

Change 8.1: Updated example on harassment related to sex - Changes we are consulting on in chapter 8

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Chapter 8 explains the general test for harassment under the Equality Act 2010 (the Act). It also explains the provisions on harassment related to a relevant protected characteristic, the provisions on sexual harassment and the provisions on less favourable treatment of people who reject or submit to harassment.

We have included the changes to this chapter that we are consulting on in the following sections.

Change 8.1: Updated example on harassment related to sex

We produced a new example to explain how harassment can occur based on a perceived protected characteristic, in the context of sex and gender reassignment.

We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 8.1.6b.

Updated content - 'Related to'

8.1.1 Unwanted conduct 'related to' a relevant protected characteristic has a broad meaning. It can include many situations, such as those described in paragraphs 8.1.2 to 8.1.6.

8.1.2 Harassment can be related to an individual's own protected characteristic.

Example - 8.1.3 A woman using the gym equipment in her local leisure centre is regularly subjected to comments from male staff members such as 'watch what you say in front of her, it's her time of the month again'. This could amount to harassment related to sex.

8.1.4 Protection from harassment also applies where a person is generally abusive, but, in relation to a particular individual, the form of the unwanted conduct relates to that individual's protected characteristic.

Example - 8.1.5 A hairdresser is often rude to his customers but regards his comments as friendly banter. For example, he often makes rude comments about customers' jobs, weight, height and where they are from. Comments about jobs, weight or height are unlikely to be unlawful because they are unlikely to relate to a protected characteristic. However, a rude comment about where someone is from could relate to race and may amount to harassment if a customer finds the comments humiliating or offensive. It does not matter that the hairdresser is rude to all his customers and did not intend to offend a particular individual.

8.1.6 An individual does not have to possess the relevant protected characteristic themselves for protection from harassment to arise. This can happen in several different situations.

a. An individual may be associated with someone who has a protected characteristic. Example - A party of adults with learning difficulties have a meal in a restaurant accompanied by their support workers. Some of the restaurant staff make fun of the party with gestures and silently mimicking them. The support workers are very upset by the conduct of the staff for creating a degrading and humiliating environment for them, as well as for the adults they support. The support workers could bring a claim of harassment related to disability.

b. An individual may be wrongly perceived as having a particular protected characteristic. Example - A trans woman using the gym equipment in her local leisure centre is regularly subjected to comments from male staff members such as 'watch what you say in front of her, it's her time of the month again'. As with the example at 8.1.3, this could amount to harassment. However, in this example, the harassment would be related to the trans woman's perceived sex.

c. An individual may be known not to have a particular protected characteristic but nevertheless is subjected to harassment related to that characteristic. Example - A member of staff at a local shop mocks a teenage boy with long hair for being gay when he comes in, using derogatory and insulting terms for gay men. The staff member knows the boy is not gay, and he regards this name calling as just a joke, but this could amount to harassment related to sexual orientation. The boy now really dislikes going to the shop, especially with his friends as he dreads being insulted and verbally abused.

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Progress

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29. 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 example on harassment related to sex is clear. - required

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

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

Example Response:

This example is problematic and inconsistent with the Supreme Court's ruling in *For Women Scotland Ltd v The Scottish Ministers* (16 April 2025), which defines "sex" in the Equality Act 2010 as biological sex recorded at birth, unaffected by a Gender Recognition Certificate (GRC). By framing harassment of a trans woman (a biological male) as related to "perceived sex" (i.e., being perceived as a woman), the example risks undermining women's sex-based protections, creates confusion for service providers, and contradicts the ruling's clarity on biological sex. Below, I outline why this example is wrong and suggest revisions to align it with the law and prioritise women's rights.

Misapplication of "Perceived Sex" Undermines the Biological Sex

Definition - The Supreme Court ruling unequivocally establishes that sex under the Equality Act 2010 refers to biological sex. In the example, the trans woman is a biological male, and their legal sex remains male regardless of their gender identity or presentation. By suggesting that harassment is based on their "perceived sex" as a woman, the example conflates gender identity with sex, effectively allowing biological males to claim protections intended for women (biological females). This contradicts

the ruling and risks diluting the Act's sex-based protections.

The example implies that a biological male can be protected as a woman under the Equality Act based on how others perceive their sex. This undermines the legal definition of sex as biological and could enable biological males to access women's rights or spaces (e.g., women-only gym sessions) by claiming a perceived female identity. For instance, if a leisure centre has a women-only session, the example suggests that a trans woman (biological male) could claim harassment if excluded, even though such exclusion is lawful under Schedule 3 of the Act (single-sex services). Women's sex-based rights, such as access to safe, single-sex spaces, are rooted in biological sex to address risks like male violence or privacy concerns. Allowing biological males to be treated as women based on "perceived sex" could intimidate women into self-excluding from spaces like gyms, fearing harassment or loss of privacy if biological males are present.

If women raise concerns, they could be accused of harassment, even though their objections align with the Act's provisions for single-sex spaces. The example's focus on the trans woman's "perceived sex" ignores the competing rights of women to a biologically female-only environment. Revise the example to clarify that harassment protections for a trans woman fall under the protected characteristic of gender reassignment, not "perceived sex." For instance, ***the comments about "her time of the month" could be framed as harassment related to gender reassignment (mocking their trans identity) rather than implying they are legally a woman.*** This aligns with the ruling and avoids conflating sex with gender identity. Or for instance: "A leisure centre operates a women-only gym session for biological females, as permitted under Schedule 3. A trans woman (biological male) is excluded from this session but claims harassment due to staff comments. The centre addresses the comments as potential harassment related to gender reassignment while lawfully maintaining the single-sex session." This ensures clarity for providers and upholds women's rights.

The example's framing risks eroding women's sex-based protections by prioritising the perceived identity of a biological male over the material reality of women's needs. The Equality Act recognises sex as a protected characteristic to address systemic disadvantages faced by women, such as male violence, sexual harassment, or privacy concerns in shared spaces. By suggesting that a biological male can be harassed as a woman based on "perceived sex," the example dilutes these protections and creates a loophole for self-identification to override biological reality. The comment about "her time of the month" mocks a biological function (menstruation) exclusive to women, yet the example applies it to a trans woman (biological

male) who cannot experience it. This misrepresents the harassment as sex-based rather than related to gender reassignment, confusing the distinct protections under the Act. It also risks trivialising women's biological experiences by equating them with gender identity. Women rely on the Act to protect against sex-specific harassment, such as comments about menstruation or pregnancy. If biological males can claim similar protections based on "perceived sex," it undermines the Act's purpose of addressing women's unique vulnerabilities. For example, women in the gym might feel their experiences are devalued if biological males are treated as women in harassment claims.

The example's ambiguity exacerbates confusion about the legal boundaries of sex and gender reassignment. By not explicitly stating that the trans woman is a biological male whose legal sex remains male, the example risks implying that self-identification as a woman grants access to women's protections. This lack of clarity undermines the Supreme Court ruling and leaves service providers uncertain about their obligations.

Ambiguity in the guidance could lead to women's spaces being opened to biological males out of fear of harassment claims, compromising women's safety and privacy. For example, a leisure centre might allow a trans woman into a women-only session to avoid perceived harassment, even though exclusion is lawful.

The consultation's narrow focus on specific changes, like this example, limits feedback on how the ruling affects the entire Code, particularly women's protections. The interplay between Chapter 8 (harassment) and Chapter 13 (single-sex service exceptions) is critical, yet the example does not address this. Allowing biological males to claim harassment based on "perceived sex" could conflict with lawful exclusions, creating legal and practical challenges for providers and eroding women's rights. **The example's focus on perceived sex without addressing single-sex exemptions risks creating a framework where biological males can challenge women-only spaces through harassment claims, contrary to the ruling's intent.**

The Chapter 8 example is flawed because it conflates perceived sex with biological sex, undermining the Supreme Court's ruling that sex in the Equality Act 2010 is biological. I urge the EHRC to revise the example to focus on harassment based on gender reassignment, not perceived sex, and to include scenarios that uphold women's sex-based rights in line with the ruling. Greater transparency, such as publishing the full example text, to ensure the Code reflects the law accurately and protects women effectively.