Lesbian Persistence

Submission to the Equalities, Human Rights and Civil Justice Committee on the EHRC Code of Practice

Introduction

Lesbian Persistence is a Scottish grassroots organisation which works to build lesbian community and raise the profile of lesbians socially, culturally and politically. Nationally and internationally, lesbians are almost universally invisible or ignored in law, policy and practice. In recent years, the Scottish Government has pursued an "inclusive" agenda, (eg in funding and the VAWG sector) which *includes* men who say they are women – many of whom claim to be lesbian - but which has *excluded* some women and lesbians.

One particular difficulty has been the forced teaming of TQ+ onto LGB, which as we explain below, actively denies lesbians and gay men.

We note that the Committee has not invited any lesbian organisations who support the EHRC Code of Practice (CoP) to give evidence. We believe this is a significant omission so we are now writing to put our views, in order to ensure that a lesbian perspective is included.

Why the lesbian perspective is important

Lesbians have always been at the forefront of the battle for women's sex-based rights, not least because of the number of trans-identifying men who claim to be lesbian, and their subsequent incursions into (and latterly, the significant destruction of) our spaces. It is not a coincidence that the lesbian intervention - which focused on the right to our own associations and our freedom of association - was central to the decision in FWS. The judges commented on the stark reality that, according to the Scottish Government's pleadings, a lesbian organisation could legally exclude a trans-identifying man without a GRC, but as soon as he acquired a GRC we would be forced to admit him.

Much of the debate we have heard at the Committee to date has focused on the provision of toilets and changing rooms, but this is a narrow focus which is not our primary concern. All women have a *situational* need for women-only space, to deal with particular circumstances (getting changed, being unwell in hospital, or even extending to a period of imprisonment). However, many lesbians' need for women-only space is *foundational,* impacting all aspects of our day-to-day lives. It includes single-sex social and cultural opportunities such as social events, associations, dating apps, nightclubs, walking groups and even accommodation.

At the end of the 20th century, all these opportunities not only existed, but were flourishing. However, since the spread of gender-identity ideology much of them have been destroyed or forced underground. The FWS ruling and CoP are enabling us to start the process of rebuilding that community.

The Committee has heard from LGBT organisations, but it is important to understand that any organisation with such an acronym is, literally, incapable of representing the sex-realist majority of lesbians. We are same-sex attracted women who want the right to meet with others in a wide range of settings. LGBT organisations consider that men can become women, and that those who are

attracted to women (ie, heterosexual men) must be recognised as 'lesbians'. It is impossible to simultaneously hold both of those positions or to advocate for both groups. When considering evidence, the Committee should be aware that any organisation which includes T+ is *only* concerned with the demands of trans-identifying individuals, even when that T is preceded by LGB. The LGBT Health and Wellbeing website, for example, offers countless events for "trans" or "LGBT+" but not a single one for lesbians (ie female lesbians).

Access and exclusion

In recent years, there has been a tsunami of inaccurate information stating that trans-identifying people had the right to access wrong-sex facilities. Whilst it is possible to have some sympathy with those individuals who had been misled into genuinely believing this to be the case, that is not a justification for allowing the situation to continue. Many women suffered significant distress or harm as a result of this wrong belief, including being abused, discriminated against, cancelled or excluded. High profile cases include Sandie Peggie and the Darlington nurses. Perhaps the most egregious harm was suffered by a woman who was raped by a trans-identifying man while she was in a women's hospital ward. The health authority insisted to both her and the police that she could not have been raped because there were no men on the ward. It took a year for them to admit the truth.

None of these situations would have arisen if the law, or even basic safeguarding, had been followed correctly. They highlight the urgency of ensuring that the new CoP is implemented in full.

The Committee has also heard about trans-identifying people self-excluding from some single-sex provision. We are not aware of any independent, robust research which demonstrates this to be a significant problem. Following on from the evidence given by Mary-Ann Stephenson, we suggest that in the few instances where this has occurred, it is likely to be because of misinformation / misunderstandings rather than because of any genuine danger.

A far greater number of women have self-excluded from women's services because they were, in fact, mixed. Edinburgh Rape Crisis Centre is a well-documented example. At the other end of the spectrum, there is an annual lesbian festival in Oban which has been "inclusive" for many years. Whilst (trans-identifying) men have felt welcome, large numbers of lesbians have felt excluded because of their presence.

Lesbian social groups

Lesbian Persistence has been able to ensure that admission for all our events was strictly lesbian only. However, other lesbian organisations have been forced to operate in secrecy and been unable to publicly advertise events, some have shut down, and some have become mixed groups admitting lesbians and trans-identifying men – often with the loss of significant numbers of female members. In those mixed organisations, women have been scared to challenge the presence of men, either because they had been wrongly told it was illegal to do so, or because they were called transphobic bigots and, likely, forced to leave.

We are not aware of any single-sex lesbian social groups which have received pubic funding in Scotland, certainly not within the last 5-10 years. Typically, they are run by just one or two women, who have been ducking and weaving to find ways to keep men out without being seen to do so, as this would risk abuse at best, and the threat of legal action at worst. One organiser in Edinburgh, for example, admitted women to the group via an application on Facebook. She would discretely vet applicants and simply didn't reply to those who appeared to be male. However, a couple of men

slipped through that net and she was too scared of the consequences to refuse them admission when they attended an event.

The FWS ruling, and the explanations in the CoP are proving essential in allowing lesbians to reclaim our organisations. The largest and oldest lesbian organisation in the UK, Kenric, had been forced to admit males, but the ruling enabled it to return to being lesbian only. Other women have told us that they are now much more confident in running lesbian only events and in stating explicitly that this means exclusively women.

The impact on lesbian organisers was summed up by one woman who said:

> *I've run a Meetup group for older lesbians (strictly women only) for more than a decade. There is a huge difference pre- and post Supreme Court Ruling. Previously I would regularly get horrible hate messages when I declined males, and lived in fear that I'd be reported to Meetup, litigated against or worse. I got one particularly vile message one Christmas morning…. All that apprehension just isn't a feature of my mental landscape now. Firstly, I haven't had a single nasty message from any of the (extremely few) males that have applied to join. Secondly, the fear is gone and I can go about running a great group without feeling as though the sword of Damocles is hanging over my head.*

We disagree with the solution the CoP offers for allowing groups to admit both lesbians and trans-identifying men. The version initially provided to the Minister had the same effect, but did so in a manner which provided much stronger protections for women who wanted to maintain female only organisations. Despite this, the clarity that the CoP provides about sexual orientation and the right to lesbian only associations is essential for helping lesbians rebuild our groups and communities after many years of fear and male infiltration.

Being challenged in women's facilities

Lesbians' need for privacy, dignity and safety when in vulnerable spaces is, in most cases, no different from that of other women, although some may experience a greater level of distress or discomfort. We welcome the Code's clarity about the provision of single-sex facilities.

Several witnesses and an MSP have told the Committee that the CoP is leading to difficulties for so-called 'butch' lesbians and gender non-conforming or 'masculine presenting' women using toilets and changing rooms. Whilst we are gratified by this unprecedented concern for the welfare of 'butch' lesbians, it does not accord with any discussions we had heard within lesbian circles.

We therefore asked lesbians (of all presentations) in networks throughout the UK about their experiences. Everyone who told us that they have been challenged since August (when the Code of Practice was introduced) *also* said they had been challenged previously, as had about half of all respondents, including several since adolescence. Some women who do not consider themselves 'butch' had been challenged. All said the matter was quickly resolved when they responded, often mentioning finding humour in the situation, "*except once in Singapore when a Chinese woman kept screaming as she insisted I was a man.*" None had found being challenged at all distressing; the closest any comments came were

> *[It was a] bit embarrassing and I was a bit annoyed with the attitude*
>
> *Before I realised I was a lesbian, I was a bit put out at being mistaken for a bloke. Now, I would aim to be reassuring because it takes guts to challenge someone in a toilet.*

Many more echoed that last point, going so far as to feel reassured to be challenged

in fact [I] find it reassuring that women are prepared to say if they think women's facilities are being used by men

I believe all women are entitled to want women only spaces and to challenge anyone who they think is not entitled to be there.

Several women said they'd been challenged in spaces other than toilets, and that those challengers were quite often men. Some women think they may have be mistaken for teenage boys. But we have no explanation for the fact that two women (one who said she's not butch, and the other androgynous) said they had been challenged despite being heavily pregnant.

The evidence does not support the contention that the CoP has led to an increase in the incidences of gender non-conforming lesbians being mistaken for men. One respondent suggested a very different perspective

I do think women get harassed plenty for not adhering to gender roles in toilets etc. But that's not on the EHRC ruling at all. And rather due to the intense focus on gender roles/presentation = if someone's a woman or not

The situation in women's facilities has become messy and complicated by the misleading assertion that some males were entitled to access them. It will only be resolved when there is a universal understanding that single sex facilities are essential in some circumstances, and that this is respected by all. The CoP is essential in helping to bring about this understanding, and in explaining to providers both the need for female-only facilities, and their responsibilities for ensuring they are kept so.

Non-implementation of the CoP

It has been evident since the FWS ruling was issued that a large number of institutions, especially those in the public sector, have been reluctant to implement it. For 18 months many, including the Scottish government, claimed that they couldn't act before they had the EHRC guidance, despite clear and repeated statements to the contrary from the EHRC itself. There is no other area of law which public authorities have been so determined to ignore.

The eventual publication of the much delayed Code of Practice should have put an end to this procrastination. However, as the committee has heard, there are still significant groups arguing against implementation, or seeking ways in which the CoP can be circumnavigated or watered down. This resistance is essentially misogynist and lesbophobic in nature - although the law and the CoP refer to men-only provision as well as women's, the reality is that the biggest impact of non-compliance is felt by women.

As Dr Mary-Ann Stephenson explained to the committee, claims that the CoP is "unworkable" are misplaced. They are, she said, either due to a misunderstanding of what the code said, or made by people who disagree with the law. We agree with that description. The loudest voices of protest have been from trans-identifying men demanding access to women-only facilities. The previous situation where men accessed women's spaces at will was the real unworkable position, which made women feel so uncomfortable, unsafe, and exposed that many self-excluded from certain facilities.

Relationship to other guidance

We have particular concerns for the protection of young women. Before the FWS judgement, both the Scottish Government guidance in Scotland for schools and guidance from the Care Inspectorate were explicitly underpinned by gender ideology. Both provided advice that was not compliant with

the law. As well as the publication of the EHRC CoP, there were two significant legal challenges relating to toilet provision:

4/6/26 Court of Session judgment against West Lothian Council, which noted a girl's distress at sharing communal toilets and restated the need to provide single-sex facilities.

Hurley v Scottish Borders 23/4/25 where the Council accepted parents' challenge to mixed sex toilet provision and the need to provide single-sex facilities.

The Care Inspectorate *Guidance for children and young people's services on the inclusion of transgender including non-binary young people* was updated in 2026 to reflect the CoP, stating the need to provide single-sex toilet provision. Similarly, *Supporting transgender young people in schools* was revised in 2025.

Despite these revisions, both sets of guidance are still heavily influenced by gender-identity ideology. Challenges from organisations such as ScotPAG (Scottish Professionals Advising on Gender) have raised concerns about the safeguarding risks to girls, in particular girls who are same-sex attracted, but who are encouraged to see themselves as boys.

Also, as the Committee has heard, various sectors will produce their own guidance following FWS. The EHRC CoP provides a baseline for their development – as in the two cases cited here.

Conclusion

The law has not changed since the Equality Act was introduced in 2010. However, misleading advice to both individuals and organisations has created a situation in which its provisions have been widely flouted, sometimes deliberately, but also because of a misunderstanding about what was legally required. That misapplication of the law seriously disadvantaged women by allowing males into what should have been safe women-only spaces. Lesbians were additionally disadvantaged because the misinterpretation of the law made it difficult for us to organise social and cultural events for lesbians independently of men. Many of our venues and events were destroyed as a result.

The FWS ruling established beyond doubt the correct interpretation of the law, and how it should be implemented, as should have been done immediately. The CoP provides details and examples, but does not make or amend the law. In our opinion, the Scottish Government's failure to implement the law is driven by a misogynist and lesbophobic bias in favour of gender-identity ideology, as there is no other explanation for the continuing delays in implementation. We urge you to ensure that the law and the CoP are implemented in full across Scottish public and private sectors without further delay.

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