

# **EHRC Code of Practice for Services, Public Functions and Associations - Consultation Response**

## **1. Introduction**

- 1.1. This response has been prepared by the Rainbow Project, an organisation working for equality for LGBTQIA+ people and their families in Northern Ireland, and HERe NI, the lesbian and bisexual women's organisation, for consideration as part of the consultation on an updated Code of Practice for services, public functions and associations.
- 1.2. In preparing this response, we consulted and worked with our colleagues in Mermaids NI and the Belfast Trans Resource Centre, and are submitting as a cross-sectoral response to the proposals of the EHRC and how they may impact or be impacting Northern Ireland.
- 1.3. As we are based in Northern Ireland, and recognise that we do not have direct experience working to the EHRC's previous Code of Practice, we will not be responding directly to the questions within the consultation. Instead, this response will focus on presenting an overarching view of the guidance, the conduct of the consultation, and the direct and indirect impact on trans and LGBTQIA+ communities in Northern Ireland.
- 1.4. We are content for this submission to be published in full.

## **2. Consultation Period and Conduct**

- 2.1. It is clear that the manner in which this consultation has been conducted, the tenor and tone of the interim guidance, and the public pronouncements of EHRC leadership throughout the consultation period have significantly damaged trust and confidence within the trans community that this engagement is being approached in a good faith and constructive manner.
- 2.2. Presenting such a monumental change to the material rights and dignity of transgender people and their ability to access public spaces, workplaces, goods and services, while allowing a fortnight for responses, was perceived by many within the community to show that the EHRC was not seeking, in good faith, the views of trans and gender diverse communities.
- 2.3. That this consultation has now been extended to 6 weeks, following criticism from the House of Commons Women and Equalities

Committee<sup>1</sup>, will provide some, but not a lot of, assurance to those individuals whose lives will be drastically impacted by these changes across Britain that their views and the views of organisations advocating for their rights will be fully and comprehensively taken into account.

- 2.4. Even with this extension, this monumental change to law and policy should be consulted on for longer and with direct engagement with trans communities and trans organisations. Tokenistic engagement - such as “Q&A sessions” where views expressed are explicitly not taken into account as part of the consultation - is not good practice nor would it be acceptable with any other marginalised group whose rights and dignity the EHRC is purported to uphold.
- 2.5. Further, arbitrary limitations have been placed on areas of the consultation where the EHRC has determined that these are clear, settled areas of law which do not require engagement. Some points, including the assertion made that employers are legally mandated to provide single sex toilets on the basis of sex assigned at birth, are arguably misreadings of the law, and as such call into question the EHRC’s wider reading of the Supreme Court judgment presented through this Code of Practice.
- 2.6. We note that the EHRC has been challenged in the courts by four claimants including the Good Law Project on a number of grounds, one of which is the manner in which this consultation is being conducted. A key issue raised within this case has been the EHRC’s refusal to seek views on what it sees as ‘settled areas of law’ stemming from the FWS judgment, but which are in many cases untested and unjustified conclusions to draw from the judgment.
- 2.7. It is notable that, in response to this legal challenge, the EHRC has walked back the above assertion regarding sex-segregated toilets<sup>2</sup> - a clear signal that other ‘settled’ areas of law which the Commission is not engaging on may too be incorrect.

### 3. Impact of the Interim Code of Practice

- 3.1. The interim Code of Practice, while produced for Britain and not taking effect in Northern Ireland, has had a significant impact locally in how it has set the narrative around the Supreme Court judgment.
- 3.2. The language and tone of the Interim Code of Practice, and the assertions that it **places a concrete obligation** to segregate transgender individuals from gendered spaces and facilities, has led

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<sup>1</sup> <https://committees.parliament.uk/publications/47800/documents/249686/default/>

<sup>2</sup> [EHRC response to pre-action letter, dated 13th June](#)

to calls from anti-trans organisations and individuals for the blanket exclusion of transgender people from accessing goods, facilities and services on the basis of their gender.

- 3.3. This rhetoric led to knee-jerk reactions from a number of public bodies in Northern Ireland, including local councils<sup>3</sup> and Executive Ministers<sup>4</sup>, about the importance of “implementing the Supreme Court judgment”, despite the different legislative landscape here, and the specificity of this case to the Equality Act 2010.
- 3.4. The language used within the overview of the interim update on the Code of Practice, while understandably legalistic, only serves to further marginalise transgender individuals and explicitly denies the identities and lived realities of transgender people. The update, posted on the EHRC’s website, refers in large part to transgender women and men respectively using the terms ‘biological men’ and ‘biological women’.<sup>5</sup>
- 3.5. This choice of language in public statements delegitimises the identities and lived experiences of transgender people, many of whom have gone to great lengths to alter both their physiology and their legal sex. It further sends a signal to politicians, the media and wider society that, in the opinion of the national human rights institution, it is acceptable to actively deny the identities of transgender people, and even that doing so is correct under the law.
- 3.6. Other public statements, particularly the appearance of the EHRC Chair and Chief Executive at the Women and Equalities Committee in Westminster<sup>6</sup>, has caused significant concern amongst trans communities. Among other issues, it was suggested that transgender people are not subject to protections under Article 8, right to private and family life, of the European Convention on Human Rights;<sup>7</sup> that operating a women’s only walking group which was trans inclusive would be unlawful<sup>8</sup>; and that there is no reason for transgender people to be fearful as a result of these changes.<sup>9</sup>

#### 4. Interim Code of Practice Content

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<sup>3</sup> BBC News (May 2025) - [Council chief apologises after gender ruling statement](#)

<sup>4</sup> BBC News (May 2025) - [Education minister urges compliance on Supreme Court gender ruling](#)

<sup>5</sup> EHRC (April 2025) - An interim update on the practical implications of the UK Supreme Court judgment

<sup>6</sup> Women and Equalities Committee (11th June 2025) - [Oral evidence: Work of the Equality and Human Rights Commission \(EHRC\) \(2024-25 session\). HC 942](#)

<sup>7</sup> Ibid, answering Q70

<sup>8</sup> Ibid, answering Q11

<sup>9</sup>

- 4.1. On the whole, the updated Code of Practice is unreasonable, unworkable and arguably unlawful. It takes a maximalist approach to the judgment, arguing that it applies not just to the Equality Act and protections therein but across the whole of society, in access to *all* facilities and services, in all interactions with public services such as healthcare and leisure centres, and even in engagement with LGBTQIA+ community organisations.
- 4.2. It is of particular concern as service providers within the community that the interim Code of Practice has stated that **“A women-only or lesbian-only association should not admit trans women”**, and vice versa for gay men’s organisations, without providing any information around the safe and inclusive spaces that are available and accessible to trans women and men respectively.
- 4.3. If an inclusive LGBTQIA+ women’s organisation, for example, cannot admit trans women, this will effectively mean that the organisation would cease to operate, or be compelled to fundamentally change its services and organisational model. This would have a significant impact on LGBTQIA+ women being able to access intersectional support in a safe environment.
- 4.4. It is worth noting that cisgender gay and bisexual men and women in Britain are over twice as supportive of transgender rights and people as the wider population. Cisgender lesbian and bisexual women are the most supportive group of transgender people, with an overwhelming 84% having a positive view of trans people.<sup>10</sup>
- 4.5. The interim Code of Practice also has broader implications on cis lesbian/bisexual women, particularly butch/gender non-conforming women. Kate Osborne MP, speaking in Westminster, said she is “misgendered frequently”. She stated that, “[After this judgement] I suspect I will get challenged even more now when accessing facilities”.<sup>11</sup> Indeed, if this guidance becomes statutory, many more cis lesbian/bisexual butch/gender non-conforming women risk being misgendered and excluded from women’s spaces.
- 4.6. The interim Code of Practice does not consider the existence of intersex people, and intersex people have been largely missing from public discourse as it has developed over the last number of years. The existence of intersex people confirms that sex is not binary; people can have a variation of sex characteristics, and ‘biological sex’

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<sup>10</sup> YouGov (August 2023) - [What do lesbian, gay, bisexual and transgender Britons think the British public thinks of them?](#)

<sup>11</sup> London Evening Standard (April 2025) - [LGBT MP fears being ‘challenged’ in toilets after Supreme Court ruling on gender](#)

as it is assigned at birth is a problematic and unhelpful means of categorising the diversity of people, their bodies and their identities.

- 4.7. The exclusion of intersex people within the Code of Practice would further marginalise those individuals within wider society, in their access to facilities and services, and their ability to participate in public life. It will leave intersex individuals questioning what their rights are in accessing services and facilities.
- 4.8. On the individual questions, and the impact of the proposed updates on trans communities in Britain, we defer to submissions by organisational colleagues across the LGBTQIA+ sector in Britain, particularly the LGBT Foundation, Equality Network and Scottish Trans, Mermaids UK, Gendered Intelligence, Stonewall, TransActual, Galop, and the LGBT Consortium.