

Legal Clarity or Regression? Analysing the Supreme Court’s Judgment on the Definition of Sex under the Equality Act 2010

(The commentary is subject to updates due to the evolving nature of the issue)

Case Summary: For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)

Citation: UKSC/2024/0042

Court: UK Supreme Court

Date of Judgment: 16 April 2025 (Heard on 26 and 27 November 2024)

On Appeal From: [2023] CSIH 37

Judges: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lady Rose, and Lady Simler

Facts and Procedure

The case concerns the legal interpretation of the terms “woman”, “man”, and “sex” under the Equality Act 2010 (EA 2010), arising in the context of the Gender Representation on Public Boards (Scotland) Act 2018 (ASP 2018). It arose from a legal challenge brought by For Women Scotland Ltd, which identifies as a feminist organisation focused on protecting and strengthening women’s rights, particularly in response to public policy developments around gender identity and representation.

The ASP 2018 aimed to improve female representation on public boards in Scotland and initially defined “woman” broadly¹ to include not only individuals assigned female at birth but also those

¹ Section 2 Gender Representation on Public Boards (Scotland) Act 2018 states:

“ “woman” includes a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female. This means that it is not necessary for a trans woman to have a Gender Recognition Certificate to be included as a woman for the purposes of the Act, provided they —

- have the protected characteristic of gender reassignment,
- are living as a woman, and
- are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of becoming female.

with the protected characteristic of gender reassignment who were living as women or undergoing gender transition. The ASP 2018 and the original statutory guidance defined “woman” as including people: (1) with the protected characteristic of gender reassignment; (ii) living as a woman; and (iii) proposing to undergo / undergoing / who have undergone a gender reassignment process.

For Women Scotland, in 2020, challenged this interpretation. In FWS1, the Inner House determined that the statutory definition was invalid, as it encroached upon the area of equal opportunities²—a matter reserved to the UK Parliament—and thus exceeded the legislative powers devolved to the Scottish Parliament.

Following that judgment, the Scottish Ministers issued revised statutory guidance,³ stating that the definition of “woman” under the ASP 2018 should now align with the EA 2010, where section 212 defines “woman” as “a female of any age.” However, the new guidance also maintained that a trans woman with a Gender Recognition Certificate (GRC) falls within this definition, effectively treating “sex” as including legal gender acquired via certification under the Gender Recognition Act 2004.

In 2022, the Appellant again challenged the lawfulness of this position, arguing that “woman” in the EA 2010 refers to what they describe as biological sex alone and that including trans women with a GRC unlawfully alters the meaning of “sex” in a reserved area of law.⁴ Both the Outer House (2022)⁵ and the Inner House (2023)⁶ rejected the challenge, leading to the appeal before the UK Supreme Court.

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- A trans man without a Gender Recognition Certificate would not be included as a woman for the purposes of the Act if they -
 - are not living as a woman, or
 - are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of becoming male.”

This section has been amended by Section 2 Gender Representation on Public Boards (Scotland) Act 2024.

² For Women Scotland Ltd v The Lord Advocate [2022] CSIH 4, 2022 SC 150 “a1”

³ For more information: <https://www.gov.scot/publications/gender-representation-public-boards-scotland-act-2018-statutory-guidance-2/> (last visited: 09/05/2025)

⁴ Second Division, Inner House, Court of Session [2022] CSIH 4 P697/20

⁵ *Ibid*

⁶ Second Division, Inner House, Court of Session [2023] CSIH 37 P578/22

The Supreme Court intended to answer the question that ‘whether the EA 2010 treats a trans woman with a GRC as a woman for all purposes within the scope of its provisions, or when that Act speaks of a “woman” and “sex” it is referring to a biological woman and biological sex?.’⁷

Judgment

In its unanimous judgment, the Supreme Court upheld the appeal and held that the terms “man,” “woman,” and “sex” within the meaning of the Equality Act 2010 refer to “biological sex.”⁸

The Court began by recognising that protection against sex-based discrimination was first established under the Sex Discrimination Act 1975 (SDA),⁹ which prohibited both direct discrimination, where a woman is treated less favourably than a man on the basis of sex—and indirect discrimination, where a neutral condition disadvantages women more than men.¹⁰

Importantly, the Act also included exceptions, particularly in contexts involving privacy and decency, such as shared accommodation, changing rooms, and toilets, which permitted separate facilities for men and women.¹¹ In its judgment, the Court found that Parliament consistently employed the terms “man” and “woman” in the SDA 1975 to delineate groups on the basis of “biological sex”, and stated there was no indication that these terms were intended to have any other meaning.¹²

Following the ruling of the European Court of Justice in *P v S and Cornwall County Council*,¹³ which acknowledged protection for individuals undergoing gender reassignment, the UK responded with the Sex Discrimination (Gender Reassignment) Regulations 1999. While these amendments extended the SDA’s protections to trans individuals, the Court observed that they did not alter the original, “biological” understanding of “man” and “woman” in the legislation.¹⁴

⁷ Para 8

⁸ Paras 36 — 51

⁹ Section 1 - Part I, Sex Discrimination Act 1975

¹⁰ Paras 36 — 40

¹¹ Paras 41 — 48

¹² Para 51, 162

¹³ *P v S and Cornwall County Council*, Judgment of 30 April 1996, Case C-13/94: ECLI:EU:C:1996:170

¹⁴ Paras 54 — 62

Subsequently, both the SDA 1975 and the 1999 Regulations were repealed and replaced by the Equality Act 2010, which consolidated equality law and introduced protection for additional characteristics, including sex and gender reassignment.¹⁵ However, the Court found no evidence that the Equality Act redefined “man,” “woman,” or “sex” in a way that departed from the “biological” meaning established under the earlier legislation.¹⁶

Turning to the Gender Recognition Act 2004 (GRA), the Court examined section 9(1), which provides that a person with a Gender Recognition Certificate (GRC) is to be treated as their acquired gender “for all purposes.” However, the Court emphasised that this provision is subject to section 9(3), which permits the disapplication of section 9(1)¹⁷ where its application would be incompatible with the context, purpose, or terms of other legislation—even in the absence of express language to that effect.¹⁸

Applying this reasoning, the Court determined that the Equality Act 2010 does not explicitly incorporate or rely upon the certificated sex of individuals. Rather, the structure and language of the Act, particularly in relation to provisions on pregnancy, maternity, single-sex services and spaces, sport, education, and sexual orientation—require a so-called biological understanding of sex. The Court was clear that interpreting “sex” as referring to certificated sex would introduce internal inconsistency and undermine the coherence of the statute. It would also unjustifiably privilege trans individuals with a GRC over those without. Accordingly, the Court held that section 9(3) of the GRA must operate to disapply section 9(1) in the context of the Equality Act.

¹⁵ Para 113 — 116, para 142 — 149

¹⁶ Para 162 — 164

¹⁷ Section 9: “General

(1) Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).

(2) Subsection (1) does not affect things done, or events occurring, before the certificate is issued; but it does operate for the interpretation of enactments passed, and instruments and other documents made, before the certificate is issued (as well as those passed or made afterwards).

(3) Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.”

¹⁸ Para 75, para 99 — 104 and para 156

In support of its interpretation, the Court reaffirmed the principle that a term used repeatedly within the same statute is presumed to have a consistent meaning, unless Parliament expressly provides otherwise. This approach is rooted in long-established authority, including *R v Secretary of State for the Environment, ex p Spath Holme Ltd* [2001] 2 AC 349, *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, and *R (O) v Secretary of State for the Home Department* [2022] UKSC 3. The Court also reiterated that where a term is expressly defined, such as “woman” in section 212 of the Equality Act 2010—the statutory definition should guide its interpretation across the Act. While external materials, such as Explanatory Notes, may assist interpretation, they cannot override clear statutory language (*R (O) at [30]*).

Finally, the Court was clear that this interpretation does not remove or diminish legal protections afforded to trans individuals. Trans people, regardless of whether they possess a GRC, remain fully protected under the characteristic of gender reassignment. They may also invoke provisions on direct and indirect discrimination, and harassment. The Court recognised that, in light of case law, a trans woman may bring a claim for sex discrimination on the basis that she is perceived to be a woman—demonstrating that a certificated sex interpretation is not necessary for these protections to apply.¹⁹

Commentary

In the following sections, the commentary explores the possible implications of the *For Women Scotland* decision through a rights-based lens, examining how the judgment may affect the legal position of transgender individuals under the Equality Act and the Gender Recognition Act. At the heart of this analysis lies a fundamental question: what does this ruling actually mean for trans people in practice? How and in which contexts will they be included or excluded under the law?

The judgment introduces a significant degree of legal and practical uncertainty, leaving individuals, institutions, and service providers without clear guidance on how to navigate issues of access, recognition, and protection. While we are waiting for the Equality and Human Rights Commission (EHRC) to update the Statutory Code of Practice in light of the ruling, it remains

¹⁹ Paras 248 — 263

unclear whether these revisions will meaningfully resolve the uncertainties or merely shift them elsewhere. While the ruling purports to clarify the meaning of “sex” in the Equality Act 2010, it simultaneously generates ambiguity about the status and treatment of trans people, particularly those with a Gender Recognition Certificate. This commentary critically engages with the tension between achieving legislative clarity and safeguarding lived equality, highlighting how the ruling may create inconsistencies, diminish protections, and increase marginalisation.

a) Legal Clarity Versus Social Consequences

Baroness Falkner, Chair of the Equality and Human Rights Commission (EHRC), stated that redefining sex as “biological” could bring clarity “in a number of areas, but potential ambiguity in others.”²⁰ This duality is evident in the Supreme Court’s reasoning, which while aiming to ensure legislative coherence, has potentially jeopardised the rights of some of the most marginalised members of society.

The judgment addresses specific domains, such as single-sex spaces, sports, education, and charities, where sex-based distinctions are permissible under the Equality Act. Yet, while the ruling purports to preserve the integrity of sex-based protections for women and girls, it raises serious concerns about the effective inclusion of transgender individuals who hold a Gender Recognition Certificate (GRC). This is especially troubling in light of the inadequacy of the present GRC process, which remains inaccessible for a majority of trans people. Existing legal criteria for obtaining a GRC involves obtaining a psychiatric diagnosis, collating years’ worth of documentary evidence treatment history, and submitting to a tribunal of judges and doctors who never meet with an applicant, which along with being invasive, expensive, and time-consuming, also fails to consider the years- (and in some cases centuries-)long waiting lists²¹ for Gender Identity Clinics in Scotland.²²

The ruling also hinges on unclear assumptions about what is meant by “biological”. Biological aspects of sex are numerous, complex, and their association is socially determined moreso than essential or inevitable. In their Clinical Practice Guideline, the Endocrine Society advises “the

²⁰ equalityhumanrights.com/media-centre/news/clarifying-definition-sex-equality-act (Last visited: 09/05/2025)

²¹ <https://www.wearequeer.af/gender-clinic-files-some-people-in-scotland-will-never-get-a-gender-clinic-appointment-on-a-224-year-waitlist/>

²² Chapter 7, Gender Recognition Act 2004

terms biological sex and biological male or female are imprecise and should be avoided”²³, demonstrating the lack of consensus among medical and scientific institutions on the usefulness of “biological sex” as a concept. These nuances are unaddressed by the Court’s decision and muddy attempts at legal analysis or application.

b) The Limits of Legal Recognition

A core inconsistency arises from the Court’s suggestion that legal recognition via GRC does not necessarily entitle a trans person to be treated as their acquired sex in all contexts. This undermines the very essence of the GRC regime and creates a paradox where a person recognised in law as female may be excluded from women-only spaces or services. By gutting the power and intent of the Gender Recognition Act 2004, the UK risks reinstating the legal alienation of trans people which was described by the European Court of Human Rights in 2002 as “a conflict between social reality and law arises which places the transsexual in an anomalous position”²⁴.

In its judgment, the court addressed the issue of sport. Under Section 19 of the Gender Recognition Act 2004, trans women could be excluded from women’s sports:

“(1) A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may, if subsection (2) is satisfied, prohibit or restrict the participation of persons whose gender has become the acquired gender under this Act.

(2) This subsection is satisfied if the prohibition or restriction is necessary to secure—

- (a) fair competition, or
- (b) the safety of competitors.”

This provision is already controversial, given the dearth of evidence suggesting trans women hold any categorical advantage over cis women in sport^{25 26}, the shaky philosophical justification

²³ The Journal of Clinical Endocrinology & Metabolism, Volume 102, Issue 11, 1 November 2017, Pages 3869–3903, <https://doi.org/10.1210/jc.2017-01658>

²⁴ Christine Goodwin v. the United Kingdom 28957/95, ECHR 2002-VI. Para 77

²⁵ <https://www.medrxiv.org/content/10.1101/2025.05.05.25326994v1>

²⁶ <https://www.scielo.br/j/rbme/a/CDkTksYcMPcKYTHGfcJLX4K/?lang=en>

for the exclusion of trans women from women's sport²⁷, and the tendency for the consequences of such exclusions to disproportionately affect women of colour²⁸. However, the Supreme Court's ruling goes further by categorically barring trans women from participating in sports, with the effect of directly discriminating against trans people and tacitly justifying a transphobic social landscape.

c) Discrimination and the Erosion of Practical Protections

Though the Court has reiterated that the Equality Act continues to protect against discrimination based on gender reassignment, the practical implications cast doubt on this assurance. The ruling risks creating scenarios where trans people can be excluded from both men's and women's spaces—effectively rendering them invisible in law and society. This 'neither here nor there' legal identity is contrary to the principles of dignity and inclusion that underpin anti-discrimination law.

If the exclusion of trans people from single-sex spaces is framed as a protective measure for women and girls, this rationale becomes questionable, as empirical evidence does not support the assertion that trans women pose a significant risk. As such, the judgment in question may be viewed as more reactive, driven by perceived threats or social pressures, rather than grounded in objective, evidence-based reasoning.

Moreover, requiring individuals to prove their legal sex to access rights introduces invasive scrutiny into daily life. As noted in legal guidance, most trans people—and even cisgender individuals—are not typically asked to show a Gender Recognition Certificate or birth certificate in everyday settings. However, this judgment may shift that norm, particularly for those whose appearance does not conform to conventional expectations of femininity. Such requirements can amount to indirect discrimination, especially in employment, membership for association and single-sex services.

d) Unintended Consequences and Policy Missteps

²⁷ <https://www.jstor.org/stable/26927952>

²⁸ <https://www.tandfonline.com/doi/abs/10.1080/14791420.2023.2267646>

This judgment exemplifies a broader tension in equality law: the balance between collective protections and individual dignity. It is notable that the Court did not settle disputes over access to single-sex spaces but arguably made them more complex. Organisations now face potential liability for both sex and gender reassignment discrimination, complicating employer responsibilities, charitable statuses, and public sector equality duties.

One particularly illustrative example of this uncertainty concerns access to toilets and other single-sex facilities. While the Equality Act 2010 provides a framework for lawful sex-based distinctions in certain contexts, it does not comprehensively regulate the provision of toilets, which are often governed by separate building regulations, health and safety codes, or local authority guidelines. As a result, there is no uniform legal requirement across all settings, and service providers are left to interpret how the Court's ruling interacts with these overlapping regulatory regimes. This creates further ambiguity, as the question of who is legally entitled to use a particular facility may now hinge on an unclear combination of biological definitions, risk assessments, and administrative discretion. Such ambiguity reinforces the need for clear, consistent guidance to prevent discriminatory practices and ensure the dignity and safety of all users.

For another example, we can point to hospitals. Hospitals illustrate the practical challenges of the ruling's strict definition of sex. A trans man may be placed in a women's ward based on assigned sex, regardless of his legal gender or lived identity. This can create distressing situations for the individual and confusion for staff and patients, especially when objections arise or policies are unclear. Such scenarios risk undermining dignity, privacy, and continuity of care, revealing how a rigid legal approach can produce harmful outcomes in sensitive healthcare contexts.

The judgment may embolden blanket exclusions justified by the notion of "biological fairness," particularly in sports and associations. These risks reversing years of advocacy aimed at integrating trans people into social, cultural, and occupational life. While safety and fairness must be preserved, these aims can and should be addressed through nuanced, case-by-case assessments rather than blanket policies rooted in fear or prejudice.

Beyond its immediate implications for transgender individuals, the policing of gender expression may have broader ramifications for anyone who does not conform to rigid gender norms. This

includes cisgender women whose appearance, behaviour, or lifestyle may deviate from traditional expectations of femininity. In practice, the entrenchment of biological essentialism may legitimise intrusive scrutiny and gatekeeping not only of trans identities but also of cis women themselves, ironically undermining the freedoms of the very group that organisations like For Women Scotland claim to protect. This narrowing of acceptable gender expression risks curtailing personal autonomy and reinforcing regressive social norms, thereby diminishing the liberty of all individuals to live authentically without fear of institutional or societal sanction.

e) A Rights-Based Perspective

From a human rights standpoint, the judgment may conflict with Article 8 of the European Convention on Human Rights,²⁹ which guarantees respect for private and family life. When legal sex is rigidly tied to fallacious assumptions about biology, it ignores the lived realities and identities of trans people. Although the Court asserts³⁰ that rights are maintained, its reasoning suggests a narrowing of scope rather than a strengthening of protections.

Dr Nick McKerrell, senior law lecturer at Glasgow Caledonian University, has correctly said that the ruling will have significant implications for trans people. He pointed out that the decision could leave trans women with GRCs unable to claim discrimination as women, a legal impossibility that undermines the very purpose of recognition laws. He said that: “It doesn’t mean everything overnight is going to change in terms of stopping trans people from accessing services. It will depend on what providers think the new definition will mean for them.”³¹

f) Reconsidering Legal Clarity: Impacts on Trans Rights

²⁹ Article 8:

“1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

³⁰ Para 73

³¹ <https://www.bbc.co.uk/news/live/cvgq9ejql39t>

In the Letter to the Minister for Women and Equalities on the definition of the protected characteristic of ‘sex’ in the Equality Act 2010 (3 April 2023), the Equality and Human Rights Commission noted:

“The potential implications of this change should be carefully identified and considered, with due regard to the Public Sector Equality Duty and in particular any possible disadvantages for trans men and trans women.”³²

This raises a fundamental question: shouldn’t such considerations come before legal changes are made, particularly when they affect a marginalised group, rather than treating the assessment of implications as an afterthought?

While legal clarity is important for consistency and enforceability, it must be carefully balanced against the potential social impact on already vulnerable communities. Sound policymaking, especially in equality law, demands a proactive rather than a reactive approach to protecting vulnerable populations.

Conclusion: Towards a More Inclusive Framework

In seeking clarity, the Supreme Court has arguably created a brittle and exclusionary legal framework, one that raises more questions than it resolves. While the protection of women’s rights is essential, it must not come at the expense of trans rights. The ruling leaves open significant uncertainty about how trans individuals, including those with Gender Recognition Certificates, will be included or excluded across different legal and institutional contexts. Without coherent guidance, service providers and public bodies are left to interpret the ruling in ways that may vary widely, leading to inconsistency, confusion, and potential discrimination.

Single-sex spaces are at the core of the debate, and the creation of a third or gender-neutral space is often proposed as a solution. While this may address some concerns, it introduces new problems, such as forcing trans people into visibly separate categories, potentially exposing them to stigma or risk. Moreover, such arrangements may be impractical or unaffordable for many institutions, making them an incomplete and uneven response to a complex issue.

³² letter-to-mfwe-definition-of-sex-in-ea-210-3-april-2023.pdf

While updates to the Statutory Code of Practice may offer some clarification, it remains uncertain whether they will provide the level of practical guidance needed to resolve these ambiguities or merely shift the burden of interpretation onto frontline institutions. Rather than reinforcing rigid binary categories, the legal system must evolve to reflect the complexity of human identity while upholding dignity and substantive equality for all. Law, after all, should be a shield for the vulnerable, not a gatekeeper of belonging.

UPDATE: Spring 2026

Since our analysis of the Supreme Court decision last August, a number of events have developed which should inform our understanding of the judgement. The rate and seriousness of these updates should serve to caution institutions across the UK, many of which have sought to hastily implement the EHRC's interim guidance in a poorly thought out and potentially discriminatory manner. As the Lemkin Institute explain in their Red Flag Genocide Alert on trans and intersex rights in the UK, organisations changing policy to align with the EHRC's restrictive interpretation of the ruling risk contributing to the attempted erasure of trans and intersex people from public life³³. These concerns are reflected in the experience of transgender people in the UK, of whom 84% say the UK is a fairly unsafe or very unsafe country for trans people, according to a recent YouGov poll³⁴.

This update will describe a number of such events in order, beginning with the Trans Legal Clinic's challenge of the Supreme Court decision at the European Court of Human Rights, then the Scottish Human Rights Commission's response to the Supreme Court, then moving into October with the Council of Europe's Human Rights Commissioner's letter to the chairs of the Joint Committee on Human Rights and the Women and Equalities Committee, the news that the EHRC have withdrawn their interim guidance and finally concluding with the ruling on the case of Sandie Peggie v NHS Fife.

McCloud v UK

In August, the Trans Legal Clinic lodged an application at the European Court of Human Rights (ECtHR) on behalf of Dr Victoria McCloud, who was the UK's first openly trans judge³⁵. The Trans Legal Clinic are working in partnership with W Legal on this case, launching their Strategic Litigation Service. This is the first time a case at the ECtHR has been brought by a trans-led legal team, directly opposing the tendency for decisions about minoritised groups to be made without their input.

³³ <https://www.lemkininstitute.com/red-flag-alerts/red-flag-alert-on-anti-trans-and-intersex-rights-in-the-uk>

³⁴ https://d3nkl3psvxxpe9.cloudfront.net/documents/GoodLawProject_250820_W2.pdf

³⁵ <https://www.translegalclinic.com/post/mccloud-v-uk-european-court-of-human-rights>

The trans-led nature of the case is especially pertinent, considering the nature of their claim. When the Supreme Court was hearing *For Women Scotland Ltd v the Scottish Ministers*, Dr McCloud petitioned to provide evidence on how the case would affect the trans community. Her request was denied, leading to the Supreme Court's decision being made with no input from transgender people. She is now arguing this violated her right to a fair trial. Article 6(1) of the European Convention on Human Rights³⁶ reads:

In the determination of his [sic] civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The right to a fair trial, which was enshrined in UK law in the Human Rights Act 1998, secures our ability to present a case before a decision is made about us. The lack of trans voices in *For Women Scotland Ltd v the Scottish Ministers* could therefore be taken as another point of erosion of the rights of trans people in the UK. The Trans Legal Clinic has established a community crowdfunding campaign to cover the costs of the case.

SHRC response

The Scottish Human Rights Commission's 'Statement in response to the Supreme Court judgment in *For Women Scotland vs The Scottish Ministers*' was also published in August, the first time since 2022 the SHRC has put out a statement regarding the state of transgender rights in Scotland. The SHRC stated that although they do not object to the Supreme Court's decision, they warn of the risk that institutions and policymakers may implement policies and procedures that violate international human rights law. While the decision was intended to provide clarification on the Equality Act 2010, it is clear that interpretation of the ruling is both difficult and fraught with potential legal and moral failures.

³⁶ https://www.echr.coe.int/documents/d/echr/Convention_ENG

In order to mitigate the possibility of rolling back on human rights, the SHRC called on the Scottish Government to implement an immediate audit of all law and policy areas where the Supreme Court's judgement could have an impact. This would include, among other areas, 'considerations around police searches, workplace health and safety requirements, single-sex accommodations in prisons and healthcare, and access to domestic violence refuges', areas in which rushed policy changes have already had detrimental for trans people accessing services. The statement also emphasised the importance of holistic, balanced approaches to human rights, noting how much of the current discourse is focussed on narrow view of compliance with a single law – the Equality Act 2010 – without considering the full landscape of human rights obligations.

Letter from the Commissioner for Human Rights

Early in October, Michael O'Flaherty, the Council of Europe's Commissioner for Human Rights, sent a letter to the Chair of the Joint Committee on Human Rights and the Chair of the Women and Equalities Committee expressing concern about the state of rights for trans people in the UK in light of the Supreme Court's decision, which he noted 'did not engage with these [sc. transgender] human rights issues'. Making explicit reference to *Goodwin v. the United Kingdom*, the letter warns that the Supreme Court's ruling suggests a movement towards making legal gender recognition in effect meaningless. Similarly to the SHRC statement, the Commissioner's letter notes the danger of approaching human rights as a 'zero-sum game', in which for some groups to have their rights secured, others must have their rights denied. This fractured approach only serves to compromise efforts to redress real injustices. As the Commissioner states in the letter's conclusion, framing women's rights and combatting gender-based violence as contingent on the exclusion and restriction of trans people 'risks undermining the comprehensive, evidence-based approach needed to address this epidemic'.

As well as concerns about the impact of the decision on legal gender recognition, the letter also expresses concern about how subsequent interpretation might affect trans people generally and also gender-nonconforming people. Forced disclosure of trans identity is a breach of Article 8 of the European Convention on Human Rights, which is subject to some conditions, but a blanket policy that directly or indirectly outs trans people would not be in compliance with human rights

obligations. The proactive involvement of the Commissioner for Human Rights should serve to warn of the grave impacts of the Supreme Court's decision and subsequent interpretation on human rights in the UK.

Withdrawal of interim guidance

Later in October, the EHRC took down its interim guidance on the Supreme Court's ruling. The guidance, which was published shortly after the judgement was announced, was described as having 'gleefully weaponised'³⁷ the judgement in order to discriminate against trans people. The EHRC is now suggesting service providers take specialist legal advice³⁸, meaning that organisations which have already implemented policies based on the interim guidance may be subject to legal challenge. In a letter to the Minister for Women and Equalities, the EHRC stated that they urge laying out their draft Code of Practice to ministers and revoking the old 2011 code as quickly as possible. According to Blacks Solicitors³⁹, government officials have stated they do not yet have all the materials necessary to assess the draft and have emphasised that 'especially close scrutiny' is needed to mitigate the potential for legal challenges. Based on a consultation around the draft Code of Practice earlier this year, TransActual have described the code as 'discriminatory and unworkable'⁴⁰. TransActual also recently published The Gendered Spaces Report 2025⁴¹, detailing the impact of the now-withdrawn guidance on the lives of trans and gender-nonconforming cis people. We will continue to update this page as progress on the code proceeds.

Sandie Peggie tribunal judgement

³⁷ <https://www.scenemag.co.uk/jane-fae-a-director-of-transactual-writes-on-the-eve-of-launching-a-new-campaign-to-get-mps-to-reject-the-ehrcs-bathroom-ban/>

³⁸ <https://www.equalityhumanrights.com/media-centre/news/ehrc-urges-government-ensure-accurate-statutory-guidance-equality-act-available>

³⁹ <https://www.lawblacks.com/2025/11/07/ehrc-withdraws-interim-advice-following-for-women-scotland-case/>

⁴⁰ <https://transactual.org.uk/transactual-briefing-for-mps-on-ehrc-draft-code-of-practice/>

⁴¹ <https://transactual.org.uk/gendered-spaces-report-25/>

Most recently, in December, the employment tribunal hearing the case of Sandie Peggie v Fife Health Board issued their judgement, concluding that NHS Fife had harassed Mrs Peggie, but dismissing her claims of discrimination, sexual harassment, and victimisation⁴². Mrs Peggie had filed a complaint to NHS Fife after learning that she was to share changing rooms with a trans woman, Dr Upton. The Health Board's eventual resolution was to reschedule the working hours of Mrs Peggie and Dr Upton so that they would not be on shift together.

The grounds of harassment lay primarily on the Health Board failing to separate Dr Upton and Mrs Peggie's access to changing rooms once a complaint had been submitted. Importantly, the tribunal found that the Health Board was not wrong for granting Dr Upton access to the changing room, nor for resolving the dispute while retaining Dr Upton's access. They ruled that NHS Fife should have temporarily suspended Dr Upton's access to the changing room while the investigation was ongoing and should not have taken so long to investigate, but all other actions taken by the Health Board were lawful.

While all of Mrs Peggie's other claims against NHS Fife and all claims against Dr Upton individually were dismissed, several elements of the hearing were disturbing from a human rights perspective. Throughout the tribunal, Mrs Peggie's legal team were allowed to misgender Dr Upton after judge Sandy Kemp declared that while such misgendering could be 'painful and distressing', it would be 'unfair' to expect Mrs Peggie and her team to use terms they considered 'inaccurate'⁴³. Mr Kemp further advised the tribunal to use 'neutral terms' for Dr Upton in case referring to her as a woman could be perceived as bias⁴⁴. The double standard is evident: the tribunal was not ruling on Dr Upton's gender, only on Mrs Peggie's claims of harassment and discrimination. If trans people are expected to endure abuse and humiliation from a legal system that fails to recognise them as impartially as their cisgender peers, faith in such a system will be severely damaged.

The ruling also contains concerning comments on how employers should balance the rights of trans people against the rights of complainants. The tribunal stated that factors including 'changes to the physiological attributes of sex' and 'the trans person's appearance as can be

⁴² <https://www.judiciary.uk/wp-content/uploads/2025/12/Peggie-v-Fife-Health-Board-and-another-Press-Summary.pdf>

⁴³ <https://www.thepinknews.com/2025/01/27/sandie-peggie-dr-beth-upton-transgender-doctor/>

⁴⁴ <https://www.telegraph.co.uk/news/2025/01/26/scotland-transgender-nhs-fife-employment-tribunal-nurse/>

observed by others' among others should be considered in such a balance test⁴⁵. The implications of such a test are disturbing: it should not be the role of an employer to judge how well a person "passes" as their gender, whether trans or cis, nor should a person's appearance impact their right to access spaces and services. The standard placed on women, especially women of colour, to abide by expectations of what femininity should look like is patently unfair. If this test were to be codified by a higher court, it would mark a significant step back in feminist progress. Regardless of these concerns, the key takeaway for employers remains the same: it is not unlawful to allow trans employees to access single-sex spaces, regardless of what anti-trans campaigners might suggest.

⁴⁵ <https://www.judiciary.uk/wp-content/uploads/2025/12/Peggie-v-Fife-Health-Board-and-another-Judgment-and-Certificate-of-Correction-2.pdf>