

Section 2.2 of the Code aims to guide duty-bearers (e.g., service providers, public bodies, associations) on requesting birth sex information sensitively, reflecting the ruling that sex is biological under the Equality Act 2010. While it provides useful direction, it lacks clarity, practical examples, and robust protections for women's sex-based rights and public-facing workers, such as receptionists, who may face aggression or confusion when enforcing policies. The use of undefined terms like "trans" and "gender non-conforming" deviates from the Act's definition of "transsexual person" (s.7), creating ambiguity. The Equality Act defines a "transsexual person" as someone with the protected characteristic of gender reassignment, meaning they are proposing to undergo, are undergoing, or have undergone a process to reassign their sex by changing physiological or other attributes (s.7). However, Section 2.2 uses "trans" and "gender non-conforming" (2.2.1) without defining them, deviating from the Act's terminology. "Gender non-conforming" is not a protected characteristic, and "trans" is undefined, risking misapplication by duty-bearers, particularly in single-sex services where clarity is critical to uphold women's sex-based rights (s.11). This ambiguity could lead to policies that inadvertently allow biological males into women-only spaces, such as domestic violence shelters or prisons, undermining safety.

Replace "trans" and "gender non-conforming" with "transsexual person" per s.7. Clarify that "gender" is not a protected characteristic, and requests for birth sex must align with legal birth sex under the Act. For example, revise 2.2.1 to state: "Requests for birth sex must use the term 'transsexual person' as defined in s.7, ensuring clarity and alignment with the Equality Act." Section 2.2 prioritises sensitivity toward transsexual persons' privacy (Article 8, ECHR; s.22, Gender Recognition Act 2004) but underplays women's rights to single-sex spaces (s.11, Schedule 3, Part 7). For instance, women accessing shelters or sports facilities may feel unsafe if biological males are present due to unclear verification processes (e.g., 2.2.6's reliance on self-confirmation). LGB Alliance, an intervenor in the Supreme Court case, argues that lesbian organisations can exclude biological males to maintain same-sex spaces, preserving the integrity of sexual orientation-based services. Similarly, Transgender Trend highlights that affirming trans identities in schools (e.g., allowing trans girls into girls' spaces) erodes female students' boundaries, with a 2020 BBC investigation finding 74% of girls aged 12–15 faced unwanted sexual comments in mixed-sex settings. Explicitly state that women's sex-based rights take precedence in single-sex services. Revise 2.2.3 to include: "Single-sex services, such as women's refuges or prisons, must prioritise biological females to comply with Schedule 3, ensuring safety while

making discreet inquiries to respect privacy.” Provide examples of “necessary and proportionate” requests, e.g., “A women’s shelter may require birth sex verification to ensure only biological females access the service, balancing sensitivity with safety.” Public-facing workers, such as receptionists or healthcare staff, are vulnerable to aggression when requesting birth sex, particularly from individuals misrepresenting their sex. Section 2.2 lacks protocols for de-escalation or legal protections, leaving workers exposed to harassment or accusations of discrimination. Add worker protections across paragraphs. For 2.2.4, include: “If a person responds aggressively to a lawful birth sex request, staff may refuse service, provided this is proportionate and non-discriminatory, to protect themselves and service users.” In 2.2.7, revise the example to state: “Staff must ensure women’s single-sex groups remain exclusive to biological females, with training to handle aggressive responses and legal backing to enforce policies.” The guidance is vague on when requests for birth sex are “necessary and proportionate” (2.2.2, 2.2.3) and lacks examples of legal obligations (e.g., single-sex provisions under Schedule 3). This leaves duty-bearers uncertain about compliance, risking either discrimination against transsexual persons or violations of women’s rights. For instance, 2.2.6 suggests self-confirmation of birth sex is sufficient but does not address risks of false claims, which could undermine women’s safety in high-risk settings like prisons. Similarly, 2.2.8 notes that a Gender Recognition Certificate (GRC) may not reflect birth sex but fails to clarify its irrelevance for Equality Act purposes, leaving workers unsure how to verify sex without legal risks. Provide specific examples and protocols. For 2.2.2, add: “A women’s prison may request birth sex to comply with single-sex provisions, using private inquiries to respect Article 8 rights.” For 2.2.6, strengthen safeguards: “In high-risk settings like shelters, verification (e.g., ID documents) may be required to protect female service users, with protocols to support staff facing aggression.” For 2.2.8, clarify: “A GRC does not change legal sex under the Equality Act, so birth certificates may be unreliable. Discreet inquiries should balance privacy and women’s rights.” Paragraph 2.2.9 lacks guidance on balancing this with Equality Act obligations. Workers may fear legal repercussions when requesting birth sex in single-sex contexts. Similarly, 2.2.10 references the Data Protection Act 2018 and UK GDPR but offers no specific guidance on secure data handling, creating legal uncertainty. Clarify compliance with both laws. For 2.2.9, add: “Requests for birth sex must ensure confidentiality per s.22, but duty-bearers must prioritise Equality Act obligations (e.g., single-sex spaces) with lawful protocols.” For 2.2.10, include: “Birth sex data must be processed securely per

GDPR, with staff training to minimise conflict and protect women's single-sex spaces." Paragraph 2.2.5 notes that policies on birth sex requests could cause indirect discrimination if they disadvantage protected groups, but it lacks examples. Unclear policies might disadvantage women (s.11) if biological males access single-sex spaces due to lax verification, or transsexual persons if public disclosure is required. Provide examples, e.g., "A policy requiring public disclosure of birth sex may discriminate against transsexual persons but must be balanced against women's rights to single-sex spaces. Staff training ensures consistent, lawful requests." Section 2.2 requires significant revisions to align with the Equality Act, protect women's sex-based rights, and support public-facing workers.