Gendered Intelligence

Maximising Trans and Non-Binary Inclusion:
Responding to the Effects of the Supreme Court Interpretation of 'Sex'

Version 4.1 - September 2026

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Introduction

This information is for organisations and professionals who wish to know what the impact of the April 2025 Supreme Court Judgment (the Supreme Court Judgment)[1] and subsequent judgments and/or changes to statutory guidance and regulations mean for their trans inclusive practices and their trans employees and service users with a view to continuing to maximise a trans-inclusive approach. So far, subsequent key judgments and developments include the February 2026 High Court judgment GLP v EHRC (the High Court Judgment)[2], and the August 2026 EHRC Statutory Code of Practice for Services, Public Functions and Associations (the Code)[3].

This document represents Gendered Intelligence's (GI's) understanding, informed by a range of sources. It is not exhaustive. Please note that GI are not legal professionals and the information in this document does not constitute legal advice. Individual advice should be sought where possible if you are navigating what the judgments and changes mean for you and/or your organisation.

This document has been reviewed by Russell-Cooke LLP following the publication of the Code. We know the Code, formally in effect from 5th August 2026, is shaping how organisations are thinking about toilets, facilities and single/separate sex facilities.

[Note: The update to v4.1 is solely to recognise that the Code has been formally issued, removing references to it being in draft. There are no material changes.]

How did we get here?

The current situation started with a 2021 judicial review about whether trans women with a Gender Recognition Certificate counted as 'women' under the Equality Act 2010 in the context of an 'all women' shortlist. This escalated through the judicial system until it reached the Supreme Court.

In April 2025, the UK Supreme Court ruled on the meaning of the terms 'sex', 'man' and 'woman' in the context of the Equality Act 2010 (Equality Act). It did not directly decide on the common, everyday (trans inclusive) use of the terms outside that specific context. Nor was it the role of the Court to establish policy. (Further detail in 'What did the Supreme Court Judgment say'). However, there were immediate and significant repercussions.

[1] For Women Scotland v The Scottish Ministers, 2025
[2] Good Law Project Ltd & Others v Commission for Equality and Human Rights, 2026
[3] Statutory Code of Practice for Services, Public Functions and Associations, 2026

The EHRC rapidly issued an 'interim update' suggesting significant exclusionary implications for trans people, and then withdrew it. Since then, a range of court cases related to trans inclusion/exclusion in the workplace and accessing services have been heard by the Employment Tribunals and the High Court, resulting in various inconsistent decisions. Several are being appealed.

Since the Supreme Court Judgment, some organisations have implemented trans-exclusionary policies, when they were previously trans inclusive; others have made no changes. Despite the issue of the Code, we know there remains a lack of clarity with respect to practical, lawful approaches to trans inclusion in wider society.

The situation continues to evolve, and we will aim to keep updating this document as necessary.

The importance of taking an inclusive position

Trans and non-binary people deserve to be treated with dignity and respect. It is fair to say that trans people continue to be enormously concerned about what the Supreme Court Judgment and subsequent legal interpretations might mean for them, for their ability to live their lives, and for their safety. We know the Code has added to that concern.

Organisations need to understand this and we are asking them to step up and be visible around their trans inclusive principles and practices – they have a power the trans community do not. Inclusion is not only the ethically right thing to do, but is a positive and effective practical approach. More crucially, inclusion is an available option – neither the Supreme Court Judgment, nor the Code, mandate exclusion of trans people. The Code itself repeatedly reminds readers that proportionality, context and fact-sensitive assessment remain central to Equality Act analysis.

At Gendered Intelligence, we strongly encourage organisations to hold a transparent, trans inclusive, compliant line.

For clarity we have adopted the following descriptions for this document:

Single sex: Spaces / services designated for women or men using the Supreme Court definition of 'sex'

Single gender: Spaces / services designated for women or men that are trans inclusive

What did the Supreme Court Judgment say?

On 16th April 2025, the UK Supreme Court handed down its judgment and stated during its oral summary when announcing its decision:
"The unanimous decision of this court is that the terms woman and sex in the Equality Act 2010 refer to a biological woman and biological sex. But we counsel against reading this judgment as a triumph of one or more groups in our society at the expense of another, it is not."

The Court ruled that for the purposes of the Equality Act the term 'woman' does not include a trans woman and the term 'man' does not include a trans man, whether they have a Gender Recognition Certificate or not. Instead, it defined sex as 'biological'.

The Court described 'biological sex' as the 'sex of a person at birth' (paragraph 7) rather than in terms of any biological features. We assume the implication is that it therefore means the sex marker on someone's original birth certificate.

The Court stated: *"It is not the role of the Court to…. define the meaning of the word 'woman' other than when used in the provisions of the EA 2010."* (Paragraph 2)

The Court also said the role of the Court is *"a … limited role which does not involve making policy"* (Paragraph 2). In other words, the decision does not insist on one policy approach - the court instead had a purely interpretive role i.e. it has decided what certain words mean, but not identified what organisations need to do as a result.

Service Provision and Workplaces Differ

Keep in mind that the law covering "service users, public functions and associations" is different from the law that applies in the workplace. Whilst the Equality Act is relevant to both situations, it doesn't operate in exactly the same way for each, and other laws and regulations may apply too[4]. Because of this, organisations shouldn't assume that approaches used for service users will automatically fit employment situations, or vice versa. It's important to stop and check which legal rules apply, before applying them.

For example, the new Code explicitly does not cover the law as it applies to employees: *"This Code does not relate to the employment practices of businesses, charities or voluntary bodies."*

[4] For example, with respect to public spaces, the GLP v EHRC High Court judgment described the laws and regulations relating to the provision of toilet facilities as 'a patchwork' (para 23)

(Explanatory Memorandum (9.4)) nor does it cover the Workplace (Health, Safety and Welfare) Regulations 1992[5] which apply to workplace facilities.

It is anticipated that the EHRC will draft and consult on a Code for Employment in due course.

What have subsequent legal judgments said?

Many of the cases so far have centred on access to toilets and changing facilities, and this is reflected below.

Employment Tribunal Decisions

Since the Supreme Court Judgment, a number of relevant cases have been heard by the Employment Tribunals (ET) of England and Scotland including Kelly vs Leonardo,[6] Peggie vs Fife (and Upton)[7] and the 'Darlington Nurses'[8]. As 'first instance decisions' of the ET, they will not be binding on courts or tribunals in the future and their authority is therefore limited. However, it's of note that these cases were all heard at around the same time, and there are some significant differences in the conclusions reached by the Tribunals on the same or similar points. All three hinged on the particular facts of each situation, and all three indicated that trans inclusion in line with a trans person's lived sex is possible.

The Claimants in at least two of these cases (Peggie and Kelly) have indicated their intention to appeal, so there could be different results if those cases reach the Employment Appeal Tribunal, which would then be binding on Employment Tribunals in future.

R (Good Law Project Ltd) v EHRC – High Court

This is an important case as, unlike the Employment Tribunals above, it is binding on lower courts in England and Wales. We've therefore included quite a lot of detail, quotes from the decision itself, and other references. We recommend you explore these fully.

Following the Supreme Court Judgment, on 25th April 2025, the EHRC published an 'interim update' on its website, which included comments on the law in relation to the provision of toilet, washing and changing room facilities in the workplace (which the Code does not deal with). Broadly, the interim update stated that trans women should be barred from women's facilities,

[5] Workplace (Health, Safety and Welfare) Regulations 1992
[6] BM Kelly vs Leonardo UK, published 03 Dec 2025
[7] S Peggie vs Fife Health Board and Upton, published 08 Dec 25
[8] 'Darlington Nurses' (Hutchison & Others v County Durham and Darlington NHS Trust) published 14 Jan 26

and trans men should be barred from men's facilities. The update was non-statutory and had no formal legal status, however, some organisations acted on it as having such authority. GLP and three anonymous claimants brought a judicial review challenge against the EHRC.

The three individual Claimants gave evidence that their employers had made changes to facilities at their places of work following the interim update and that these changes remained in place. This meant that the High Court had to consider whether certain statements in the interim update were an accurate reflection of the law as set out in the Workplace (Health, Safety and Welfare) Regulations 1992 and the Equality Act.

The judgment found the EHRC's update was lawful, largely because the update did not purport to be a complete statement of all possibilities and carried a caveat. The judgment also noted that trans people must be provided for, potentially including via trans inclusive and/or gender neutral provision.

Although the High Court was not tasked with considering how the law applies to a particular situation (unlike the Employment Tribunal decisions referred to above) the Judge gave some strong indications as to how the law should be applied in practice. Although the case was brought on the basis of three employment situations, the judgment refers to both service provision and workplaces.

Following the High Court judgment, **The Good Law Project**[9] stated the following:

With respect to Services

"…The High Court is very clear that it will likely be lawful for service providers to allow trans people to use toilet and changing room facilities which align with their lived gender. There is no requirement of a 'bathroom ban'.[10]

…

Some organisations have claimed, following the Supreme Court decision, that allowing e.g. trans women to use the women's toilets would amount to direct discrimination against men. The High Court emphasised that where service provision is equal and separate for both men and women, this is unlikely to be true. … This means that service providers may lawfully

[9] Good Law Project FAQs after High Court Decision

[10] Clarification: Whilst single gender facilities can be lawful, if there is no appropriate additional provision for cisgender people who don't wish to use them, the provider may be open to claims of indirect discrimination and harassment

provide, for example, women's toilets which both cis and trans women are permitted to use, but from which cis men are still excluded.

The High Court explicitly states that it is permissible for service providers to label such facilities, where they are trans-inclusive, simply as 'men's' and 'women's'.

When providing toilet and changing facilities, service providers must ensure they have considered the needs of all users. This includes those who for reasons of religion or belief do not want to use trans-inclusive facilities. Failure to provide appropriate facilities for these service users may amount to indirect discrimination, and would need to be justified as a proportionate means of achieving a legitimate aim.

…

It will likely be unlawful to require trans people to use services corresponding to their sex as recorded at birth. … "

With respect to Workplaces

"Workplaces are required to provide toilet, washing, and changing facilities on a single-sex basis except where these are provided in individual rooms which are lockable from the inside. Single-sex toilet, washing, and changing facilities in the workplace must be provided on the basis of 'biological sex'[11]. It is not permissible for employers to allow, for example, trans women to use the women's toilets, and for those toilets to be considered single-sex for the purpose of the workplace regulations.

The High Court is clear that this does not prohibit providing additional provision which is not single-sex… Sufficient and appropriate provision must also be made for trans employees. … The High Court considers that this may be achieved via the provision of mixed-sex facilities in addition to single-sex ones. These may be provided on a gendered basis. For example, an employer could provide single-sex women's toilets alongside women's toilets which both cis and trans employees were permitted to use.

Employers should consider adapting their facilities to be provided on a universal basis, in individual lockable rooms. This avoids potential claims of discrimination on the basis of sex, gender reassignment, or any other protected characteristic whilst complying with the regulations."

[11] Clarification: In other words: **If** you have single sex toilets **then** they must be on the basis of biological sex. The Workplace Regulations allow for fully gender neutral provision

There is also a useful, fuller summary on the Bates Wells website.[12]

A High Court decision is binding on lower courts in England and Wales, including the Employment Tribunal and Employment Appeal Tribunal. However, the High Court's *observations* on arguments that might be made in different scenarios, are not binding, but are likely to be given weight by the lower courts. In Scotland, the decision as a whole is not binding, but may influence future cases.

The Claimants have applied to appeal the High Court's decision so things may change again if an appeal is heard.

In February 2026, following the GLP v EHRC High Court judgment, the United Nations Human Rights Council (UNHRC) issued a statement[13] calling on the UK government to uphold protections for all women including trans women, and reminding the government that "*The United Kingdom remains bound by a range of core international legal instruments…. Together, these treaties require not only formal legal recognition of gender identity, but also substantive, lived equality in access to public life, services, and protection from discrimination. These legal regimes uphold the consistent principle that legal recognition that is not accompanied by functional access to rights in everyday life risks becoming hollow. Any framework that were to permit routine exclusion from ordinary public services, introduce discretionary verification of sex by service providers, or otherwise decouple legal status from practical participation in society would raise serious concerns under international human rights law.*"

With respect to the Code, you may notice that certain aspects of the Code are not aligned with some more trans-inclusive aspects of this judgment. In particular, the judgment observes that 'single gender' facilities can most likely be provided without cis people of the 'opposite gender' having a valid claim about being barred from them (e.g. cis men barred from a single gender women's facility). This appears to be at odds with Code para 13.131 '*A mixed sex service must be open to all*'. Although the Code is statutory, this aspect of the High Court judgment is persuasive authority which is likely to be given weight by the lower courts.[14] This is an example of some of the uncertainty that exists at the moment.

[12] Summary of GLP and Others v EHRC – Bates Wells solicitors, 19 Feb 26
[13] UNHRC Joint Statement, Feb 26
[14] The Judge's task in this case was to determine whether the EHRC Interim Update, taken as a whole, misstated the law. He found that it did not for the reasons set out in his judgment. As noted earlier, the observations and comments on hypothetical scenarios made by the Judge will not be treated as binding authority, though may influence future decisions.

Creating compliant and inclusive policy for your organisation

It's for organisations to review and decide on their policy position around trans inclusion in light of the Supreme Court Judgment. Through policy, organisations have an opportunity to be front footed and to maximise a trans inclusive approach.

It is important to note that a policy must be implementable. We think that taking a trans inclusive approach is often more practical and realistic.

How can my organisation provide a trans inclusive single gender service or space?

At Gendered Intelligence we know that there will be many organisations, services and institutions that want to (continue to) give trans people access to their services.

The starting point under the Equality Act is that services should be provided without discrimination on the basis of protected characteristics. Separate / single sex facilities are statutory 'exceptions' to that principle. It is important to state that there is no automatic individual or collective right to single sex provision or spaces established by the Equality Act. The Equality Act does not establish a single sex default position. It is 'permissive, not prescriptive' in that regard.

Separate / single sex service provision[15][16]

It is useful to know broadly what the Equality Act says about the circumstances in which separate / single sex services are lawful. This information is included because services that historically relied on these provisions when they were understood in trans inclusive ways, need to revisit their legal underpinning if they wish to remain trans inclusive. It is possible that some services may be unaware that these are the particular provisions they have historically relied on.

In general terms, the Equality Act allows providers to offer separate / single sex services where a joint service would be less effective, where there are different levels of demand according to sex, or where only one sex has need of the service.

Providers may offer a single sex service where the service may be used by more than one person at the same time, in circumstances where '*a person of one sex might reasonably object to the*

[15] Equality Act 2010, Schedule 3, Part 7, Clause 26 Separate sex services
[16] Equality Act 2010, Schedule 3, Part 7, Clause 27 Single sex services

presence of a person of the opposite sex'. Providers may offer a single sex service where the service involves physical contact between the service provider and recipient and the recipient '*might reasonably object if [the provider] were not of the same sex*'.

A further exception exists which allows for (but does not mandate) the exclusion of trans people from such provision.[17]

In all circumstances, the separate / single sex provision (and the exclusion of trans people), must be a '*proportionate means of achieving a legitimate aim*'.

'Proportionality' is a balancing exercise that organisations will have to undertake when deciding on their approach. It should consider all possible service users, consider the impact of the approach and assess the balancing of competing rights. To show a decision is 'proportionate', a decision-maker does not have to prove there was no other option. Instead, it must show that what it did was reasonably necessary to achieve a legitimate aim. If the same aim could have been achieved in a less discriminatory way, the actions will not be considered reasonably necessary. When assessing proportionality, both the scale of the impact (how many people were affected) and the nature of the impact (how serious it was and how long it lasted) should be considered. Ultimately, this will depend on the specific facts of each case. Understanding your service-user base is therefore important and being able to provide evidence-based reasoning is likely to be helpful should you ever have to justify your approach.

Full details are in the links to the relevant law, and we recommend you read them. If the conditions for separate / single sex provision set out in the Equality Act are not met, then such provision is likely to constitute unlawful discrimination.

Single gender service provision

Although a trans-inclusive service for all women cannot say that it is a single sex provision for the purposes of the Equality Act, it could describe itself as a single gender provision instead, or 'for women' / 'for men', and make it clear that this is trans-inclusive.

The Code states that providers cannot rely on the separate / single sex exceptions as a lawful basis for a single gender provision (Code 13.130). It will therefore be for the service provider to find an alternative way to lawfully justify the exclusion of 'opposite gender' cisgender people from a single gender service e.g. a service provider offering a single gender service for women

[17] Equality Act 2010, Schedule 3, Part 7, Clause 28 Gender Reassignment

will have to justify why the exclusion of cisgender men is lawful. To do so, there are other sections of the Equality Act that can potentially be relied on as a lawful basis for single gender services (see 'Positive Action', as an example, below).

If your service has been operating as a single gender service (i.e. that both trans and cis people could access) and you have been relying on the single sex exception in the Equality Act (and the previous understanding of 'sex' as trans-inclusive), you should review your policy and external communications to ensure your reasoning is updated following the Supreme Court Judgment, and to ensure service users are able to make informed decisions. This is especially so if being trans inclusive is one of your organisation's objectives. You should formally record your decision with reasons for internal reference as required.

What's proportionate in the circumstances depends in part on the impact on the people who are included/excluded. If previously trans people weren't impacted because they were included, and now they are significantly negatively impacted because they are excluded, that may alter whether it is proportionate to offer single sex provision. The EHRC Code Equality Impact Assessment (EIA)[18] itself notes there is likely to be significant negative impact on trans people as a result of the revised Equality Act interpretation / the Code. In addition, the EIA notes there may be impact on cis women questioned or excluded from single sex spaces on the assumption they are trans, amongst other negative impacts.

It's important to go back and look carefully at the purpose of your service and the needs of the people who you want to offer it to.

Where possible, seek advice so you can feel confident that your approach remains both lawful and aligned with your commitment to inclusion.

Positive Action

In some instances, the law[19] allows organisations to take positive steps to help people who share one or more protected characteristics if those people face disadvantage, have particular needs, or are underrepresented in an activity for reasons connected to that protected characteristic. This is known as 'positive action'. Any action to address those issues must be reasonable and proportionate.

[18] EHRC / OEO Equality Impact Assessment for the Statutory Code of Practice for Services, Public Functions and Associations
[19] Equality Act 2010 Section 158 Positive action: general

'Positive action' may be one Equality Act mechanism that could defend a trans inclusive approach. Though the question remains formally untested in the Courts, as noted in Bates Wells summary, "*a trans-inclusive women's toilet could potentially justify excluding (cis) men on the basis that the limited provision was a 'positive action' (benefitting cis and trans women) under s158 of the EqA*".

Reducing the risk of a challenge

There is no completely risk-free approach to deciding whether a service should be trans-inclusive or trans-exclusive. Legal challenges can arise from either approach if decisions are made without properly considering the needs, rights and interests of everyone affected.

The key question is not how to eliminate all risk, but whether your approach is evidence-based, proportionate and tailored to the purpose of your service. It is essential to define who the service is for, what needs it is intended to meet, and understand who may be disadvantaged by exclusion.

Importantly, a trans-inclusive approach is not automatically unlawful. Where there are good reasons for enabling trans people to access a service, those reasons should be clearly identified and supported using the principles and protections contained in equality law.

A well-reasoned and carefully documented inclusive approach can be just as legally defensible as an exclusive one.

Additional considerations for public sector organisations

If a service is delivered by a public body or those exercising public functions, they may be subject to the Public Sector Equality Duty (PSED).[20] The PSED requires those bodies to think about the impact of their decisions on different groups of people and consider how they can reduce discrimination, improve equality of opportunity and promote good relations between communities.

It doesn't require a particular outcome, but it does require decision-makers to consider equality issues before making decisions.

[20] Equality Act 2010 Section 149 Public Sector Equality Duty

How are toilet facilities regulated in the workplace?

The requirements around toilets in the workplace are regulated by the Workplace (Health, Safety and Welfare) Regulations 1992.[21] For schools it is the Education (School Premises) Regulations 1999.[22]

Employers must make sure all staff, including trans staff, have access to safe and suitable toilets, and where needed changing rooms and washing facilities. This can be done by providing separate men's and women's facilities, individual lockable facilities that anyone can use, or a combination of both.

Trans employees should not be forced to use facilities that do not match the gender in which they live, nor should they be challenged or "policed" when using workplace facilities.

Employers may need to manage differing views among staff, including views about sex and gender. However, these differences do not remove an employer's responsibility to treat trans employees fairly and comply with equality law.

There is no legal requirement for workplaces to provide only single sex toilets. Employers can comply with the law by providing individual lockable toilets that can be used by anyone.

The practical reality is that no organisation can ever be 100% certain that single sex spaces (such as toilets and changing rooms) are 'trans free'. Many trans people are used to using those spaces in line with their lived sex, often invisibly, causing no concern to anyone else. Some will undoubtedly continue to do so for their own wellbeing, confidentiality, dignity and safety. The only way to be absolutely sure a space is 'single sex' is to have only one person in it.

It is important to point out there is no evidence or documentation that anyone can provide that proves definitively that they are cisgender. It would not only be pointless to try, but potentially highly intrusive and inappropriate. Whilst Bates Wells summarise the position as "*Employers can trust their employees to comply with the rules, and are not required to police or monitor the use of the toilets*" they also say that employers "*would be expected to act on any complaints*" at which point an employer would face the difficulties noted.

[21] The Workplace (Health, Safety and Welfare) Regulations 1992
[22] The Education (School Premises) Regulations 1999

What choices might trans people make?

An individual who violates a policy in an organisation is not committing a criminal offence. If a trans person continues to access a single sex space that aligns with their lived sex / gender, they are not committing a crime. No private citizen has the right to detain another if they have not committed a crime. If a trans person is questioned about their sex or gender by another individual, they are under no obligation to answer. If someone challenges the presence of another person in a single sex space, that person is legally within their rights to not engage and to continue about their business. However, there are some risks attached: the person could be accused of disobeying a reasonable instruction by their employer, or allegations of 'harassing' other users of the toilet. In the Equality Act harassment means "*violating a person's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment*".

The Code expressly recognises that harassment or discrimination may arise if a trans person is questioned about their sex in ways that are public, humiliating, combative or insensitive (Code 13.165).

Universal facilities that are fit for all

In general, we think that communal facilities divided into men's and women's spaces are the least accommodating for trans people and hardest to work with. These kinds of gendered spaces are, by nature, not accommodating of non-binary people and any space with limited privacy tends to be challenging for trans people.

We think the ideal is to provide a predominance of lawful, "universal", all-gender changing facilities and toilets with fully private individual enclosed cubicles, including at least some with integral washing facilities. It also supports parents bringing older children who are of a different gender, and disabled people who may have a PA/carer of a different gender, as well as better meeting the needs of those who may need more privacy because, e.g. they have a colostomy, or are using Mooncups or similar for menstruation; and improving access for those with faith-based washing requirements.

Note that when redesignating 'accessible' facilities as 'gender neutral' or 'all genders', providers should consider the impact this can have on those who use those particular toilets for disability-related access reasons. This is acknowledged as a potential negative impact in the Equality Impact Assessment that accompanies the Code.

How does this intersect with the Gender Recognition Act 2004?

The Gender Recognition Act 2004[23] (GRA) of the UK provides the legal framework by which some trans adults[24] can have their gender legally recognised as being 'acquired, for all purposes' as a matter of law. The legislation states:

Section 9(1) GRA 2004:
"*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).*"

Following the Supreme Court Judgment, a Gender Recognition Certificate (GRC) is still a legally recognised document that affirms a trans person's sex for purposes like marriage and tax, and whilst it is not required for death certificates, it does make respect more certain. For some trans people, a GRC is about affirmation and having legal recognition of one's lived sex.

As part of this process, a birth certificate is issued to reflect the relevant sex.

What the Supreme Court has decided is that section 9(3) in the GRA applies to the Equality Act. This states "*Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation*". The Supreme Court decided that the change of sex afforded by a GRC does not apply with respect to the Equality Act.

For employers, key aspects of the GRA 2004 continue to apply. Section 22 of the GRA 2004 makes it a criminal offence for someone who has acquired the information that a person has a GRC in an official capacity (e.g. HR) to disclose that information, unless with consent or if a specific exception applies[25].

NOTE: It is worth noting that since its inception, there have been exceptions in the EA 2010, with regards to a person being recognised in their acquired gender for 'all purposes'. Those

[23] The Gender Recognition Act 2004
[24] English law only recognises male and female as legal sexes (unlike some other countries) so there is no provision for non-binary people to have their lived gender legally recognised. In addition, there are specific evidence, diagnosis and declaration requirements in the Gender Recognition Act that not everyone can (easily) meet.
[25] GRA Section 22 Prohibition on disclosure of information

exceptions existed prior to the Supreme Court Judgment, and enabled trans exclusion in the small number of circumstances when it might reasonably be necessary – indeed they generally required demonstration that it was necessary and proportionate. Now trans exclusion in separate / single sex situations can potentially be justified solely on the basis someone is trans.

Confidentiality and privacy

Organisations should consider how they will maintain the dignity, privacy and confidentiality of all trans people (whether they have a GRC or not). The Code expressly recognises that information about sex may engage Article 8 of the European Convention on Human Rights (the right to respect for private and family life)[26] (Code 13.161-13.162) and that requests for information about sex should only be made where that is a "*proportionate means of achieving a legitimate aim*".

The Code expressly recognises that harassment or discrimination may arise if a trans person is questioned about their sex in ways that are public, humiliating, combative or insensitive (Code 13.165). This may occur, for example, if there is an unwanted disclosure of sensitive information e.g., a trans man who has always used the men's toilets or men's changing room is required to use a gender-neutral facility and faces questions or assumptions as a result. Sensitivity is crucial.

[26] European Convention on Human Rights; Human Rights Act 1998, Article 8; Right to Respect for Private and Family Life, EHRC explanatory information, including reference to the case Goodwin & I v United Kingdom [2002] which gave rise to the Gender Recognition Act (2004)

Further reading

There are many opinion pieces and guidance notes offered by a range of practitioners and organisations in circulation. These are a few that GI has found useful:

References from 2026, including on the GLP case and the Code

Summary of GLP and Others v EHRC – Bates Wells solicitors (Feb 26)

FAQ: Trans inclusion after the High Court decision on the EHRC's interim guidance – Good Law Project (Feb 26)

Single-sex facilities in the workplace – the latest position – Lewis Silkin (Apr 26)

Has the Equality and Human Rights Commission done its job? – Melanie Field (Jun 26)

Work of the Equality and Human Rights Commission (EHRC) - Oral evidence (Jun 26)

References from shortly after the Supreme Court Judgment

Supreme Court says Equality Act definition on based on biological sex – Lewis Silkin (Apr 25)

For Women Scotland: a legal critique - Crash Wigley (Apr 25)

Melanie Field on the UK Supreme Court judgment For Women Scotland podcast (May 25)

Limits to the UK Supreme Court's Reach: Northern Ireland, the Windsor Framework and Trans Rights - Administrative Court blog (Apr 25)

'Know your rights' references for trans people

Know Your Rights Following the Supreme Court Judgement – Trans Actual (Sep 25)

Our opinions and support work are based on our wide professional experience of working directly with trans people and those who have contact with them. New situations and circumstances involving trans people are developing all the time and GI is at the forefront of helping to evolve forward-looking, positive, inclusive approaches in response. However, whilst GI has significant expertise in the field of trans inclusion, we are not qualified solicitors or medical professionals, and we therefore cannot offer legal or medical advice. Our comments and suggestions do not constitute such advice and should not be regarded as a substitute for it. It is therefore important that you seek appropriately qualified advice where necessary, that is also well-informed about trans lives and the associated critical thinking, especially if you intend to rely on a particular point of law or medicine.

Everyone can be intelligent about gender

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