

Steve Race

Member of Parliament for Exeter

By email only

From: Mary-Ann Stephenson, Chair

Our ref: 20260622Race

22 June 2026

Dear Steve Race and colleagues,

Subject: Equality Act Code of Practice for Services, Public Functions and Associations

Thank you for participating in the session we held for Parliamentarians on 3 June. I value your engagement with the draft Code of Practice for Services, Public Functions, and Associations (the Code) and the scrutiny you are providing. I have also given [detailed evidence](#) to the Women and Equalities Committee where a number of questions were asked in relation to the Code.

The Code is an important document to help duty-bearers understand the Equality Act 2010 and how they can comply with the law. It covers the obligations on service providers, public functions and associations across eight protected characteristics.

Now is the first time the Code has been updated since it was initially published in 2011 and takes account of case law that has clarified and improved the understanding of the Equality Act 2010. The Code is detailed and comprehensive but it cannot cover every potential situation or context. We provide examples throughout the Code to help organisations understand what

steps they should be taking to comply with the law. As with all guidance, we would also expect organisations to produce their own policies reflecting their circumstances, and to take legal advice where needed.

I recognise that there are strongly held views about the law on single and separate sex services. The Code does not make the law. Through the Code, we are seeking to apply the Supreme Court judgment in *For Women Scotland v The Scottish Ministers* to everyday settings for duty bearers, so they can comply with the law and reduce their risk of legal challenge. The Supreme Court was unequivocal in its conclusion that “read fairly and in context, the provisions relating to single-sex services can only be interpreted by reference to biological sex” ([paragraph 218](#)). It is our duty to reflect the law accurately, to support organisations to comply with the law set by Parliament, and to ensure people do not experience unlawful discrimination.

Our interpretation has also been tested in the High Court in *GLP V EHRC*. The High Court confirmed that our interpretation of the Supreme Court judgment is accurate and lawful.

In revising the Code, we held two open, public consultations. The second consultation specifically covered changes to the Code following the Supreme Court judgment and we received over 50,000 responses. The Code reflects the law accurately and objectively. It corrects previous guidance that incorrectly suggested single-sex services were obliged to allow people to access services for the opposite sex on the basis of self-identification. The Code provides organisations with an opportunity to review and, where necessary, amend any guidance or policies that incorrectly state that single-sex services are obliged to

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admit people of the opposite sex.

I would also like to clarify a misunderstanding about whether the Code can be amended. The Code is in draft until it has completed Parliamentary scrutiny and the Minister signs an order bringing it into force. It is before Parliament under the negative procedure. There is therefore no scope to amend the Code through the Parliamentary process unless the Minister decides to withdraw the Code from Parliament. We stand by the accuracy of the Code and are open to clarifying any misinformation or misunderstanding about its content through our website.

You will be aware that there is also a route for Parliament to formally reject the Code. If implementation of the Code was delayed, we would be concerned about the effect on duty-bearers, who may face uncertainty about how to apply the law in practice. Regardless of the status of the Code, the law remains the same. Organisations must comply with the law, or they will be open to legal challenge.

In your letter you ask a number of questions, which I will answer in turn:

1. Asking about someone's sex

- a) How will staff within relevant organisations be trained to 'weigh up' factors? Who shoulders the risk in these circumstances? How is "genuine concern" measured or evidenced? How can providers be sure to avoid harassment claims given the potential of 'violating an individual's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment' [8.7]?**

It is the role of the service provider to determine how to train staff. The Code is intended to support organisations in understanding the law and their obligations and should be used as a starting point for service providers to train staff. While detailed, it cannot address all circumstances. Organisations will need to consider their own specific circumstances in relation to any single or separate sex provision. Nonetheless, the Code sets out that asking someone to confirm their sex in relation to accessing single or separate sex services should be done sensitively and discreetly, and respect privacy.

The need to ask someone to confirm their sex in these circumstances will be rare and exceptional, and there are ways organisations can communicate rules around their service that will prevent the need to ask for a person's sex, for example through clear signage. In general, these services work based on trust and with an expectation that service users follow the rules. If there is a rare need to ask someone to confirm their sex for the lawful provision of single or separate sex services, the Code sets out that the organisation should take account of the sensitive nature of such questions, the risks to staff and others, and the need to avoid the information being given to other service users or staff.

The single and separate sex provisions in the Act mean that it may be proportionate to make these enquiries to protect the integrity of single and separate sex services. Doing so as we have set out, discreetly, sensitively and in a way that protects a person's privacy, means that it would be unlikely to amount to harassment. Harassment could occur if a person is asked about their sex in a way that creates an intimidating, hostile, degrading, humiliating or offensive environment.

We set out in paragraphs 13.168 and 13.169 some of the relevant factors that services may consider give rise to “genuine concerns”.

b) Section [13.168] states that it may be legitimate to ask people to ‘provide confirmation’ of their sex, but [13.179] states that there is no document in the UK which provides ‘reliable evidence of sex’, therefore what does confirmation of sex practically mean? How should providers determine this?

In some instances, it could be justified to ask a person to provide confirmation of their sex and to accept their reply. In other cases, it may be justified not to accept what a person asserts to be their sex. This requires reasonable exercise of judgement, but generally people are able to determine the sex of strangers with a high degree of accuracy.

In some cases, a person’s gender presentation will not accord with their ID, whether this is a bank card, driving licence or other documentation. In those circumstances, combined with the factors we set out in 13.168 and 13.169, it will be reasonably apparent if a person’s biological sex is different to the sex for which the service is provided.

There will also be cases when someone has a Gender Recognition Certificate and has changed the sex recorded on all formal documents including birth certificate. In these cases, the Code says (at 13.179) that it is unlikely to be proportionate to ask for any further evidence, but that services need to weigh up a range of factors in deciding whether to allow the person to access the service, which may include the strength of concerns, the nature of the service and the

risks to the individual and others.

These steps are necessary to preserve the integrity and purpose of the single and separate sex provisions in the Equality Act 2010.

c) Further to the above, asking a question about sex that inherently reveals or allows an organisation to infer your medical history, health status, or medical treatment, this becomes special category data, over the ICO's official position. Is the Code of Conduct's position aligned to the ICO's position, and to GDPR regulations?

The Code recognises that asking a person to confirm their sex involves their dignity and privacy. In some cases, disclosing such information may indicate further information that may be special category data, such as about the person's health. We recognise that further questions have been raised about this, and we have [published an additional explanation](#), drawing on the guidance provided by the ICO.

d) Furthermore, under Section 22 of the Gender Recognition Act 2004, information related to your status as a GRC holder is strictly defined as “protected information”, and nobody has a right to question your gender. Anyone questioning this or someone's gender identity would violate the Equality Act 2010 on the basis of discrimination. How does the wording of the Code align with the Equality Act?

Section 22 of the Gender Recognition Act creates an offence of disclosure of information related to a person's application for, or acquisition of, a Gender Recognition Certificate if a person has acquired that information in an official

capacity, including in the course of, or in connection with, the conduct of business. It does not prohibit the seeking of such information, only wider disclosing of it. This is why the Code emphasises that any enquiries are made sensitively and respect people's privacy.

The Code sets out that it may be proportionate to seek information about an individual's biological sex, and doing so is not discrimination because of the single and separate sex provisions in the Equality Act.

2. 'Double Exclusion'

Before answering your specific questions, we would like to address your interpretation that 13.147 and 13.148 of the Code may result in 'double exclusion' for trans people from both services of their biological sex and of their acquired gender. In some circumstances, it may be legitimate to prevent a trans person from using either the male or female facility or service. This might be, for example, if a trans man's presence in the women's facilities raises reasonable objections from other women, due to concerns over dignity, privacy and safety if their appearance is masculine – for instance, having a beard. However, we are clear that in those circumstances it would be important to provide a facility or service that the trans person can use, for example through an additional gender-neutral space. We have been clear that trans people should not be left without services they can use.

- a) For services that are not 'necessary for everybody', but vital for those that do need them and have a higher likelihood of exclusion, such as domestic violence services [as in 13.150], what should**

excluded trans people do? How does the EHRC intend to measure the impact of exclusion on trans people's safety, i.e. through rates of violence?

There is a chronic shortage of domestic violence services. Many people are unfortunately unable to access these services because there is not enough capacity in the system. [Research from Women's Aid](#) shows that 65.2% of referrals to refuges were turned away in 2024/25, an increase of 5.1% on the previous year. The Domestic Abuse Act 2021 sets out requirements on the Domestic Abuse Commissioner and Local Authorities to assess the need and provision of domestic abuse services. In addition to assessing the need of services for women, these assessments should take account of the need for services for trans people as well as men, who are excluded from female only services.

We will monitor the impact of the law through our regular, routine information and evidence gathering, as we do across our remit. We are also exploring work to follow up on the Code of Practice, both in how to ensure compliance with the law and to inform what further work we may need to do to promote and further equality and human rights.

While our role as the regulator of the Equality Act is principally about preventing discrimination, we are acutely aware of the potential for tensions between groups in our society that share different protected characteristics. Evidence about rates of violence is a part of the evidence base that will inform our work and approach in future.

b) How should providers determine whether someone could ‘reasonably object’? What does this mean in practice? Does this ambiguity open up providers to legal risk of unlawful discrimination?

The concept of ‘reasonableness’ is common in law and is fact and context specific. It does not necessarily lead to ambiguity but gives an element of discretion to take account of particular circumstances. The Code sets out (13.107) that it is likely to be reasonable that a person would object to the presence of someone of the opposite sex if they were in a state of undress or other vulnerable situation, for example in a changing room. Similarly, if the service is likely to involve intimate physical contact between the service user and another person, it may also be a situation where a person may reasonably object to the presence of someone from the opposite sex (13.109).

Organisations will need to make such considerations in determining whether it is a proportionate means of achieving a legitimate aim to provide single or separate sex services. They are not new considerations. However, it is now clear that they should be applied according to biological sex.

3. Associations vs services, and contradiction with Swift J in GLP v EHRC

a) Why does the Code departing from the ruling of Swift J in GLP v EHRC by stating that trans inclusion is ‘very likely’ to amount to direct discrimination against excluded cis men, where men’s and women’s services are provided in a materially similar way?

The Code is not a departure from Swift J’s analysis.

The judgment in GLP v EHRC confirms our view that a service for women that admits trans women will be a mixed rather than a single sex service and as such will not benefit from exemption from claims of sex discrimination.

Swift J's analysis also sets out that in the case, for example, of separate sex toilets whether or not different treatment between sexes will amount to no less favourable treatment is an issue that will depend on the fact-specific circumstances. In practice, such circumstances are likely to be very limited. This is reflected in the Code (13.131) which sets out that 'trans inclusion' - i.e. allowing a trans person to use a service provided for the opposite sex - is "very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it". Secondly, the Code also highlights the risk that such a service would also be open to challenge from women for indirect discrimination or harassment. The legal challenges we have seen so far have largely fallen into this second category.

b) What is the basis for the differentiation in the code between the ability to organise an association of people of two protected characteristics, but not a service?

The Equality Act 2010 treats services and public functions (Part 3 and Schedule 3) and associations (Part 7 and Schedule 16) differently. This means that different considerations are needed when determining how the exemptions apply.

Firstly, our analysis of the exemption for single characteristic associations (Schedule 16 of the Equality Act 2010) is informed by Section 6(c) of the

Interpretation Act 1978. This provides that in legislation ‘words in the singular include the plural and words in the plural include the singular’, unless the contrary intention is clear. In our view, this is likely to apply to Schedule 16 provisions for ‘single characteristic associations’, meaning that an association can limit membership to persons who share one or more (or any of one or more) protected characteristics. This interpretation is strengthened by considering Article 11 (Freedom of Assembly and Association) of the European Convention on Human Rights. This interpretation positively protects the rights of all to associate freely, with no negative impact on the rights of others.

Conversely, there are different considerations that apply to interpreting the single and separate sex service provisions. This requires a proportionality assessment of competing interests. In brief, the single and separate sex provisions are intended to protect the rights of people according to their biological sex. It is therefore clear these provisions were not intended to refer to the plural.

c) If a constituent wants to organise a coffee morning or a book club for women and trans-women, why is this not currently allowed? The response in our meeting – that they should organise into an association, with a membership – does not offer a reasonable way around this issue.

The approach to the example raised at the meeting of a coffee morning or book club for women and trans women depends on its purpose and how it is set up.

A coffee morning could be a service if it is providing goods to the public or a

section of the public. In which case it would be discriminatory to provide it only to women unless it has been determined that it is a proportionate means of achieving a legitimate aim to provide it only to women as a single sex service. If it was determined that it was proportionate to provide it as a single sex service, allowing trans women would mean it would no longer be a single sex service.

If a coffee morning or book club were to be established as an association, it would be possible to do so according to the protected characteristic of sex to include women (which would include trans men – legally women for the purposes of the Equality Act) and gender reassignment (to also include trans women).

It is also important to note that, for the purposes of the Equality Act 2010, an association must have at least 25 members, be regulated by a set of rules and membership must involve a process of selection. Informal gatherings without membership rules and selection, or where a grouping has less than 25 members, would not be considered an association under the Equality Act. An informal coffee morning or book group that doesn't meet the definitions of a service or association would be free to admit or exclude anyone it chooses.

d) Would the above examples be lawful under “positive discrimination” measures, given both sex and gender transition are protected characteristics?

Positive discrimination is not lawful under the Equality Act. The Act contains provisions for ‘positive action’ (s158), meaning services may take proportionate action to:

- overcome or minimise disadvantage experienced by people who share a protected characteristic
- meet their different needs
- enable and encourage their participation in activities where they are underrepresented

The Code (Chapter 10) sets out the steps organisations should take in considering whether positive action is proportionate. However, it is our view that a positive action to allow trans people into single or separate sex services of the opposite biological sex would not be a defence to a claim of direct discrimination. This is because, while the positive action provisions allow services to take proportionate steps to overcome disadvantage experienced by people sharing a protected characteristic, it does not allow that to be done by overriding otherwise unlawful activity. Where an organisation has determined it is proportionate to provide single or separate sex services, it is unlawful to allow someone to access the service of the opposite sex. This cannot be overridden by positive action.

4. Safeguarding risks

- a) Given the OEO has highlighted this significant risk, how does the EHRC justify the guidance? How will it measure the ongoing impact on rates of violence and sexual assault?**

The draft Code sets out guidance for organisations to comply with the law. The Supreme Court has determined that Parliament's will when passing the Equality Act 2010 was that single and separate sex services should be provided

according to biological sex. We are seeking to reflect the law accurately to ensure organisations are not left open to legal challenge.

We have set out a number of examples for how organisations can provide services and facilities in a way that protects the dignity, privacy and safety of trans people. Trans people should never be in a position that there is not a service or facility that they can use safely.

We have set out in response to Q2a how we will monitor the impact of the law in this area, including rates of violence. This will inform our future work, as evidence of impact becomes clear.

5. Third-spaces

- a) How can the negative effects of the Code on trans people be mitigated by ‘third-spaces’ - that the Government recognises service-providers may not be able to provide?**
- b) If services cannot provide alternative facilities, what can they do other than wait for litigation? Does the EHRC recognise the precarious nature of this situation for businesses; particularly considering the financial risk?**

The Code provides a range of examples that we think are helpful to services in determining how they can provide services in a way that protects the privacy, safety and dignity of all service users. In many cases, organisations may not need to make any changes as they do not provide any single or separate sex services, for example where a café has universal toilets in single, lockable cubicles. In other situations, it may only be policies that need to change rather

than expensive physical alterations.

The Code is an accurate reflection of the law passed by Parliament. We are not imposing any new obligations. We have set out the considerations that services need to make in order to comply and a range of practical examples to support with that.

Of course, there may be costs for some organisations in complying, and it may be hard for some organisations to absorb those costs. This is often a consequence of laws made by Parliament, as it is in this case. For example, there are costs associated with requiring accessibility for disabled people, but the law recognises that it is important that they should not be prevented from accessing services. However, if an organisation that operates in a way that is not compliant with the law, it is at risk of litigation, which may come at considerable cost to them.

c) The Equality Impact Assessment makes clear that there are concerns over the increased use of “third spaces” in this context, given the potential negative effect on people who rely on disabled facilities, and who currently already campaign for better access and availability. To what extent does the EHRC view this potential “tension” between people with one of two protected characteristics as acceptable?

The Code sets out the rights of disabled people under the Equality Act 2010, including the requirement to make reasonable adjustments to support disabled people in accessing services.

We provided an example in the Code that for a particular service, having taken account of its premises and service users, deciding to repurpose its accessible toilet to allow access to everyone may be a proportionate and lawful option to allow trans people to access a service or facility. We think this would be appropriate to smaller services and depends on the specific circumstances of that service. The impact on disabled people would need to be monitored and the organisation may need to make other arrangements if disabled people are unfairly disadvantaged.

This is not a unique situation. In some places, the accessible facility already doubles as a place for baby change, for example. We do not think that such arrangements put groups in tension with one another. However, as explained in the example in the Code, we expect service providers to monitor the impacts on all groups of users.

We greatly welcome your engagement with and scrutiny of the Code. I hope this letter helps with your understanding of the Code. While I have set out that amending the Code at this point is not simple, we want to keep hearing views from you and your colleagues and the wider community. Once it is in force, we will consider whether any additional or more specific guidance is necessary to further support organisations in complying with the law.

Please do write again should you have any further questions.

Yours sincerely,

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Chair

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