

# Trans matters in sport: The decision in For Women Scotland

08 May 2025  James Arrowsmith

## What has changed?

The Supreme Court Decision in *For Women Scotland v The Scottish Ministers* UKSC/2024/0042 (FWS) clarifies the meanings of 'sex', 'man' and 'woman' in the Equality Act 2010 (EqA) as being based on biological sex (sex at birth).

The decision is contrary to the longstanding view of the Equality and Human Rights Commission that sex for the purposes of the EqA could be changed by a Gender Recognition Certificate (GRC).

Technically the Supreme Court interprets the law and so this has always been the correct understanding of the legislation. Practically, because many organisations have developed policies based on a different understanding of the law, this is a significant change.

## EHRC guidance

The Equality and Human Rights Commission (EHRC) has committed to update general guidance by the summer, and to work to update guidance such as that on single-sex services as a matter of urgency. The absence of up-to-date guidance does not alter the legal position determined by the Supreme Court.

EHRC published an 'interim update' on their work on 25 March 2025 and updated this further on 30 March: [An interim update on the practical implications of the UK Supreme Court judgment](#) (the EHRC update). The wording of that update makes it clear that it is not updated guidance but states that it is intended to "*highlight the main consequences of the judgment.*" The update states that rules relating to competitive sport will be addressed separately 'in due course'.

The guidance emphasises the need to follow the law and take advice where necessary. This update offers clarity as to EHRC's interpretation of the implications of the judgment, in those areas it covers, and we can expect to see much of what is said reflected in their updated draft guidance. A consultation on that guidance is expected in mid May which may offer further insight.

## Inclusion matters

Many sports organisations include among their objectives the promotion of wider participation in their sport, with access for everyone. FWS will impact on some aspects of how this is done but does not mean that the objective of trans participation should not or cannot be pursued. Where policies are revised following the judgment it will be important to consider what alternative strategies are available to promote inclusion.

## Protections continue

The Supreme Court was careful to point out that a range of protections exist for trans and non-binary people under the equality Act. In this regard, it is important to recall that *Taylor v Jaguar Land Rover Ltd* 1304471/2018 supports an expansive interpretation of the protected characteristic of 'gender reassignment' under EqA. In addition to protection from discrimination in relation to the characteristic, trans and non-binary people benefit from protections from harassment and victimisation, and from discrimination based on perceived sex or association with a sex. Safety, safeguarding and prevention of harm are as important as ever.

In a highly politicised and emotionally charged area such as sex, gender, and trans inclusion it is important organisations are clear that mistreatment in relation to these characteristics or associated protected beliefs is unacceptable.

## Employment

We are issuing separate guidance on the employment impact of FWS.

## Single sex spaces

Policies in relation to use of single sex spaces such as changing and toilet facilities require review considering the judgment. Reviews should consider concerns in relation to safety and dignity raised by those affected and seek opportunities to accommodate these. This may be particularly problematic for smaller clubs or organisations, or those with older facilities, who may already struggle to provide the facilities they would like to.

In relation to single sex spaces, the EHRC update expresses the view that to permit trans women to use biological women's facilities and trans men should not be permitted to use biological men's facilities, as they would then no longer amount to single sex spaces. It goes on to express a view that in some circumstances the law may permit trans women to be excluded from biological men's facilities, and trans men from biological women's. It does not set out those circumstances. It goes on to make clear that trans people should not be put in a situation in which they have no facilities available to them, and recognises that some organisations may be able to cater for people with unisex/ shared facilities where these provided lockable rooms to be used by one person at a time.

## Trans participation

Shortly before the FWS judgment, *Haynes v English Blackball Pool Federation* was heard in Canterbury County Court, with judgment reserved. This was a challenge by a trans competitor against a policy by which they were excluded from women's competition. Many sports organisations had considered trans participation prior to FWS, generally with reference to UK Sports Council Guidance issued in September 2021. That guidance drew on an understanding of EqA which pre-dates FWS.

Earlier this month, *Haynes v English Blackball Pool Federation* was heard in Canterbury County Court, with judgment reserved. This was a challenge by a trans competitor against a policy by which they were excluded from women's competition. Many sports organisations have considered trans participation recently, generally with reference to UK Sports Council Guidance issued in September 2021. That guidance drew on an understanding of EqA which pre-dates FWS.

The EqA has specific sporting exemptions for "*gender affected*" competition. FWS deals with these and concludes "*biological definition of sex would mean that a women's boxing competition organiser could refuse to admit all men, including trans women regardless of their GRC status*". The judgment goes on to identify the further exception which could apply where safety or fair competition may permit exclusion of trans men from women's competition.

The result is that many trans participation policies may have been developed using guidance that does not reflect the conclusions of FWS.

Policies will require review for compatibility with the reasoning of FWS and work may be needed to bring them in line. However, it is likely that the UK Sports Council guidance will often have led to a policy consistent with FWS. Where this is the case, it may be that a review alone is sufficient.

Some organisations have already published updated policies following the FWS judgment. This is despite the EHRC update indicating further guidance will follow.

## Existing disputes

The FWS decision may affect live disputes with employees and participants in relation to individual incidents or policies. Review of these cases to assess impact and adjust strategy is essential, with stays and extensions worth considering, to ensure this can be done well.

## New disputes

It seems inevitable that FWS will give rise to disputes based on alleged past discrimination, where it is said the law was incorrectly interpreted. Smaller clubs may find these hard to navigate and benefit from support from regional and national organisations, brokers, and

insurers.

## Managed change

Given the attention received by FWS, we know that internal and external stakeholders are likely to already be asking organisations how they will respond, questioning policy decisions and so on. Some may present robust demands and threaten legal challenge.

However, while FWS and the EHRC update offers some insight into the likely content of updated guidance in relation to some areas of operation, the full guidance is still awaited and there remain areas of uncertainty. This creates a risk that early updates will require additional revision on fuller guidance being published.

The need for prompt review and action is clear, but it is critical that organisations take the time to get their response right. All stakeholders deserve the certainty that a carefully considered policy will bring.

Organisations in many sectors and their lawyers will be considering and digesting the FWS Scotland over coming days and weeks, to ensure its impact is fully understood.

Organisations in many sectors and their lawyers will be continuing to consider both the FWS judgment and associated guidance as it becomes available in order to establish how the resulting requirements are best implemented in sport.

## How can we help?

With equality, employment and sports practices we have wide experience of supporting organisations in relation to their equality policies and responding to challenges and claims.

## Contact

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## Related expertise

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