9th November 2026

Dear Members of the Equalities, Human Rights and Civil Justice Committee,

We are pleased to see that you will be taking evidence on the impacts of the EHRC's Code of Practice for Services, Public Functions and Associations, including from us on November 19th. We hope that this letter will provide some useful background.

As you will know, the guidance provided in that Code about how services provided separately to women or men, or only for women or men, should treat trans people has changed drastically since the previous version from 2011. This is a result of the Supreme Court ruling in April 2025 on the meaning of 'sex' in the Equality Act 2010.

While the Code is not itself the law, courts and tribunals are directed to take it into consideration whenever relevant to deciding cases related to the Equality Act 2010 (s. 15(4) of the Equality Act 2006) and it thus has statutory weight.

In our view the guidance, which says that all such services must either require trans people to use services that correspond with our "biological sex at birth", or segregate us from others entirely, will cause significant harm to trans people. It will increase the inequality and discrimination that we face, and lead to breaches of our human rights in many contexts. It will also likely impact more widely on those who are not trans, by introducing greater scrutiny of everyone based on whether or not they adhere to gender stereotypes.

As far as we are aware, Britain is the only liberal democracy in the world in which public bodies, service providers and businesses are being informed that in order to comply with the law, trans people can *never* be treated in line with our gender identities. One result of this is that the UK has fallen to 22nd place on the annual ILGA Europe Rainbow Index that ranks European countries' LGBT+ equality laws, falling from 1st place just 11 years ago. A significant part of this fall is about our approach to trans equality – with the UK 44th out of 49 countries on that measure, ahead of only Bulgaria, Georgia, Hungary, Slovakia and Russia.

Impacts

The UK Government's own Equality Impact Assessment of the Code of Practice (https://www.gov.uk/government/publications/equality-act-2010-code-of-practice-for-services-public-functions-and-associations-2026/equality-impact-assessment) highlighted significant concerns about the impacts on trans people's equality, including:

> " 'Double exclusion': It is possible that trans people could be barred from both the space aligned with their gender (because of their sex) and the space aligned with their birth sex (because of possessing the protected characteristic of gender reassignment), **effectively leaving them with no service at all.**" (our emphasis added)

And:

> "Safeguarding risks: Concern that **excluding trans women from female services could mean they have to use male services, where they could face a disproportionate risk of violence and sexual assault** (although this will depend on the nature of the service in question)." (our emphasis added)

Some of the negative impacts of the exclusion and segregation that the Code says that the law requires have already been recorded by our colleagues at TransActual, in their reports "Trans Segregation in Practice":

> **"Since the ruling there has been a definite increase in the number of misgendering incidents by both staff and patients, and patients making discriminatory comments and/or inflammatory accusations."** – White, disabled, trans woman facing issues at work in Scotland (https://transactual.org.uk/wp-content/uploads/Trans-Segregation-in-Practice.pdf p. 9)

and "A community living in fear":

> **"All we as trans people want to do is to live comfortably within our bodies and without fear of someone taking issue with our identity. I'm trying to stay positive but this has made me increasingly anxious over what other rights or protections might we lose next."** – Trans man living in Scotland (https://transactual.org.uk/wp-content/uploads/Community-living-in-fear-final.pdf p. 34)

Reaction from international human rights experts

Numerous international human rights experts have also spoken out about both the Code of Practice, and the ruling.

This includes the Commissioner for Human Rights for the Council of Europe, in direct correspondence with the Joint Committee for Human Rights and the Women and Equalities Select Committee at Westminster:

> "As I note in my end-of-visit statement, I observe a tendency to see the human rights of different groups as a zero-sum game. This has contributed to narratives which build on prejudice against trans people and portray upholding their human rights as a de facto threat to the rights of others. Such a zero-sum approach risks certain inferences being drawn from the UK Supreme Court judgment that could lead to widespread exclusion of trans people from many public spaces. This, in turn, **may severely infringe on their ability to participate fully and equally in society. This is particularly the case, as discussions about how access to services and facilities will have to be regulated following the judgment have tended towards the exclusion of trans people.**" (our emphasis added) (https://rm.coe.int/letter-to-parliament-and-house-of-commons-of-te-united-kingdom-by-mich/488028ddd7)

It also includes a range of UN experts, including the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and the Working group on discrimination against women and girls:

> "When legal guidance effectively presents exclusion as the means of complying with the law, discrimination risks becoming institutionalised rather than assessed on the basis of necessity and proportionality." (https://www.ohchr.org/en/press-releases/2026/08/uk-revised-code-practice-risks-institutionalising-discrimination-against)

Our own work analysing the Code and the Supreme Court ruling

We have also written extensively about both the Supreme Court ruling and the Code over the last year and a half, including:

- In correspondence to your predecessor Committee: https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2025/for-women-scotland-v-the-scottish-ministers-from-the-equality-network-and-scottish-trans-24-april-20.pdf
- In a report analysing the human rights impact of the ruling and what was at time the draft Code of Practice: https://www.equality-network.org/wp-content/uploads/2025/07/The-Erosion-of-Trans-Rights-in-the-UK-a-human-rights-analysis.pdf
- And in an analysis of the final Code that was approved by the UK Minister for Equalities and commenced on 6th August 2026: https://www.scottishtrans.org/supreme-court-ruling-on-sex-in-the-equality-act/our-thoughts-on-the-ehrcs-updated-code-of-practice-may-2026/

We very much hope that members will be able in the oral evidence sessions to explore with witnesses the serious impacts that treating trans people in the way described by the Code will have for our equality, human rights, and wellbeing.

Yours Sincerely,

Vic Valentine
Scottish Trans Manager

Dr Rebecca Don Kennedy
Equality Network Chief Executive Officer