

28 April 2025

EHRCJ.committee@parliament.scot

Dear members of the EHRCJ Committee,

Please accept this additional note to our letter last Thursday, for consideration at tomorrow's meeting. We are writing as a result of the Equality and Human Rights Commission issuing, late on Friday, an interim update on the UKSC judgment. This requires an update to our previous letter.

The EHRC's interim update is an example of the "wider" and more damaging possible interpretation that we described in our previous letter. In fact, it goes even wider than we feared. For example, it adds that if a lesbian sets up any kind of club or group for lesbians, and it grows to more than 25 members, she must exclude any trans lesbians (and similarly for gay men's groups). This new rule applies regardless of the views of the members of the group. Absurdly, if a group member was married to a trans woman, that woman would also be excluded from the group. We note that research [indicates](#), as well as our experience of working with LGBTI+ community groups, that a very large proportion of lesbians are trans-friendly and supportive. Most lesbian groups are happy to have trans lesbians as members.

The EHRC's interim update focuses solely on excluding trans people from both associations and single-sex services and spaces. It also suggests the segregation of trans people at times where they consider that the UKSC judgment requires they should be treated as their "biological sex", but doing so would offend others. We reiterate that some, including senior lawyers, consider that this is not a required interpretation of the UKSC judgment. We are clear that if the suggestions in this update were followed, the UK will breach various human rights in the European Convention on Human Rights, as explained in our previous letter. We know that at least one trans person is already considering litigation on Convention grounds.

We are also very concerned that the EHRC have announced that they will consult publicly on their new statutory code of practice on these issues, in mid-May, but only for two weeks. That is far too short a timeframe for trans organisations (many of whom have no paid staff) and trans people to respond. For complex changes, that have trans people at their core, that would simply be a sham consultation. We note that the previous consultation that the EHRC ran on a code of practice change was open from 2nd October 2024 to 3rd January 2025 – three months.

In addition to our previous recommendations, we request that the Committee also:

- Seek an explanation from the EHRC of whether and how it considers that if service providers and employers were to implement the advice in its interim update, this would be compatible with the European Convention.
- Seek assurance from the EHRC that its consultation on the new code of practice will last for three months, as is standard, so that trans people and all others can reasonably respond.

Kind regards,

Dr Rebecca Don Kennedy

and

Vic Valentine, Manger, Scottish Trans