

5th January, by email

To whom it may concern,

CONSULTATION ON THE EHRC CODE OF PRACTICE FOR SERVICES, PUBLIC FUNCTIONS AND ASSOCIATIONS

We write to you in regard to your recent consultation on revisions to the EHRC's Code of Practice (CoP) and in particular, the response submitted to you on 2 January 2025 by Murray Blackburn Mackenzie (MBM). We share the concerns of MBM that the revised CoP risks creating confusion around matters which are already settled in law, and we support their request that the legal reasoning underpinning the revised CoP be published as a matter of urgency.

The ruling of the Inner House of the Scottish Court of Session, given in February 2022 and binding in Scotland, states that the protected characteristic of sex in the Equality Act refers to a person's natal sex and that this is not affected by the protected characteristic of gender reassignment. You are of course aware, as interveners in the current Supreme Court appeal brought by For Women Scotland, that the only issue still to be decided in law concerns individuals in possession of a Gender Recognition Certificate (GRC) and whether such individuals should be treated for the purposes of the Equality Act 2010 as having a sex opposite to their birth sex. You will also be aware that we, jointly with The Lesbian Project and LGB Alliance, submitted a written intervention explaining the implications of the case for lesbians and lesbian associations.

We are concerned that your revised CoP does not refer to or acknowledge the 2022 judgment. We are particularly concerned about the guidance in the CoP regarding Gender Reassignment discrimination and single sex services (13.57-13.60), in which the onus is placed on service providers to justify exclusion of members of the opposite sex on a 'case-by-case basis' and only in 'exceptional circumstances'. As a lesbian association, in contact with other lesbian associations and service providers in which there is already widespread confusion and anxiety about the legality of maintaining our single-sex organisations, we are gravely concerned that your revised CoP could lead to a chilling effect and a reversal of work already undertaken to clarify the law as it stands.

We await your response to the letter from MBM requesting to see the legal reasoning on which your CoP has been revised, and in the light of this information being made public, we foresee that we and others will be better placed to respond to the proposed revisions.

Yours faithfully,

Jenny Willmott
Dr Lorraine Douglas

Directors, Scottish Lesbians