of bullying and exclusion is making it harder for us to support them to leave the house and engage meaningfully in society. Young people are so afraid they will be harassed or excluded that they are disengaging from social contact, education, and healthcare.

Our children and young people deserve safety and have a right under Article 4 of the UN Rights of the Child to be supported to fulfil their full potential; and under article 23 the right to a full life and active participation in the community. This guidance should help children meet these possibilities, not limit them.

We implore the EHRC as a matter of conscience to uphold its duty to protect trans people from harm. The Code must protect children by supporting them to be happy and included at school, and empowering all trans people to live as their best selves.

In summary, this section of the Code fails in both principle and practice. It disregards human rights law, disregards data protection law, and disregards the lived realities of trans people. It legitimises harassment and structural discrimination while offering no real legal or practical clarity for service providers. We urge the EHRC in the strongest possible terms to withdraw and redraft this section in consultation with trans communities, human rights experts, and data protection authorities.

Chapter 2.3

The EHRC said, “This content defines 'sex', 'man' and 'woman', and explains how a GRC does not change a person's legal sex for the purposes of the Equality Act 2010. ”

- **We strongly disagreed that the explanation of the legal rights and responsibilities set out in the new content on defining sex at birth is clear.**
- **We responded:**

The proposed changes are unworkable and disconnected from the realities of service delivery. The Code fails to consider how organisations who are committed to inclusion operate day-to-day in the real world. In fact, the proposed changes provide no meaningful support for trans inclusion. Instead, it focuses almost exclusively on justifying exclusion, offering no practical advice for how services, associations, or sporting bodies can continue to welcome trans people in line with their existing inclusive practices.

The guidance relies heavily on the notion of “biological sex” as a fixed and universally understood concept. The medical and scientific consensus is that this is not the case. Biological sex is a complex interaction of anatomy, hormones, chromosomes, and lived identity. It is likely that there are at least as many people with differences of sex development (DSDs) who do not readily fit into the binary of biological sex as there are trans people, but there is no provision made for these people in the Code. (See: [Biology is not binary – a letter to the Equalities Minister from biologists and health experts.](#))

More worryingly, we have already witnessed how this interim guidance is being interpreted in harmful and inappropriate ways. Some public services are directing trans people to use facilities marked for disabled users, even when there is no relevant need. This is not only degrading to trans people, who do not have a disability and have been peacefully using appropriate services thus far—it places additional strain on disabled communities, who already face inadequate provision and lack of access to facilities. These spaces are often shared with family or baby-changing areas,

and are limited in number. The focus of the EHRC should be on expanding access to basic services and spaces for all protected characteristics, not reducing them across the board.

There are concerning contradictions in the examples given in the Code. For example, paragraph 2.3.1 defines sex as a protected characteristic applying to all males and females. Yet in example 13.4.3, the Code allows a woman to bring a male child under ten into a women's changing room because such children are not seen as a threat. The implication here is that a trans woman in the same situation would be a threat, even though there is no evidence that this is the case and no legal framework or rubric offered to explain why a trans woman would be considered a threat. The EHRC's position appears to be that trans women are always a threat, which position is blatantly discriminatory and likely to lead to litigation.

Moreover, if young boys can be present in women's spaces without undermining their status as "single-sex," then excluding trans women on the basis of birth-registered sex is inconsistent and indefensible.

Furthermore, it is widely accepted and uncontroversial for men to work as cleaners or maintenance staff in women's bathrooms, and vice versa. These workers regularly enter so-called single-sex spaces without objection, because the real concern is not "sex" but conduct. This highlights that the issue is not about protecting safety or privacy, but about expectations of conduct and fair use. There is no evidence that transgender people cause serious incidents or detriment to other users of vital spaces, and so there is no reasonable or legitimate reason to treat all transgender people as a potential threat. An acceptable alternative would be to accept transgender people in single-sex services and spaces so long as there is no misuse of the space.

As it stands, the CoP reinforces stigma and exclusion, rather than offering workable, fair, or inclusive solutions. The Code should offer a model of inclusion that is based on conduct and social understanding, rather than birth sex. This would allow for the inclusion of trans women and trans men in appropriate spaces without including, for instance, cis men in women's spaces.

- **When asked, "What changes might your organisation make as a result**

of this update to the code of practice?”, we answered:

At Gendered Intelligence, our commitment is to creating spaces where trans people are recognised, respected and included. We take this learning and support other organisations to do the same. This draft guidance fundamentally undermines that aim, and represents a regressive step away from evidence-based, human rights-informed policymaking. The Equality and Human Rights Commission must urgently reconsider its position and provide clear, constructive support for inclusive practice across sectors. We know from our work with schools, public bodies, and community services that inclusion is not only possible—it is already happening.

We find the proposed guidance to be both unworkable and disconnected from the realities of service provision. It does not reflect how organisations function in practice and fails to support the inclusion of trans people in everyday settings.

Rather than offering constructive advice on how to include trans people, the guidance focuses solely on how to justify their exclusion. It contains no practical information for services, associations, or sporting bodies wishing to continue inclusive practice.

Chapter 2.4

The EHRC said, “We updated our description of sexual orientation. Our description now specifies that a person who is attracted to people of the same sex is either a lesbian woman or a gay man. The full description is as follows

Sexual orientation is a protected characteristic (s.12(1)). It means a person’s sexual orientation towards:

- persons of the same sex (the person is a lesbian woman or a gay man)
- persons of the opposite sex (the person is heterosexual), or
- persons of either sex (the person is bisexual)”
- **We strongly disagreed that the explanation of the legal rights and responsibilities set out in the updated description of the protected**

characteristic of sexual orientation is clear.

- **We responded:**

Personal definitions and experiences are not and should never be the province of the EHRC. Neither the regulator nor any other governing body can provide a definition of homo-, hetero-, bisexuality or any other category of sexual orientation that includes some individuals but not others. All discrimination, harassment, and exclusion on the basis of sexual orientation should be prohibited.

The redefinition of who counts as “gay” or “lesbian” within the Code has already caused confusion, distress, and concern among the organisations we support, their members, and the wider LGBT+ community. Rather than fostering clarity or cohesion, the guidance risks fracturing communities and undermining the progress we’ve collectively made.

The Code takes a rigid and narrow view of identity that does not reflect the lived experiences of LGBT+ communities, where identities and relationships often don’t fit into neat binary categories. For example, the definition risks excluding gay people who are attracted to trans individuals, or people who come out later in life and whose sexual orientation changes over time. The Code does not acknowledge the diversity of these communities and, in doing so, restricts the freedom of LGBT+ people to define who they are and who they love.

Transgender people who are lesbian, gay or bisexual are overwhelmingly likely to be so in relation to their gender identity, not their birth sex. Likewise, many cisgender gay, lesbian, and bisexual people are gender non-conforming. These people should not have to fear that their protections on the grounds of sexual orientation will be reduced.

LGBT+ people have always been subject to shared oppression and have always stood together in pursuit of rights and recognition. We are deeply concerned that section 2.4.6 appears designed to divide trans people from the rest of the LGBT+ community, rather than support their rights collectively.

These changes create a lack of clarity about the protections extended to trans people

and their partners on the grounds of sexual orientation or perceived sexual orientation, and risk exempting trans people from protections on the grounds of sexual orientation.

For example, trans women in relationships with cisgender women might self-describe as lesbians, be perceived as lesbians, and to all intents and purposes be considered lesbians, but would not be legally protected against discrimination on the grounds of sexual orientation under the Act. This leaves trans people and their partners open to discrimination.

We are concerned, for example, that under the proposed changes a cisgender woman who is married to a trans woman could be the target of homophobic comments and not be entitled to protections against discrimination on the basis of sexual orientation. Likewise, a cisgender man in a relationship with a trans man could be excluded from a gay men's organisation on the basis that he is not 'really gay'. In these examples the Code would support the homophobic exclusion of individuals on the basis of sexual orientation.

The guidance assumes that exclusion should be the default, which is incompatible with our human rights obligations and decades of work toward inclusive practice. At Gendered Intelligence, we know from experience that trans inclusion is both possible and beneficial for organisations, and we provide clear, practical support to make it a reality.

Chapter 4.1

The EHRC said, "This example explains how discrimination can occur based on a perceived protected characteristic, in the context of sex and gender reassignment."

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the new example on sex discrimination by perception are clear.**
- **We responded:**

We are concerned that restricting trans people's protection from sex discrimination to situations where they are perceived as cisgender introduces serious legal and practical challenges. This approach weakens the consistency of equality protections and leaves many trans people more exposed to discrimination than before.

By limiting protections based on how someone is perceived rather than their affirmed gender, the guidance creates a harmful gap in legal coverage. It denies trans people—particularly those with a Gender Recognition Certificate—the full rights and protections they should receive under sex discrimination law. This represents a backward step in advancing equality.

The guidance also risks being exploited by employers and service providers as a loophole. For example, if a trans woman with a GRC is unfairly passed over for promotion in favour of a man, the employer could argue that because they were aware of her trans status, it wasn't sex discrimination. This creates a deeply flawed system where prejudice may go unchallenged, and discriminatory actions are shielded simply because someone is openly trans.

This position introduces a fundamental inconsistency within the Equality Act. It suggests that a trans woman might claim discrimination based on being perceived as a woman, yet not be legally recognised as a woman in other parts of the same law. Such contradictions cause confusion, weaken protections, and undermine the integrity of the legislation as a whole. In the interests of consistency sex discrimination rights must be applied on an inclusion-first basis.

Chapter 4.2

The EHRC said, "We removed content that explained that, for trans men holding a gender recognition certificate (GRC), the protection from pregnancy and maternity discrimination under the Equality Act 2010 (the Act) arose from case law. This case law set out that trans men were still protected irrespective of them having a GRC that stated that their legal sex was male. Following the *For Women Scotland* ruling, their legal sex is now female for the purposes of the Act, and they therefore have protection on that basis."

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in Change 4.2 is clear.**

- **We responded:**

Although the protections now seem to extend to trans men—technically aligning with the Supreme Court ruling—this outcome is unclear and risks reducing both the visibility of trans men and awareness of the rights they are entitled to. Suggesting that a trans man is protected “as a woman” is not only misleading but also undermines his identity and could cause confusion among employers and service providers about how to uphold his rights appropriately.

Trans men, trans masculine people and non-binary people who are assigned female at birth need access to maternity or gynaecological care, but treating them as women or making access to this treatment conditional on the erasure of their identity will weaken this access.

Consider the following example from our work. A 30-year old trans man needs access to ante-natal care. He has been openly trans for 12 years and has medically transitioned, he presents as male, and is to all intents and purposes male. His medical records record his gender marker as male and note his trans status and specific medical needs as a result. He is unlikely to enroll in medical services for women, and is far more likely to disenroll himself from services if he is treated as a woman. Furthermore, under the proposed changes he could be lawfully excluded from women-only services and be offered no ante-natal care. Is the intention of the EHRC that trans men and gender non-conforming women are excluded from these services?

Chapter 5.1

The EHRC said, “This example explains how indirect sex discrimination can occur when people experience the same disadvantage, even if they do not share the same protected characteristic. The example is in the context of sex and gender reassignment.”

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the new example on sex discrimination - same disadvantage is clear.**

- **We responded:**

We are concerned that trans people are now left without a clear legal route to access full protection from sex discrimination in their affirmed gender. This change increases their vulnerability to discrimination, leaving them with fewer safeguards than they previously had.

To address the ongoing and well-documented issue of sex discrimination in the workplace—particularly against cisgender women—we strongly urge that safeguards be introduced to prevent employers from exploiting this legal gap.

Given that transgender women are likely to experience the same discrimination in the workplace as cisgender women, we recommend that an expansive approach be taken to protections against discrimination on the basis of sex. For example, a transgender woman who is discriminated against in the workplace because she is a woman should be able to pursue a claim even if it has nothing to do with her gender reassignment.

Such uncertainties also complicate trans men's rights. For instance, under the proposed changes trans men could make sex discrimination claims even if they are considered male for all purposes in their workplace.

The language used in example 5.1.3 is itself problematic. The phrase "because they present as a woman" is particularly problematic, as it treats trans people's identities, rights, and protections as superficial. The Code must not undermine trans people's protections, treat them as inferior to other protected characteristics, or trivialise trans people's real and meaningful experiences.

It is contradictory to recognise that trans women may face the same forms of disadvantage and discrimination as cis women—due to their gender expression and lived experience—while denying them equal protection under other parts of the Equality Act. Such inconsistency weakens the law's purpose and fails to uphold equality in practice.

Chapter 8.1

The EHRC said, “We produced a new example to explain how harassment can occur based on a perceived protected characteristic, in the context of sex and gender reassignment. We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 8.1.6b.”

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the updated example on harassment related to sex is clear.**

- **We responded:**

It is fundamentally inconsistent to suggest that a trans woman could report sexual harassment based on her gender expression and lived identity, yet not be treated the same as other women under different parts of the Equality Act 2010.

We are also deeply concerned that trans people may now be more at risk of harassment—including sexual harassment—because they no longer have a clear legal route to access full sex discrimination protections in line with their affirmed gender. Likewise, the inconsistencies are likely to discourage workplaces and organisations from reporting and managing sexual harassment cases where the victim is trans, either because they are unsure of protocol or because they do not think trans people are equally protected. Trans women can and do experience sexual harassment because they are women and trans men can and do experience sexual harassment because they are men, and equalities law must do everything it can to protect them.

We also strongly recommend that the guidance explicitly confirms that intentional, repeated, and unwanted misgendering of a trans person continues to be recognised as a form of harassment, as set out in the 2011 Code of Practice.

Chapter 8.1

The EHRC said, “The example in this section explains when applications to an association can be lawfully refused based on a protected characteristic, in the context of sex and gender reassignment. We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 12.1.3.”

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the new example on women-only associations is clear.**

- **We responded:**

The Code fails to offer any guidance for single-sex associations—whether for women or men—that wish to be trans-inclusive. This omission leaves many organisations that aim to include trans people without the clarity they need to remain both inclusive and legally compliant. Instead of supporting inclusion, the Code focuses heavily on outlining how to exclude trans people. This is a missed opportunity for the EHRC to lead with solutions that enable both legal compliance and inclusive practice—something that falls squarely within its remit.

The Code places organisations in an impossible position. They are expected to identify trans applicants “sensitively” and without causing discrimination or harassment, while also respecting individuals’ privacy—yet the guidance offers no clear or lawful way to do this. As a result, leaders are left navigating a legal minefield, with no clear path that avoids risk. In fact, the proposed changes would require trans members of men’s and women’s associations to disclose their trans status, potentially violating their right to privacy.

This lack of clarity and support will place unacceptable financial and administrative pressure on organisations—many of which already operate on limited resources. Not only will this divert funds from vital frontline services, but it may also force some groups to shut down entirely due to fears about legal liability and the cost of potential challenges. The EHRC’s position should be to encourage charitable work and community development, not to shut it down in the interests of exclusion.

Organisations built around inclusive values are now forced to choose between maintaining those values and operating in legal uncertainty. The guidance places pressure on associations to exclude people based on perceived sex, which encourages harmful stereotypes and raises the risk of discriminatory decisions, and which will disproportionately affect marginalised groups who are already judged based on appearances. This could drive people away from community spaces designed to support them, whether they are trans or not.

It is especially concerning that the guidance does not address how trans-led or trans-founded organisations are expected to respond. It seems to presume they, too, must exclude the very individuals they were created to support. In doing so, the Code penalises those who have worked to build inclusive and affirming communities, effectively discouraging grassroots organising and community cohesion.

Many men's and women's association will want to continue including trans people, including non-binary people, but the changes make no suggestion as to how they can do this. In fact, the implication of the updated guidance is that trans people must disenroll from men's and women's associations, which is likely to be discriminatory both towards trans people who have historically used these associations and associations that want to continue accommodating trans people.

These changes could result in widespread exclusion of trans people from associations, and there is unlikely to be an alternative given the very small number of associations based on gender reassignment. It is impractical for alternatives to be provided for all transgender people and discriminatory if transgender people are to be excluded without alternative on a national scale.

We recommend that the guidance advocate for the inclusion of trans people on the basis of acquired gender as a first resort, with exclusion only being considered if there is a proportionate and legitimate reason.

Chapter 13.1

The EHRC said, "This section has been updated to explain the circumstances in which

it may be lawful to exclude participation in competitive sporting events in relation to the protected characteristics of sex and gender reassignment. It also sets out considerations that should factor into policy decisions regarding the exclusion of trans people from competitive sporting events.”

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the updated section on competitive sport is clear.**

- **We responded:**

At Gendered Intelligence, we have supported a wide range of sports providers—from national bodies to grassroots teams—through training, consultancy, and bespoke resources designed to promote the inclusion of trans and non-binary people in sport. Based on this work, we are deeply concerned that the proposed Code of Practice creates significant legal and operational challenges for sports organisations, while offering little to no constructive guidance on how to be trans-inclusive.

From our experience, most community sports settings operate on very limited budgets and are run by volunteers. These groups simply do not have the capacity or infrastructure to verify participants’ “biological sex” as the Code seems to imply. Expecting consistency in this kind of scrutiny is wholly unrealistic and would unfairly penalise small, well-meaning organisations that want to offer inclusive, accessible opportunities for all.

In addition, the guidance creates conflicts with existing privacy protections enshrined in the Gender Recognition Act. There is no clarity on how sports providers are meant to respect the legal rights of trans individuals—particularly those with Gender Recognition Certificates—while adhering to the Code’s exclusion-focused framework. This leaves both organisers and participants at risk of violating data protection and human rights law.

Crucially, the EHRC fails to provide meaningful support to organisations seeking to include trans women in women’s sport (and trans men in men’s). Instead of offering balanced, evidence-based advice on inclusive practices, the Code disproportionately

focuses on when and how to exclude trans participants. This exclusion-first framing undermines the inclusive ethos of community sport, where the emphasis should be on participation, fairness, and belonging.

There is also no clear distinction made between competitive and non-competitive settings. Much of the sport and fitness landscape—such as yoga classes, dance sessions, walking groups, or five-a-side football—is recreational, where issues of competitive advantage are not relevant. The absence of this clarification has already contributed to widespread confusion and unnecessary exclusion from activities that are vital for people’s physical and mental wellbeing.

At Gendered Intelligence, we have seen first-hand the positive impact that inclusive sports environments have on trans people, particularly those already facing multiple forms of disadvantage. The current proposals risk undoing this progress. Marginalised communities—including disabled people, people of colour, and LGBTQ+ individuals—already face significant barriers to participation. The proposed guidance will only deepen these inequalities, reducing access to sport and increasing social isolation, poor health outcomes, and exclusion from public life.

Sport should be a space where everyone feels welcome, supported, and able to thrive. We urge the EHRC to reconsider this approach and work to provide practical, lawful, and inclusive guidance that reflects the diversity of people’s lived realities.

Chapter 13.2

The EHRC said, “This section has been updated to provide guidance on how separate or single-sex services can be provided for men and women. It also sets out when providing these services is likely to be lawful.”

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the updated section on separate and single-sex services for men and women is clear.**
- **We responded:**

The Code's repeated recommendation that trans people should be directed to use a separate "third space" instead of men's or women's facilities is highly problematic. The EHRC appears to have overlooked serious issues with this approach—including the fact that such spaces are often unavailable, and when they are, they are frequently shared with or intended for disabled users. This fails to consider the existing access barriers already faced by disabled people and risks compounding discrimination against both groups.

This section does not provide sufficient clarity for services on how to support trans people. The examples given, like hospitals and toilets, presume widespread exclusion of trans people from vital services and spaces. The current wording of the Equality Act already offers sufficient explanation for the limited number of situations in which trans people can be excluded as a proportionate means to a legitimate aim. Presumption of widespread exclusion will lead to trans people losing access to healthcare, toilets and changing spaces, sports and physical activity, and others. Not only will this worsen inequality in the trans community, it will also undoubtedly lead to discrimination in service provision.

We are particularly concerned about the lack of clarity in 13.3.14: "it may be that offering alternative arrangements is not reasonably possible for the service provider (including a person providing a service in the exercise of public functions) or that doing so would undermine the service that is being provided. This may be because of the type of service being provided, the needs of the service users, the physical constraints of any building, or because of the disproportionate financial costs associated with making those arrangements."

This allows for a scenario where services, including vital services like healthcare, can exclude trans people as a matter of course on the grounds of finance or infrastructure without a framework to clarify what is "reasonably possible". This will give services carte blanche for the exclusion of trans people without justification, and also provides no guidance for how services can minimise financial or infrastructural investment by including trans people in existing provisions.

For example, most gyms with separate male and female changing spaces will not want to bear the expense of creating a new third space for trans people. Trans women will

not be safe or comfortable changing in male spaces, and trans men will not be safe or comfortable changing in female spaces. The result will be that many establishments will exclude trans people, and those people will not have an alternative. The guidance should make clear that excluding trans people from services without providing an adequate alternative would constitute discrimination on the basis of gender reassignment.

Likewise, hospitals and healthcare providers are unlikely to want to spend money on infrastructure to provide additional wards, toilets, and treatment facilities for trans people. The result will be that trans people do not get equal access to healthcare, or miss out on important treatments. We also know from prior research (including the National LGBT Survey 2018) that trans people are less likely to seek medical treatment if they fear exclusion. The guidance should make clear that trans people should be included on the basis of acquired gender wherever possible, and that if trans people are excluded from vital services (like healthcare) it is likely to be discriminatory if it negatively impacts their care. Furthermore, the guidance should explicitly state the responsibility service providers have to ensure that trans people who are excluded on the basis of sex receive an equal standard of care.

The result is that the proposed changes are likely to lead to widespread and discriminatory exclusion of trans people from important services, and furthermore do not provide sufficient guidance to minimise loss of access to services for trans people or sufficient guidance on the responsibilities services have to minimise negative outcomes for trans people.

We also note that, as mentioned above, these exclusions are unenforceable, as they would require all users of services (including medical services) to be asked their birth sex, and possibly provide proof, which is likely to cause confusion among service users and may amount to violations of privacy and dignity.

Trans people should be included on the basis of acquired gender wherever possible, because there is no systemic history of problems or serious incidents with this approach, because it minimises the financial and infrastructural burden on services, and because it offers the maximally inclusive and equal approach. At minimum, the Code must clarify that trans people should be included on the basis of acquired gender

where exclusion on the basis of sex would lead to loss of access or unequal treatment, or that services wishing to exclude trans people on the basis of sex are likely to cause discrimination if they do not provide an equal alternative.

Chapter 13.3

The EHRC said, "This section sets out the considerations that should be given to all potential service users when deciding whether separate and single-sex services are a proportionate means of achieving a legitimate aim. It also sets out circumstances in which mixed-sex services may be necessary, and the potential legal implications of providing only mixed-sex services."

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the new section on justification for separate and single-sex services is clear.**
- **We responded:**

This section refers to the concept of a "proportionate means of achieving a legitimate aim" but fails to explain what qualifies as a legitimate aim, how proportionality is assessed, or who makes these decisions. The lack of clarity creates uncertainty for service providers and leaves trans people vulnerable. It creates a scenario in which trans people can be excluded on any pretext or justification. Any statutory guidance must ensure that the situations in which transgender people can be lawfully excluded are defined with specific rubrics and contexts, with a focus on the minimum possible exclusion.

Crucially, the Code does not adequately address the serious and disproportionate harm that exclusion causes to trans people—particularly trans women—who already face elevated risks of violence, harassment, and marginalisation in public spaces. While some providers may cite "privacy" or "comfort" as reasons for exclusion, the Code fails to weigh these claims against the safety, dignity, and wellbeing of trans individuals. This is especially pressing in contexts like toilets, changing rooms, and shelters, where exclusion can directly jeopardise personal safety. Trans people should

not be assumed to be an inherent threat to the privacy, comfort, or dignity of cisgender people, and trans people's privacy, comfort, and dignity should be given equal weighting to that of others.

The result is an unworkable and contradictory set of expectations. Providers who deliver single-sex services may unintentionally discriminate against trans people, who are more likely to be disadvantaged by such arrangements (13.3.7). On the other hand, those offering mixed-sex services risk accusations of sex discrimination against women (13.3.20). The guidance offers no clear or practical solution for balancing these risks, leaving providers without a lawful, inclusive way forward under the Equality Act 2010.

Even more concerning is the guidance's failure to consider the rise in informal "policing" of gender in public spaces. There are growing reports of individuals—particularly women—being harassed, excluded, or verbally abused from facilities simply because someone assumed they "looked trans." This kind of gender surveillance disproportionately harms gender non-conforming people, lesbian women, some disabled women, and women of colour. In particular, a growing number of cisgender lesbian women have reported feeling unsafe or being targeted in spaces like changing rooms as a result of the growing exclusion of trans people. The guidance, by not addressing this issue, risks enabling these harmful behaviours and undermining the safety of already marginalised groups.

- **When asked, "What changes might your organisation make as a result of this update to the code of practice?", we responded:**

We do not intend to change our current approach, but we would welcome clear, official guidance on how trans-inclusive organisations and services can continue to operate effectively, especially given the increased complexity around logistics and access created by the proposed Code.

For many years, a wide range of services have successfully and safely included trans people. The new Code threatens to undermine this progress by shifting the focus away from inclusion and human rights, and instead advising that exclusion and violations of human privacy and dignity are now required.

There is a clear imbalance in the guidance, which appears to prioritise the views of a vocal minority with gender-critical perspectives. This is not a fair or neutral approach, does not represent the best interests of the people of the United Kingdom, and risks eroding the inclusive principles that many organisations have upheld for years.

Chapter 13.4

The EHRC said, "This new content explains that service providers may need to develop policies regarding the provision of separate or single-sex services. It also covers specific circumstances that may require a different approach to that set out in policy, and examples of those circumstances."

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the new content on policies and exceptions for separate and single-sex services is clear.**
- **We responded:**

This section lacks the clear, practical guidance that service providers need to create legally compliant policies that also respect and protect the rights, safety, and dignity of trans people. The current advice is vague and risks being misinterpreted or exploited to justify sweeping exclusions under the guise of policy decisions.

Trans women have lawfully accessed services that align with their gender for many years, without evidence of safety concerns or detriment to other service users. In fact, some studies have found that risk of serious incidents like sexual harassment increased where trans people were forced to use sex-segregated services. The proposed shift in approach appears unjustified and unnecessary. We question why this change is being introduced now, given the absence of any new risk or rationale.

In fact, the proposed changes offer no clarity or advice for services that have happily included trans women for years, or advice on how trans people who have been excluded after years of service use should seek alternative provision.

To give an example from our work, a trans woman in her 40s has been using a

women's domestic abuse support group for over ten years. She has formed lasting relationships and a supportive community with the group. Her trans status has never been a problem with the service or the group. She would not be comfortable using a male service because her abuser was a man, and because it does not reflect her experiences as a woman. Is the EHRC position that the service should be forced to exclude this woman even though they want to include her, and that she should receive no alternative provision?

The Code should minimise exclusion from services and communities wherever possible, and should offer comprehensive advice on A) How services who want to include trans people can continue to do so and B) How trans people who are excluded can be supported to find alternative provision.

Chapter 13.5

The EHRC said, "This section explains that service providers should consider their approach to trans people's use of their services when deciding whether to provide a separate or single-sex service. It includes examples of relevant considerations when deciding whether the exclusion of trans people from a separate or single-sex service is a proportionate means of achieving a legitimate aim."

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the updated section on separate or single-sex services in relation to gender reassignment is clear.**
- **We responded:**

This section raises serious concerns about the exclusion of trans people from both male-only and female-only services. It also introduces what we see as a deeply harmful and impractical standard for denying trans people access to single-sex spaces based on whether their presence might cause "distress or alarm" to others.

This does not provide an adequate legal framework for determining what constitutes "distress or alarm", allowing for the wholesale exclusion of transgender people on any

pretext. Furthermore, it reinforces damaging stereotypes that portray trans individuals as inherently threatening. There is no evidence of any kind that transgender people are a safety risk or cause detriment to others.

This kind of language legitimises discriminatory views and contributes to a climate of fear, hostility, and violence against trans communities. These tropes are not only unfounded—they are dangerous and unacceptable. Compare the language here to other protected characteristics that the EHRC upholds. There are undoubtedly people who might feel “distress or alarm” at sharing a changing room with a gay or lesbian person, but we do not consider that grounds for excluding people on the grounds of sexuality because such homophobia is considered unreasonable. The EHRC’s role is to facilitate the inclusion and protection of all protected characteristics. Trans people should be offered the same protections as other protected characteristics, and their rights should be not be conditional on the personal beliefs of others.

We strongly urge the EHRC to reflect on the profound impact that denying access to both male and female services will have on trans people’s everyday lives. This amounts to segregation, and could severely limit the ability to function in public, use basic sanitary facilities, and participate in social life. The implications go far beyond inconvenience—they risk isolating, dehumanising, and segregating trans people from wider society. Over time, this exclusion would have devastating consequences for mental health, increase vulnerability to violence, and reduce access to key areas like education, employment, and healthcare. It sends a harmful message that trans people are not full and equal members of society and undermines progress toward inclusion and equality.

It’s also important to note the sharp rise in community distress following the Supreme Court ruling: in the two weeks after the decision, the UK LGBTQ+ Helplines Partnership saw a 33% rise in calls overall, and a 644% increase in calls where transphobia was the primary concern. This is a clear warning of the real-world consequences of policies that legitimise exclusion.

We would also highlight the contradictory logic used in the guidance: in some instances, it uses a person’s sex at birth to justify exclusion, while in others it relies on their outward gender expression. This inconsistency puts trans people in a no-win

situation—excluded from both categories, with no safe or lawful option left. Example 13.5.9, for instance, claims to acknowledge unfairness toward trans people, yet still validates the approach under the guise of “proportionality.”

The proposal to direct trans people to “third spaces” is also highly flawed. Many such spaces do not currently exist, and where they do, they are often repurposed disabled facilities. This places additional strain on disabled communities, who already face access issues. The EHRC’s endorsement of this approach fails to acknowledge the shortcomings of current infrastructure and ignores the many services that already provide trans-inclusive access successfully and without issue. The proposed changes offer no guidance on how services should manage financial and infrastructural limitations without excluding trans people. We recommend an inclusion-first approach, where services that cannot provide alternatives for trans people should not exclude them.

Ultimately, this section of the Code directly contradicts the EHRC’s statutory duties to uphold equality, human rights, and dignity for all—including trans and gender-diverse people. Rather than supporting inclusion, the guidance threatens to erode it, and risks causing lasting harm to group that the regulator was established to protect.

Chapter 13.6

The EHRC said, “This content explains the application of the Act to communal accommodation in respect of the protected characteristics of sex and gender reassignment.”

- **We said we strongly disagree that the explanation of the legal rights and responsibilities set out in the updated content on communal accommodation is clear.**
- **We responded:**

This section is largely concerned with outlining how trans people might be excluded from communal accommodation designated as either male-only or female-only. It

offers little to no guidance on how to include trans people or provide them with safe, accessible alternatives—effectively denying them access to essential housing or emergency accommodation support.

It is critical to clarify what options will be available to trans individuals when accommodation is strictly separated by sex. The guidance fails to specify where trans people can be safely housed in such settings. Without clear alternatives, there is a real risk that trans people will either be excluded altogether or placed in environments that are unsafe or inappropriate for their needs. For example, if a trans person would be excluded from emergency accommodation without an alternative, the Code must specify how they are to be housed. It is unacceptable for the highest human rights body in the UK to say that leaving someone without shelter is preferable to including a trans person in a single-sex space.

In addition, the EHRC has not adequately addressed how service providers can lawfully and respectfully include trans people in communal accommodation that aligns with their lived gender. There is a clear absence of guidance on how to develop inclusive policies that protect the dignity, privacy, and safety of trans individuals while still complying with legal obligations.

Other Feedback

- **When asked if we have other feedback about the content of the code of practice. We responded:**

This Code is unnecessarily complicated, creating confusion and placing organisations in a difficult and often contradictory legal, ethical, and practical position. Rather than supporting the inclusion of trans people in everyday aspects of public life, it fails to offer any clear guidance on how to do so—making integration and participation more difficult.

At Gendered Intelligence, we support hundreds of organisations who are looking to be inclusive of all people who come through their services, including trans people. This guidance undermines those long-standing values of inclusion for all.

In effect, the Code forces organisations to choose between upholding their inclusive principles and staying compliant with a legal framework that no longer reflects them. This false choice limits their ability to meet the needs of their service users.

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