



## How the UK Supreme Court Ruling on biological sex impacts your trans and non-binary workplace policies

The ruling of the UK Supreme Court in the case of *Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)* of 16th April 2025 has caused controversy for many, and confusion for employers in particular. This addendum statement seeks to clarify our advice in this document with specific reference to how the Supreme Court ruling has – and has not – changed things.

Please remember that our advice is not legal or binding. But it does represent our considered and researched opinion after consulting with trans+ community members, businesses, and legal experts regarding how businesses can continue to support the trans community.

## WHAT THE UK SUPREME COURT DECIDED

The Supreme Court has ruled unanimously that references to 'sex' and a 'woman' under the Equality Act 2010 (Equality Act) pertain strictly to biological sex and biological women. 'Woman' refers to a female-born person only and does not apply to a transgender individual – even if they hold a Gender Recognition Certificate (GRC).

That said, the court did not ask for testimony from any transgender people. Nor did it appear to take into account any trans legal opinion, for example from trans lawyer and former judge Victoria McCloud. This highlights a significant shift in the ongoing legal and political debate surrounding the legal status of transgender individuals and the interpretation of single-sex service protections.

However, according to Kennedys Law LLP, the ruling *"has not added or removed any protections for individuals and therefore... **transgender people remain protected from discrimination under the existing provisions of the Equality Act and employers should continue to be mindful of these protections and act accordingly and with appropriate sensitivity.**"*

This means there's no legal barrier for employers to support current or future potential trans employees with trans+ inclusion, gender affirming, and transitioning at work policies. We encourage you to use our guide to help review your existing policies or help set up new ones.

## WHAT DOES THIS MEAN FOR SINGLE SEX SPACES?

The current legal situation appears to be that it is legal for employers to restrict trans access to single-sex spaces. However, without provisions for those trans employees, they can complain (rightly) they are being discriminated against and have a legal case against their employer.

### How can employers move forward?

- If taking a trans-exclusionary stance (which we strongly oppose), the employer should provide third sex spaces for trans and non-binary employees across all offices/premises.
- Employers may consider carrying out legal risk assessments of their single-sex facility provision and make a decision that way.
- Employers may wish to consult their employees on their options and seek a consensus on the best approach.

## WE URGE EMPLOYERS TO CONSIDER ALTERNATIVES TO REMOVING THE FREEDOMS OF TRANS PEOPLE

For trans people, being seen and accepted as their true gender is fundamental to their existence. This includes being able to access appropriate spaces as part of their day to day lives.

While we appreciate there are some strongly-held sensitivities on this issue, barring access is a fundamental rejection of trans people's sense of self. It may cause anger, resentment, fear, and potentially immeasurable damage to an individual's mental health. Although we recognise that such an exclusion is not often deliberately intended to be anti-trans, it has the effect of being just that, and sows entirely unnecessary prejudice, fear, and division.

Protecting trans access is an opportunity to reaffirm your company's commitment to all diversity, equity, and inclusion, and to the acceptance of trans+ and non-binary people in general, particularly at time when their lives are being scrutinised and 'othered' by a hostile media.

We would urge employers to consider modelling the responses of companies such as Co-op, whose chief executive recently came out strongly in favour of protecting trans access.

More broadly, businesses should consider reviewing their diversity and inclusion policies and training to ensure these are current and thorough. Please see the recommended resources in our guide, where we mention several organisations and information sources that could be helpful.

The law **requires** that trans+ people must still be protected from harm, harassment, or other prejudicial treatment. This is where we hope our guide comes in useful.