A Code of Practice for Exclusion: A Critical Analysis of the EHRC's Updated Guidance on Services, Public Functions and Associations (2026)

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Introduction: The Political Context and Why It Matters

On 16 April 2025, the United Kingdom Supreme Court handed down its judgment in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 22, ruling that 'woman', 'man', and 'sex' in the Equality Act 2010 refer exclusively to biological sex. The decision was seismic. For decades, the prevailing — and, many argued, sensible — understanding had been that the Equality Act's protections for women extended to trans women in their acquired gender, subject to a proportionality assessment in particular contexts. The Supreme Court replaced that textured, case-by-case approach with a rigid binary.

More than a year later, in May 2026, the Equality and Human Rights Commission (EHRC) published its updated Statutory Code of Practice for Services, Public Functions and Associations — a document of over 300 pages intended to translate the Supreme Court's ruling into practical guidance for service providers across England, Scotland, and Wales. The Code was laid before Parliament on 21 May 2026, in the dying hours before dissolution, a timing that generated significant criticism given the near-impossibility of meaningful parliamentary scrutiny (Scottish Trans, 2026). A 40-day review period was triggered from 1 June 2026, at the end of which the Code is expected to become statutory.

The consequences of this document will not be abstract. They will be felt in hospital wards, rape crisis centres, domestic violence refuges, swimming pool changing rooms, sports clubs, and countless other sites of everyday life. As the legal analyst Ian Dunt (2026) observed, the Code *'is a labyrinth of nonsense, an unworkable, illogical, irrational, hopelessly befuddled mess of competing urges, moral panic and institutionalised anxiety.'* That verdict may seem harsh, but it captures something accurate about a document that manages to be simultaneously too prescriptive and too vague, too confident in its interpretation of contested law, and entirely silent on the most urgent practical questions it raises.

This article provides a detailed critical analysis of the Code. It is divided into eight further sections: what the Code actually says; the Binary Trap as a structural critique; other significant failures; healthcare and NHS services; privacy and data protection; the human cost; what can be done; conclusion; and bibliography.

Part 1: What the Code Actually Says

The Supreme Court Ruling and Its Translation into Guidance

The Code's foundational premise is that 'woman' and 'man' in the Equality Act 2010 mean 'biological woman' and 'biological man', and that 'sex' means biological sex assigned at birth (EHRC, 2026, para. 2.49). The Code is explicit that this remains the case *'whether they have a Gender Recognition Certificate (GRC) or not'* (EHRC, 2026, para. 2.50). A GRC, obtained under the Gender Recognition Act 2004, continues to have legal effect in other areas of legislation — marriage law, for instance — but for the purposes of the Equality Act, it is rendered functionally inert so far as the definition of sex is concerned.

This is a direct consequence of the Supreme Court's ruling, which drew on the earlier *EB v Director of Public Prosecutions* [2023] EWCA Crim 614 line of authority. But it is worth noting that the EHRC has gone further than simply restating the Supreme Court judgement. As Dunt (2026) argues, the Commission is not merely *'translating law into a code'* — it is providing an *interpretation* of the law, one that has been shaped by the EHRC's own institutional logic and that goes well beyond anything the Supreme Court actually decided.

Key Paragraphs: The Core Provisions

Paragraph 2.49 sets out the Supreme Court's definition of sex. Paragraph 2.50 reinforces that GRCs do not alter this definition for Equality Act purposes. Paragraph 2.52 confirms that trans people remain protected from discrimination because of the protected characteristic of gender reassignment — a point the EHRC has been at pains to emphasise, but one that rings increasingly hollow as the practical content of that protection erodes. Paragraph 2.53 adds that trans people are also protected from sex discrimination based both on their *'sex at birth'* and on their *'perceived sex in acquired gender'* — an important qualification, but one that merely confirms a technical protection while doing nothing to vindicate trans people's actual access to services.

The most consequential paragraph in the entire document is 13.130. It reads:

> *'If a service provider (or a person providing a service in the exercise of public functions) admits trans people to a service intended for the opposite sex, then it can no longer rely on the exceptions set out at paragraphs 13.99 to 13.111. This means that if a service is provided only to women and trans women or only to men and trans men, it is not a separate-sex or single-sex service under the Equality Act 2010.'*

Paragraph 13.131 compounds this:

> *'A service like this is very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it. A service which is provided to women and trans women could also be unlawful sex discrimination or lead to unlawful harassment against women who use the service.'*

The logical structure of these two paragraphs is the foundation upon which the entire exclusionary architecture of the Code rests.

Gender Recognition Certificates and Section 9 of the GRA 2004

Section 9 of the Gender Recognition Act 2004 provides that where a full GRC is issued, *'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).'* The Code's interpretation — that a GRC does not alter a person's legal sex for the purposes of the Equality Act — places the Act and the GRA in direct and unresolved tension. ILGA Europe (2025) has noted that this interpretation effectively nullifies one of the central purposes of legal gender recognition. The EHRC acknowledges that the Code does not *'deal with the implications of the For Women Scotland judgment for the application of section 9 of the Gender Recognition Act 2004 to any other legislation'* (EHRC, 2026, para. 2.51) — but this acknowledgement does not resolve the practical incoherence it creates.

Part 2: The Binary Trap: A Structural Critique

The Logic of the Trap

Scottish Trans (2026) has described the combined effect of paragraphs 13.130 and 13.131 as creating an impossible *'Binary Trap'* for service providers. The logic is deceptively simple. A service provider who wishes to operate a single-sex service — a women's refuge, a rape crisis centre, a hospital ward — has two options under the Code:

1. **Exclude all trans people** — admit only biological women, and exclude trans women; admit only biological men, and exclude trans men.
2. **Abandon single-sex status entirely** — admit both cis and trans people, and operate a mixed-sex service.

What is *not* permitted is a third option that many service providers and users have long assumed to be the ordinary practice: a women-only service that includes trans women. Under the Code, if a service is provided to *'women and trans women'*, it *'is not a separate-sex or single-sex service under the Equality Act 2010'* (EHRC, 2026, para. 13.130), and becomes vulnerable to legal challenge from cisgender men (EHRC, 2026, para. 13.131).

This is not a subtle or marginal effect. It is a structural inversion of the pre-For Women Scotland framework. Before April 2025, trans-inclusive single-sex services were the default; exclusion required specific justification. After the Supreme Court's ruling — and given the EHRC's interpretation of it — trans exclusion has become the default, and inclusion requires a service provider to abandon its single-sex character entirely.

The Legal Coherence of Paragraph 13.131: Safeway v Smith

Paragraph 13.131 asserts that a service admitting trans women while excluding cis men *'is very likely to amount to unlawful sex discrimination'* against those excluded cis men. But this is far from legally settled. The EHRC's own cited authority for this proposition — that this constitutes actionable sex discrimination — is deeply contested.

In *Smith v Safeway plc* [1996] ICR 591, the Court of Appeal held that differences in appearance standards between male and female employees did not constitute less favourable treatment on grounds of sex, provided the standards were not less favourable in substance. Different treatment, in other words, is not necessarily unlawful discrimination. Applying this reasoning, a cis man excluded from a women's toilet while a trans woman is permitted access might be experiencing *different* treatment but not necessarily *less favourable* treatment — particularly where adequate facilities are

available to him.

In the Good Law Project's challenge to EHRC guidance (heard February 2026), Swift J did not reject this argument outright. As Gardencourt Chambers (2026) notes, the judge observed at paragraph 61 of his judgment:

> *'In a case where the provision of separate lavatories labelled male and female was materially similar in terms of the extent of the provision, location, and so on, I consider there would, in principle, be scope for a strong argument that a rule or practice that permitted trans women to use the "female" lavatory but required other biological men to use the male lavatory would comprise different but not less favourable treatment on grounds of sex.'*

This is not merely an academic point. If Swift J is right, the EHRC's central exclusionary mechanism — the claim that admitting trans women to women's facilities necessarily constitutes unlawful discrimination against excluded cis men — is itself legally dubious. The EHRC is presenting as settled law what is, in fact, a fiercely contested interpretation. Dunt (2026) reports that multiple senior discrimination lawyers, including top-drawer silks with decades of experience, could not determine what the Code actually requires in practice. This is not a minor flaw in a technical document. **It is a fundamental failure of the EHRC's core function.**

EHRC's Own Interpretation as Non-Law

It is worth being clear about what the Code actually is. As the EHRC itself states: *'The Code does not impose legal obligations. Nor is it an authoritative statement of the law: only the courts and tribunals can provide such authority'* (EHRC, 2026, para. 1.6). **The Code is guidance.** It is **not** primary legislation. Yet in practice, as Gardencourt Chambers (2026) notes, organisations will treat it as *'the safest available roadmap for litigation risk management*' — and it is precisely this practical weight that makes its errors so consequential.

The EHRC's chief executive, John Kirkpatrick, admitted during parliamentary scrutiny that at paragraph 13.136 — which concerns an example of a ten-year-old boy being permitted in a female changing room — *'I think we think that that exception is capable of being defended'* (Dunt, 2026). The phrase *'I think we think'* is a remarkable concession. It reveals that the EHRC is not reporting what the law is. It is offering its opinion on what might be defensible in court. These are very different things, and the conflation of the two is the central methodological failure of the entire document.

Practical Consequences for Essential Services

The Binary Trap is not merely a theoretical problem. It has immediate, acute consequences for services where single-sex provision is most sensitive.

Domestic violence refuges operate on the basis that their single-sex character is essential to their function. Women fleeing male violence may be traumatised, vulnerable, and physically at risk. Many refuge providers have historically admitted trans women, on the grounds that their primary characteristic — vulnerability, the experience of male violence — aligns with the service's purpose. Under the Code, they must choose: admit only biological women and exclude trans women, or abandon their single-sex character and admit all women (including cis women) to a mixed-sex service. The EHRC's Equality Impact Assessment, as noted by Translucent (2026), acknowledges that the Code will have negative impacts across all three limbs of the Public Sector Equality Duty (PSED).

Rape crisis centres — intimate, trauma-specialist services — face the same impossible choice. A rape crisis centre that admits trans women may, under the Code, lose its single-sex status; one that excludes them may turn away some of the most vulnerable women in society.

NHS hospital wards face a particularly acute version of this problem, discussed in detail in Section 5 below.

The Code's defenders might argue that paragraph 13.135 creates space for a different approach. It does not. It merely notes that *'there are limited circumstances'* where a different approach may be required. It does not specify what those circumstances are, or how they are to be determined. The Binary Trap remains the structural default.

Part 3: Beyond the Binary Trap: The Code's Other Failures

Unlawful Extra-Statutory Conditions: Paragraph 2.46

Paragraph 2.46 introduces what Translucent (2026) has identified as an extra-statutory condition on the application of gender reassignment protection. The paragraph appears to require a degree of *'permanence'* and *'consistency of presentation'* before gender reassignment protection applies — requirements that find no basis in section 7 of the Equality Act 2010.

Section 7 EA 2010 provides that a person has the protected characteristic of gender reassignment if they are *'proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.'* The operative trigger is *proposing* to transition — not any threshold of social consistency, medical treatment, or physical change. The Equality Act's definition is deliberately broad, reflecting the reality that gender transition is a process, not a single event, and that the law has long recognised this. Paragraph 2.46's introduction of additional conditions — permanence, consistency of presentation — directly contradicts the statutory text. This is not interpretation; it is amendment of primary legislation by administrative guidance.

The Intersection with Disability Law

The Code is almost entirely silent on the intersection of gender dysphoria and disability law (Translucent, 2026). This is a significant omission. Many trans people meet the threshold for disability under the Equality Act 2010, particularly where gender dysphoria is chronic, severe, or has been diagnosed. Where gender dysphoria constitutes a disability, service providers have a duty to make reasonable adjustments under Section 20 EA 2010.

The reasonable adjustments duty is not aspirational. It is a **mandatory** legal obligation. A service provider who fails to make reasonable adjustments for a disabled person is acting unlawfully. Yet the Code provides **no** guidance whatsoever on how the duty to make reasonable adjustments applies to trans people whose gender dysphoria constitutes a disability. Does a requirement to use the facilities of one's biological sex constitute a failure to make reasonable adjustments? The Code does not say. This is not a minor oversight; it is a fundamental gap in guidance that will leave both trans people and service providers without the clarity they need.

The Toilet Guidance: Verification and Paragraph 13.179

The question of who is entitled to use which toilet has been one of the most visible flashpoints in the debate about trans rights and single-sex services. The Code's guidance on this question is

contradictory, confusing, and ultimately reveals the entire enforcement framework to be practically unworkable.

Paragraph 13.160 states that *'there are limited circumstances'* where asking about protected characteristics *'may be warranted'*. Paragraph 13.168 acknowledges that *'it is not always possible to be sure of a person's sex from their appearance.'* Paragraph 13.170 admits that *'it is unlikely to be either practical or appropriate to approach any particular individual to make enquiries about their sex.'*

And then, at 13.179, the EHRC delivers the killing blow to its own enforcement logic:

> *'There is no type of official record or document in the UK which provides reliable evidence of sex. Therefore, it is unlikely to be proportionate or practical to ask for further evidence of a person's sex.'*

This is an extraordinary admission. It means that the entire apparatus of verification and enforcement — the demand for birth certificates, the scrutiny of identification documents — collapses at the moment it is most needed. As Dunt (2026) notes, *'One of the great dreams of the anti-trans movement, that we should all have our genitals checked before we go for a wee, fades into history.'* But the practical consequence is that the Code simultaneously requires exclusion of trans people from single-sex facilities and makes that exclusion practically impossible to enforce. Providers are left in a state of legal uncertainty without the tools to resolve it.

Competitive Sport

Paragraphs addressing competitive 'gender-affected' sport state that such sport should be based on biological sex, and that trans people *'can, if necessary, be excluded'* (EHRC, 2026, para. [sports section]). The guidance here is brief and lacks the nuanced proportionality analysis that might at least acknowledge the complexity of sport governance, the World Professional Association for Transgender Health (WPATH) Standards of Care (2022), or the considerable scientific debate about the relationship between hormone levels, physical performance, and competitive fairness. This is perhaps understandable as a political document — the EHRC has clearly been under significant government pressure — but it is not rigorous guidance.

Part 4: Healthcare, NHS Services, and Voluntary Sector Health Organisations

NHS England Updating Hospital Accommodation Guidance

The Code's implications for healthcare settings are among the most urgent of any sector. NHS England is currently updating its guidance on *'Delivering same sex accommodation'*, which will be retitled *'Privacy, dignity and safety in hospital accommodation'*, to align with the Code (NHS Employers, 2026). The new guidance will emphasise *'the need for sufficient and appropriate facilities that protect the privacy, dignity and safety of all staff'*, and individual NHS trusts will be *'accountable for the creation, review and update of their own policies'* following local equality impact assessments.

This means that across England's NHS trusts — 217 of them, each operating dozens of wards and departments — hospital managers must now independently navigate the question of where to place trans patients in sex-based accommodation. The Code provides no clear answer. The Binary Trap

applies. A trust that places a trans woman on a female ward may be told it has lost its single-sex status. A trust that places her on a male ward may be failing its duties under the gender reassignment and disability provisions of the Equality Act. The result will be a postcode lottery of ad hoc decisions made by managers who are not equality law specialists, under pressure, with inadequate guidance.

The Specific Problem of Hospital Wards

A hospital ward is not a toilet. It is a 24-hour living environment where patients may be semi-conscious, delirious, dying, or in labour. The question of which ward a trans patient is placed on is not merely an administrative detail — it is a question of safety, dignity, and clinical care. Yet the Binary Trap leaves no principled resolution.

The EHRC's own Equality Impact Assessment — as highlighted by Translucent (2026) — warns that forcing trans women to use male services *'places them at disproportionate risk of violence and sexual assault'*. This is a safeguarding finding, made by the EHRC's own analysts, in an official government document. And yet the Code fails to incorporate this finding into its proportionality guidance. The safeguarding evidence and the exclusionary conclusion sit side by side, unintegrated, as if the EHRC's different branches had not spoken to each other.

Voluntary Sector Health Organisations and HealthWatch

The implications extend well beyond NHS hospitals. Voluntary sector organisations delivering health services — sexual health clinics, mental health charities, community health providers, drug and alcohol services — will all need to reconsider their policies in light of the Code. HealthWatch England and local HealthWatch organisations, which have a statutory role in representing users of health and social care services, have not yet issued detailed guidance on the Code's implications. This is a gap that needs urgently to be filled, as the most vulnerable users of these services — those with complex needs, those in crisis, those who are already underserved — will bear the brunt of policy failures.

Health Outcomes for Trans People

The human context for all of this is not abstract. Research consistently documents severe health inequalities experienced by transgender people across the UK.

The VIAQ (Verification and Identity in Academic Quality) project — which examined transgender identity, verification practices, and their effects in institutional contexts — draws on extensive evidence about the health outcomes associated with gender incongruence and minority stress. The concept of minority stress, developed by Ilan Meyer (2003) and applied specifically to transgender populations by Bariola et al. (2015), holds that the excess morbidity and mortality experienced by trans people is not primarily a function of gender incongruence itself, but of the chronic stress associated with social stigma, discrimination, and violence. Trans people do not become ill because they are trans. They become ill because of how society treats them.

The Birmingham 'Growing Older Trans' study (2024) found that 68% of trans people aged over 50 had experienced discrimination in age-related healthcare settings; 52% reported avoiding healthcare due to fear of discrimination; and 74% of those aged over 65 experienced significant social isolation. The 2023 UK Aging Survey produced comparable findings. These are not small numbers. They represent tens of thousands of people whose healthcare needs are going unmet because they are afraid to seek help.

In broader population terms, McNeil et al. (2017), in a study published in the *British Journal of Psychiatry*, found that 84% of trans people had self-harmed and 31% had attempted suicide. Stonewall (2021) reported that almost half of all trans people had experienced a hate crime in the previous twelve months. The Samaritans — the suicide prevention charity — reported a 40% surge in

calls following the For Women Scotland judgment (Translucent, 2026). These are the human stakes of the policy question before us.

Minority Stress Theory and Healthcare Access

The minority stress model provides the theoretical framework for understanding why the Code's provisions are likely to worsen health outcomes. Meyer (2003) distinguished between distal stressors — external, objective events such as discrimination, violence, and institutional exclusion — and proximal stressors — internalised processes such as concealment, expectation of rejection, and identity shame. Both categories of stressor are damaging to mental and physical health.

The Code, by creating a formalised framework of exclusion from single-sex services, is a distal stressor of the first order. It does not merely reflect existing discrimination; it **institutionalises** it, elevates it to the status of statutory guidance, and places service providers in a position where compliance with equality law and compliance with the Code may pull in opposite directions. For trans people who are already experiencing minority stress — who are already avoiding healthcare, already isolated, already afraid — the added weight of knowing that the statutory guidance encourages their exclusion from hospital wards, refuges, and crisis services will be significant.

The Code's failure to engage with the disability intersection compounds this harm. Where gender dysphoria constitutes a disability, the duty to make reasonable adjustments is mandatory. For a trans patient who has gender dysphoria severe enough to constitute a disability, and who experiences acute distress at being placed in a male ward — or being forced to use male facilities — the failure to make a reasonable adjustment may itself be unlawful. The Code's silence on this point is a dereliction of the EHRC's responsibility to provide comprehensive guidance.

Part 5: Privacy, Data Protection, and UK GDPR

Trans Status as Special Category Data

The UK General Data Protection Regulation (UK GDPR), implementing the EU GDPR in the UK's post-Brexit legal order, classifies information about gender reassignment as **special category data** under Article 9(1). This is because gender reassignment is understood as a medical process, and information about it falls within the category of *'data concerning health'*. Special category data receives the highest level of protection under the UK GDPR. Its processing is generally prohibited unless a specific condition applies — for example, explicit consent, or a necessary reason of substantial public interest.

The implications for service providers are significant. A provider who makes enquiries about a person's trans status — as the Code's exclusionary logic implicitly requires — is necessarily processing special category health data. This triggers heightened obligations under the UK GDPR, including obligations of data minimisation (Article 5(1)©), purpose limitation, and enhanced security. The Information Commissioner's Office (ICO) guidance is clear that gender identity information should be treated with the highest sensitivity, and that processing it generally requires explicit consent.

The Code's Failure to Alert Providers

Despite this, the Code is almost entirely silent on UK GDPR obligations. It does **not** advise service providers that processing information about trans status is processing special category health data. It does **not** remind providers of the data minimisation principle, which requires that only the minimum necessary personal data be collected for any specific purpose. And it does **not** flag the heightened obligations that apply when a provider's attempt to implement the Code's exclusionary logic necessarily involves making enquiries about a person's gender history.

As Translucent (2026) has argued, this creates a structural contradiction. The Code directs providers towards a course of action — making enquiries about sex, scrutinising gender history — that is itself a data protection event with legal consequences. The EHRC, whose founding legislation requires it to promote and enforce equality law, has produced a code that is silent on one of the most significant legal frameworks with which it intersects.

Privacy, Article 8 ECHR, and the Policing of Gender Presentation

The government's own Equality Impact Assessment — as noted by Translucent (2026) — warns that the Code will increase the *'policing of gender presentation'*, with knock-on effects for both trans people **and** non-conforming cis women. This is an important observation. The enforcement of sex-based categories in everyday spaces — toilets, changing rooms, hospital wards — requires **someone** to make a judgement about what sex a person 'really' is. This judgement will inevitably be based on gender presentation: clothing, hairstyle, voice, body shape. It will fall most heavily on those women who do not conform to stereotypes of femininity — butch lesbians, gender-non-conforming women, women with androgenetic alopecia, women with PCOS — as well as on trans people who do not pass as their acquired gender.

Article 8 of the European Convention on Human Rights — the right to private and family life, incorporated into domestic law by the Human Rights Act 1998 — protects the ability of individuals to define and express their identity without unwarranted state or institutional interference. The Code's framework, by requiring continuous informal policing of gender presentation in everyday spaces, engages Article 8 in a particularly intimate way. Gardencourt Chambers (2026) notes that the Supreme Court's decision in *For Women Scotland* did not eliminate Convention analysis and that proportionality review, Article 8 privacy rights, and the requirement to balance competing rights carefully remain operative even after that judgement. The EHRC's Code gives almost no attention to these residual human rights obligations.

Part 6: The Human Cost

It is tempting, in a piece of this analytical density, to become absorbed in the legal architecture and lose sight of what it means for actual people. I want to resist that temptation.

The statistics are stark. McNeil et al. (2017) found that 84% of trans people had self-harmed and 31% had attempted suicide. Stonewall (2021) found that almost half of trans people had experienced a hate crime in the previous year. The Birmingham 'Growing Older Trans' study (2024) found that 68% of older trans people had experienced discrimination in healthcare settings, 52% avoided healthcare due to fear of discrimination, and 74% of those over 65 experienced social isolation. The Samaritans' 40% surge in crisis calls following the For Women Scotland ruling (Translucent, 2026) is perhaps the most acute indicator of the immediate human cost of legal and policy changes in this area.

Bariola et al. (2015), in a study published in the National Library of Medicine, found consistent evidence that the excess burden of poor mental health among trans populations is mediated by minority stress — by the social environment of stigma, discrimination, and violence, not by any intrinsic property of being transgender. This is an important finding. It means that the things we do as a society — the policies we adopt, the guidance we issue, the spaces we create or deny — have a direct causal relationship with the health outcomes experienced by trans people. The EHRC's Code is not a neutral administrative document. It is a policy instrument that will produce health consequences.

There is a particular Wittgensteinian irony in the framing of this debate. Ludwig Wittgenstein observed, in the *Philosophical Investigations*, that the meaning of a word is its use in the language, and that concepts are not natural kinds with essential properties waiting to be discovered, but tools

shaped by their social context and practical application. The attempt to impose a **single**, fixed, biological definition of 'woman' onto every context of social life — to make it do the work of determining who may use a hospital ward, who may seek refuge from domestic violence, who may use a toilet — is a clear category error. It treats a contested philosophical concept as if it were a simple empirical fact determinable by inspection. The philosopher in me finds this intellectually indefensible. But the person — the colleague, the friend, the citizen — finds it heartbreaking.

Part 7: What Can Be Done

EDM 65938 and Parliamentary Action

Nadia Whittome MP has tabled Early Day Motion 65938 in the House of Commons, seeking to disapprove the Code of Practice. EDM 65938 is a procedural mechanism — not a vote that will automatically defeat the Code — but it serves an important function of registering parliamentary dissent and bringing the issue to the attention of MPs who may not have engaged with the detail. I have already written to local councillors urging them to consider the Code's implications for local authority services, and to engage with discussing any guidance produced by HealthWatch and voluntary sector organisations in their areas.

The parliamentary timing was, as noted above, unfortunate. The Code was laid late on 21 May 2026, in the dying hours before dissolution. This made meaningful parliamentary scrutiny almost impossible — a procedural sleight of hand that will not have gone unnoticed by those who noted its timing. But parliamentary procedure is not the only avenue.

Engaging with Local Authorities and HealthWatch

Local authorities are major service providers. They run libraries, leisure centres, swimming pools, housing services, and social care services — all of which are covered by the Equality Act and all of which will be affected by the Code. Local authorities are also subject to the Public Sector Equality Duty under section 149 EA 2010, which requires them to have *'due regard'* to the need to eliminate discrimination, advance equality of opportunity, and foster good relations. The EHRC's own Equality Impact Assessment acknowledges that the Code will have negative impacts on all three limbs of the PSED. Local authorities cannot simply adopt the Code and consider their duties discharged; they must conduct their own equality impact assessments and make their own proportionality judgements.

HealthWatch England and local HealthWatch organisations have a statutory role in gathering public experience of health and social care services, and in reporting concerns to regulators and commissioners. They are well-placed to document the effects of the Code on trans people's access to healthcare and to flag failures of reasonable adjustment or discriminatory practice.

Voluntary Sector Organisations

Charities and voluntary organisations working with trans people — including those whose mission is not exclusively trans-focused but who serve populations that include trans people, such as domestic violence refuges, homeless shelters, and mental health services — need to seek legal advice on their specific situations. The Code does not provide automatic answers. Gardencourt Chambers (2026) is clear that proportionality analysis remains the organising legal principle throughout, and that this analysis is *'intensely fact-sensitive'*. No two service providers face exactly the same situation. Generalised guidance — even guidance as voluminous as the EHRC's Code — cannot substitute for specific legal advice on specific service contexts.

The Long Game: Legal Challenges

Future litigation is likely to focus increasingly on implementation, proportionality, dignity impacts, and whether particular arrangements go further than is reasonably necessary (Gardencourt Chambers, 2026). The unresolved tensions around Smith v Safeway, the disability intersection, and the Article 8 ECHR dimensions of the Code's enforcement will not remain dormant. They will be tested in employment tribunals, county courts, the Court of Appeal, and possibly back in the Supreme Court. The EHRC's Code is not the final word. It is, at best, an influential interpretation of contested law — and contested law, as history teaches us again and again, moves.

Part 8: Conclusion and Summary

The EHRC's updated Code of Practice for Services, Public Functions and Associations is a document of extraordinary ambition and extraordinary failure. It is ambitious in its scope — over 300 pages of guidance touching on virtually every aspect of sex-segregated service provision. It is a failure in almost every dimension that matters.

It **fails** on legal accuracy, imposing extra-statutory conditions on gender reassignment protection, stating contested legal propositions as settled law, and remaining silent on the disability intersection that affects many trans people's lives. It **fails** on proportionality, having been presented with its own Equality Impact Assessment's finding that its provisions place trans women at disproportionate risk of violence, and having taken no steps to integrate that finding into its guidance. It **fails** on privacy and data protection, requiring enquiries about trans status that trigger UK GDPR obligations while remaining silent on what those obligations require. It **fails** on implementation, simultaneously demanding exclusion of trans people from single-sex facilities and conceding that no reliable verification mechanism exists. And it **fails** on basic human decency, producing a document that treats tens of thousands of vulnerable people as a problem to be managed rather than as people entitled to dignity, safety, and access to services.

The Binary Trap is the structural expression of this failure. By collapsing the rich, textured, context-sensitive framework of the Equality Act into a binary choice — exclude trans people or lose single-sex status — the Code has destroyed a system that was imperfect but workable and replaced it with a system that is neither legally coherent nor practically implementable. **Service providers across the country will now spend years trying to navigate its contradictions, with trans people bearing the cost of that navigation.**

There is a Wittgensteinian lesson here, too. Language, Wittgenstein taught us, is a form of life. Words mean what they do in the contexts of human practice, and the attempt to extract them from those contexts — to fix them with a single, immutable definition, to enforce that definition by statute and guidance and informal policing — is a form of violence against the very thing it purports to protect. The domain 'woman' has always been more than a biological fact. It has been a social achievement, a site of solidarity, a basis for political organisation. The EHRC's Code does not merely misdefine it. It colonises it, instrumentalises it, and in doing so diminishes us all.

The question is not whether the Code will be challenged — it will. The question is what happens to the people caught in the meantime, while the law catches up with the harm that a poorly drafted guidance document has done. For us, the answer to that question is not abstract.

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Published: July 2026

Suggested citation: Groves-McDaniel, B. (2026) 'A Code of Practice for Exclusion: A Critical Analysis of the EHRC's Updated Guidance on Services, Public Functions and Associations (2026)', The Blog, July 2026.