

This example is problematic and inconsistent with the Supreme Court's ruling (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.