

## **Change 13.5: Updated section on separate or single-sex services in relation to gender reassignment - Changes we are consulting on in chapter 13**

This section explains that service providers should consider their approach to trans people's use of their services when deciding whether to provide a separate or single-sex service. It includes examples of relevant considerations when deciding whether the exclusion of trans people from a separate or single-sex service is a proportionate means of achieving a legitimate aim.

### **Updated content - Separate or single-sex services – gender reassignment**

**13.5.1** If a service provider (including a person providing a service in the exercise of public functions) is considering providing a separate or single-sex service, they should consider their approach to trans people's use of the service.

**13.5.2** The impact of separate or single-sex services on trans people should be considered when the service provider is deciding whether it is justified to have a separate or single-sex service in the first place. Read paragraphs 13.3.8 to 13.3.20 for further information on this.

**13.5.3** If a service provider (including a person providing a service in the exercise of public functions) decides to have a separate or single-sex service and allows trans people to use the service intended for the opposite biological sex, the service will no longer be a separate or single-sex service under the Equality Act 2010 (the Act). It is also very likely to amount to unlawful discrimination against others (read paragraph 13.3.19).

**13.5.4** If it is justified to provide a separate or single-sex service, then it will not be unlawful discrimination because of gender reassignment to prevent, limit or modify trans people's access to the service for their own biological sex, as long as doing so is a proportionate means of achieving a legitimate aim (Sch 3 paragraph 28).

**13.5.5** For example, a trans man might be excluded from the women-only service if the service provider decides that, because he presents as a man, other service users could reasonably object to his presence, and it is a proportionate means of achieving a legitimate aim to exclude him.

13.5.6 A legitimate aim for excluding a trans person from a separate or single-sex service for their own biological sex might be to prevent alarm or distress for other service users. Whether it is reasonable to think that the presence in that service of the trans person will cause alarm or distress will depend on all the circumstances, including the extent to which the trans person presents as the opposite sex. For this reason, a service provider (including a person providing a service in the exercise of public functions) should only consider doing this on a case-by-case basis.

13.5.7 The service provider should consider whether there is a suitable alternative service for the trans person to use. In the case of services which are necessary for everybody, such as toilets, it is very unlikely to be proportionate to put a trans person in a position where there is no service that they are allowed to use.

13.5.8 If the service provider does not act proportionately, this is very likely to amount to direct or indirect discrimination because of gender reassignment (s.13 and s.19).

Example - 13.5.9 Group counselling sessions are provided for female survivors of domestic violence. The service provider excludes a trans man from the sessions because he presents as a man and the service provider is concerned that women service users could reasonably be alarmed or distressed by his presence.

The service provider's decision to exclude the trans man from the service could amount to direct gender reassignment discrimination because he has been treated less favourably than a woman without the protected characteristic of gender reassignment. However, in this situation the service provider is likely to be able to rely on the exception from liability explained in paragraph 13.5.4, because the decision to exclude the trans man was proportionate.

13.5.10 If the nature of a service means that it is only, or generally, used by women or by men, this does not mean that it is necessarily a separate or single-sex service under the Act. A service like this does not need to operate according to the rules and principles described in paragraphs 13.2.10 to 13.5.9. However, the Act (Sch 3 paragraph 30) contains a different exception which means that, in services of this sort, it will not be unlawful discrimination if the service provider refuses to serve a person of the opposite sex, if it would be impracticable to provide the service to that person. The service provider can also

refuse to adjust the way in which the service is provided to cater for a person of the opposite sex. This exception applies to all protected characteristics in the Act, not just sex.

Example - 13.5.11 A hospital provides an Obstetrics and Gynaecology outpatient service. Only women and trans men need to use the service. The hospital provides the service to women and trans men in a way which preserves all users' privacy and dignity.

The hospital can refuse to allow a man or a trans woman to access the service because it does not offer any treatment which is suitable. This means that it would be impracticable to treat a man or a trans woman. It could also be impracticable to do so if it would impact on the privacy and dignity of the women and trans men who use the service.

The hospital can also refuse to adjust the way in which it provides the service.

Example - 13.5.12 A trans man attends a gym frequently and uses the women's changing room, consistent with his biological sex. If the gym owner decides that he can no longer use the women's changing room and there is no other changing room he can use this may be a disproportionate decision. If it is disproportionate, the gym owner will not be able to rely on the exception for gender reassignment discrimination (Sch 3 paragraph 28). The trans man will be able to bring a complaint of direct gender reassignment discrimination, because he has been treated less favourably than a woman who does not have the protected characteristic of gender reassignment.

### Change 13.5: Updated section on separate or single-sex services in relation to gender reassignment

Progress  89%

#### Change 13.5: Updated section on separate or single-sex services in relation to gender reassignment

This section explains that service providers should consider their approach to trans people's use of their services when deciding whether to provide a separate or single-sex service. It includes examples of relevant considerations when deciding whether the exclusion of trans people from a separate or single-sex service is a proportionate means of achieving a legitimate aim.

47. To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the updated section on separate or single-sex services in relation to gender reassignment is clear. - required

- ☐ Strongly Agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Do not know

48. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

### Example Response:

The updated guidance in Change 13.5 seeks to clarify how service providers should approach trans people's access to separate or single-sex services under the Equality Act 2010, particularly in light of the Supreme Court ruling affirming the definition of "sex" as biological sex. I welcome the acknowledgment that excluding trans people from single-sex services is justified as a proportionate means of achieving a legitimate aim (Sch 3, para 28). This is critical for protecting the privacy, safety, and dignity of service users, particularly women, in spaces such as toilets, changing rooms, and domestic violence services. However, several aspects of the guidance lack clarity, introduce ambiguity, or risk undermining women's rights and safeguarding by prioritising trans people's access over biological sex-based protections. Below, I address specific paragraphs and examples, identifying issues and proposing improvements.

**Paragraph 13.5.1: Consideration of Trans People's Use of Services** This paragraph instructs service providers to consider trans people's use of services when deciding whether to provide a separate or single-sex service. While it is reasonable to consider the needs of all potential users, the guidance does not sufficiently emphasise that the primary purpose of single-sex services is to protect the privacy, safety, and dignity of users

based on their biological sex, particularly women. Without this emphasis, there is a risk that service providers may feel pressured to prioritise trans inclusion over the needs of biological women, potentially compromising safeguarding. The guidance does not clarify how service providers should balance competing rights (e.g., women's right to single-sex spaces vs. trans people's access). This could lead to inconsistent decision-making or legal challenges. Add explicit language to clarify that the primary purpose of single-sex services is to protect users based on biological sex, particularly for safeguarding and privacy. For example: **"Service providers must prioritise the privacy, safety, and dignity of users based on biological sex when considering the provision of separate or single-sex services, while taking into account the needs of trans people where proportionate and feasible."**

**Paragraph 13.5.2: Impact on Trans People When Deciding on Single-Sex Services:** This paragraph advises considering the impact on trans people when deciding whether to provide a single-sex service. While impact assessment is important, the cross-reference to paragraphs 13.3.8 to 13.3.20 does not sufficiently guide providers on prioritising biological sex-based protections, especially in high-risk contexts like domestic violence shelters or prisons. The guidance risks implying that trans inclusion is a primary consideration, which could undermine the justification for single-sex services. For example, women escaping domestic violence may require female-only spaces to feel safe, and this need should take precedence over trans access.

Clarify that the impact on trans people is a secondary consideration to the primary aim of protecting users based on biological sex. For instance: **"When assessing the impact on trans people, service providers must ensure that the primary aim of single-sex services—protecting the privacy, safety, and dignity of users based on biological sex—is not compromised."**

**Paragraph 13.5.3: Impact of Allowing Trans People into Opposite-Sex Services:** This paragraph correctly states that allowing trans people to use services intended for the opposite biological sex renders the service no longer single-sex and is likely to amount to unlawful discrimination against other users (per para 13.3.19). This is a critical point that upholds the integrity of single-sex spaces and aligns with the Supreme Court's ruling on biological sex.

This is a strong and clear statement that protects women's rights by recognising that single-sex services lose their purpose if biological sex is disregarded. It also highlights the risk of discrimination against women if trans people are permitted to access opposite-sex services. Reinforce this point with an example illustrating the impact on women, such as: "A women's refuge allowing a trans woman (biological male) into a

female-only space may breach the Equality Act by discriminating against female service users who rely on the service for safety and privacy.”

**Paragraph 13.5.4: Exclusion of Trans People as Proportionate Means**

This paragraph confirms that excluding trans people from a single-sex service for their biological sex is not unlawful discrimination if it is a proportionate means of achieving a legitimate aim (Sch 3, para 28). This is a vital protection for women’s rights and safeguarding, particularly in sensitive contexts.

The guidance is clear and aligns with the Equality Act. However, it could benefit from more explicit examples of “legitimate aims” beyond those listed later (e.g., preventing alarm or distress). Expand the list of legitimate aims to include “ensuring the physical and psychological safety of vulnerable users” and “maintaining the integrity of trauma-informed services for women.” This would provide clearer guidance for providers in high-stakes settings.

**Paragraph 13.5.5: Example of Excluding a Trans Man from a**

**Women-Only Service:** The example of excluding a trans man from a women-only service due to her male presentation and potential distress to other users is helpful in illustrating a proportionate decision. It reflects the reality that biological sex-based services may need to exclude trans individuals to maintain their purpose. The example focuses on the trans man’s presentation rather than the broader principle of biological sex protections. This risks creating ambiguity about whether exclusion is always justified based on biological sex or only when presentation causes distress. Revise the example to emphasise biological sex as the primary criterion for exclusion, with presentation as a secondary factor. For example: “A women-only service may exclude a trans man because the service is intended for biological females, particularly where her presence could cause distress due to male presentation.”

**Paragraph 13.5.6: Legitimate Aim of Preventing Alarm or Distress:** This paragraph identifies preventing alarm or distress as a legitimate aim for excluding trans people and emphasises case-by-case assessment based on presentation. While this is useful, it places a significant burden on service providers to assess presentation, which is subjective and may lead to inconsistent application. The focus on presentation rather than biological sex risks undermining the clarity of single-sex protections. For example, a trans woman who is male, but presents as a woman, will still pose a safeguarding risk in a women’s prison or shelter, regardless of presentation. Shift the emphasis to biological sex as the primary criterion for exclusion, with presentation as one of several factors. For instance: “The primary justification for excluding a trans person from a single-sex service is to maintain its biological sex-based purpose, with factors such as

presentation considered on a case-by-case basis to ensure proportionality.”

**Paragraph 13.5.7: Suitable Alternative Services for Trans People:** This paragraph advises providers to consider alternative services for trans people and notes that excluding trans people from essential services like toilets is unlikely to be proportionate. While access to essential services is important, the guidance does not adequately address the practical challenges of providing alternatives while maintaining single-sex protections. The suggestion that excluding trans people from toilets is “very unlikely to be proportionate” could pressure providers to allow trans individuals into opposite-sex facilities, undermining women’s privacy and safety. For example, women may feel unsafe sharing toilets with biological males, regardless of their gender identity.

Clarify that **service providers are not obligated to allow trans people into opposite-sex facilities and that alternatives (e.g., gender-neutral toilets) should be provided where feasible.** For example: “Service providers should explore gender-neutral alternatives for trans people to ensure access to essential services **without compromising the single-sex nature of facilities intended for biological females.**”

**Paragraph 13.5.8: Risk of Discrimination if Not Proportionate:** This paragraph warns that disproportionate actions may result in direct or indirect discrimination against trans people. This is a necessary reminder of legal obligations but risks overemphasising trans rights at the expense of women’s protections. **The guidance does not equally highlight the risk of discrimination against women if single-sex spaces are not maintained.** This imbalance could lead providers to err on the side of trans inclusion to avoid legal challenges, even when it compromises safeguarding. Balance this warning with a reminder that failing to maintain single-sex services may result in discrimination against women. For example: “Service providers must ensure that decisions to exclude trans people are proportionate to avoid discrimination, while also ensuring that maintaining single-sex services does not result in discrimination against users based on biological sex.”

**Example 13.5.9: Group Counselling Sessions for Female Survivors:** The example of excluding a trans man from female-only counselling sessions due to potential distress is clear and aligns with the need to protect vulnerable women. It correctly notes that the exclusion may be justified under Sch 3, para 28. This example effectively illustrates a proportionate decision but could be strengthened by emphasising the trauma-informed nature of such services.

Add detail to highlight the safeguarding context, e.g., “The service provider excludes the trans man to ensure a trauma-informed environment for female survivors, where the presence of a male could undermine the

therapeutic purpose of the service.”

**Paragraph 13.5.10 and Example 13.5.11: Services Used Primarily by One**

**Sex:** These sections clarify that services used primarily by one sex (e.g., obstetrics and gynaecology) are not necessarily single-sex under the Act and can exclude opposite-sex users if impracticable. The example of a hospital refusing to treat a man or trans woman is clear and practical. This guidance is helpful in distinguishing between single-sex services and services used primarily by one sex. It supports providers in making pragmatic decisions without requiring unnecessary adjustments. Retain this section as is, but consider adding an example of a women’s health service excluding a trans woman to protect the privacy of biological females, reinforcing the focus on biological sex.

**Example 13.5.12: Trans Man in Women’s Changing Room:** This example highlights the potential for direct gender reassignment discrimination if a trans man is excluded from a women’s changing room without an alternative. It correctly notes the need for proportionality but risks implying that trans people must always be accommodated in single-sex spaces. The example does not adequately address the impact on female users’ privacy and safety if a trans man (biological female) uses the women’s changing room but presents as male, potentially causing distress. It also fails to consider the availability of gender-neutral facilities as an alternative. Revise the example to emphasise the need for gender-neutral alternatives and the primacy of biological sex-based protections. For example: “If a gym excludes a trans man from the women’s changing room due to distress caused by her male presentation, it should provide a gender-neutral changing facility to ensure access while maintaining the single-sex nature of the women’s facility.”

The guidance frequently references “presentation” as a factor in exclusion decisions, which introduces subjectivity and risks undermining the Supreme Court’s ruling on biological sex. **To align with the ruling, the guidance should consistently prioritise biological sex as the basis for single-sex services, with presentation as a secondary consideration.** Explicit language should be added to affirm that women’s right to privacy, safety, and dignity based on biological sex is a primary consideration.

Provide practical guidance on implementing gender-neutral facilities as a solution for trans access, ensuring that single-sex spaces remain intact. For example: **“Where feasible, service providers should offer gender-neutral facilities to accommodate trans people without compromising the single-sex nature of services for biological females.”** Include additional case studies illustrating scenarios where excluding trans people is justified to protect women’s safety, such as in prisons, shelters, or sports facilities.



These should emphasise biological sex and safeguarding as the primary considerations.

By addressing the concerns outlined above; through clearer language, a stronger focus on biological sex, and practical guidance on alternatives, the EHRC can better support service providers in complying with the law while upholding the rights of all users, especially women in vulnerable contexts.