

Trans matters in sport: The decision in For Women Scotland

17 April 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.

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.

Trans participation

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.

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.

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.

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

James Arrowsmith

Partner

james.arrowsmith@brownejacobson.com



+44 (0) 330 045 2321

Related expertise

Employment