

## Single-sex services

### Providing a women-only service



A guide for charities, public services and commercial businesses that want to provide a single-sex service for women only (or for men only), with guidance about the Equality Act 2010 in the UK.

**December 2021**

**Sex Matters** is a human rights organisation campaigning for clarity about sex in law, policy and language

[sex-matters.org](https://sex-matters.org) | [info@sex-matters.org](mailto:info@sex-matters.org)

## Introduction

In order to provide a single-sex service for women only, you have to have rules which exclude men. This will also have an impact upon transgender people.

Discrimination against someone on the basis of a protected characteristic is usually unintended and unlawful, but for single-sex services it is both intentional and lawful, because it is impossible to provide a single-sex service without it.

**Discrimination** is where someone is treated less favourably or put at a disadvantage because of their protected characteristic.

**Protected characteristic** refers to the groups covered by the Equality Act: disability, gender reassignment, marriage or civil partnership status, pregnancy and maternity, race, religion or belief, sexual orientation, sex and age.

The relevant protected characteristics for these purposes are sex and also gender reassignment: if you offer a single-sex service, you will be routinely discriminating on grounds of sex, and you may also sometimes be discriminating on grounds of gender reassignment.

This guide sets out how to be confident understanding and using the Equality Act exceptions which enable single-sex services to operate. It is intended both for organisations that operate on a fully single-sex basis, and those that provide some services on a single-sex basis.

The rules for separate-sex services (where the same service is provided for men and women separately) are slightly different and will be covered in a different guide. The rules for sports competitions and for single-sex schools are also slightly different and rely on different parts of the Equality Act. These will be covered in future briefings.

For single-sex services, the rules are slightly different, depending on whether or not you are a charity.

If you **are** a charity, [go to page 6](#).

If you are **not** a charity, continue reading.

## If you are not a charity or association

You need to be able to show two things:

- that your decision to exclude one sex is a **proportionate means of achieving a legitimate aim**
- that it meets any one of **six additional conditions** set out in the Act.

### Legitimate aim

First you need to identify your legitimate aim. Your aim should be real and objective. Examples of legitimate aims would be:

- ensuring well-being and dignity
- ensuring that services and benefits are targeted at those who need them
- removing barriers to access
- ensuring health and safety
- preventing inappropriate use of services
- fair exercise of power.

Saving costs will not be a legitimate aim on its own, but may be part of your decision-making in combination with other factors. Questions about cost will more often come into considerations about proportionality.

### Proportionate means

Next you need to consider whether providing the service on a single-sex basis is proportionate and if there is any other way to achieve your legitimate aim. You need to consider whether there are any practical alternatives to excluding members of the opposite sex and to do this you should ask yourself these questions:

- Is excluding members of the opposite sex appropriate and necessary?
- Have you chosen the least adverse measure?
- Is the disadvantage to the excluded group disproportionate to the aim?
- Conversely, is the aim so important that it justifies exclusion?
- Has a fair balance been struck between the rights of the community versus the rights of the individual?
- Is exclusion rationally connected to the aim?

And, finally:

- Can less intrusive measures be used without unacceptably compromising achievement of the aim?

So long as you can answer 'yes' to the first six of these questions, and 'no' to the last, your decision to exclude should be watertight, even if someone challenges your decision to provide a women-only service in court.

## What you have to do

There are **no compulsory procedures** you have to go through when you are setting up your service in order to satisfy a court or tribunal (should you be challenged) that limiting your service to women is a proportionate means of achieving a legitimate aim. Especially if you're a small organisation, you may simply have seen a need or a gap in provision, and decided to make that need or that gap your priority.

It's perfectly possible to establish in court that rules and policies are a proportionate means of achieving a legitimate aim without ever having thought systematically about that question at the time you made your decision.

So if you have been running a women-only service for years without thinking consciously about these questions, **don't panic. The justification for single-sex services is mostly a matter of common sense**, and the fact that you haven't gone through an elaborate process to justify your decision doesn't mean you won't be able to defend it.

But it is good practice to have a **written policy** which makes expectations clear to all staff, trustees, clients and commissioning agencies. [We have produced a model policy for women's services such as refuges and rape crisis centres.](#)

If you want to do everything possible in advance to protect your service against potential challenge, you might **think about doing a formal 'equality impact assessment'**. These are routinely carried out by public authorities that are subject to the public sector equality duty, so you may already be familiar with them. Any organisation – large or small, public sector or private sector – can conduct an equality impact assessment before adopting a policy that creates a risk of discrimination, and **if you have done one it may well be useful in helping to defend you against any subsequent challenge.** [We have produced a guide to doing an equality impact assessment.](#)

## The six additional conditions

1. **That only women need the service.**
2. **That the service is also provided jointly for both sexes**, but wouldn't be sufficiently effective if it were *only* provided jointly.
3. **That a joint service would be less effective**, and the extent to which men need the service means it's not reasonably practicable to provide separate services.
4. **The service is provided at a hospital** or another care establishment.
5. **The service is likely to be used by two or more people at once**, and the circumstances are such that a woman *might reasonably object* to the presence of a man.
6. **The service involves physical contact between the service user and another person**, and the other person *might reasonably object* if the service user were not of the same sex as her.

At first sight, those conditions look complicated. But once you understand what they mean, they are actually a decent attempt to describe in legal language all the **everyday situations in which common sense would tell you that single-sex services might be necessary**.

**You only need to meet ONE of these conditions!** In practice, many women-only services will be able to meet more than one. The one most commonly relied on is probably number three: a joint service would be less effective, and the extent to which men need the service means it's not reasonably practicable to provide a separate service for men, too.

**For example**, suppose you're a department store, and you want to provide a bra-fitting service for your customers in a room with curtained cubicles. You might argue that this is something that only women need, so it falls within the first condition. That might be contested on the basis that some males also wear women's underwear for a variety of reasons.

You could have a complicated argument about that, but you don't need to, because it's simpler just to rely on the third condition. A joint service would be less effective, because your female customers – or at least a substantial proportion of them – want to

take their bras off and talk to a female bra-fitter about things like cup sizes and underwiring in a women-only space. A male voice or body in that space will upset them – or enough of them that you're entitled not to want to take the risk. And it's not practicable for you to provide a separate bra-fitting service for males, because the extent to which males require bra-fitting services is very limited. You are a commercial organisation, and you simply don't experience the level of demand that would justify expenditure on a separate service. Male customers are of course welcome to purchase underwear from the women's section.

## If you are a charity or association

For charities, the situation can be even simpler.

Charities are allowed to restrict their provision of benefits to persons who share one or more protected characteristics, provided:

1. that's what their charitable instrument says they are for

**and**

2. the provision of benefits is **either**

(i) a proportionate means of achieving a legitimate aim

**or**

(ii) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic(s).

## What's in your charitable instrument?

Charities are a means by which people choose to try to do a bit of good in the world. People are allowed to have individual preferences about what kind of good they want to do or support. You can have charities for musicians in difficulties, for young female musicians, for young musicians from a particular ethnic minority, or older musicians, to give just a few examples.

Deciding on a charity's objects, and the limitation of its benefits, is something that the trustees do when setting the charity up, with agreement from the Charity Commission. These decisions can be applied organisation-wide, rather than at a service-by-service

level. **If your charitable instrument says you are a charity for women (or a particular sub-section of women), then you do not have to specifically justify providing any particular single-sex service.** Your mission is to serve women: your charitable instrument says so.

A charity's benefits can be limited to a particular group because this is either (i) a proportionate means of achieving a legitimate aim, or (ii) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic.

The second of these is the important one, because it is a significantly easier route to justifying a single-sex approach than showing that it's a proportionate means of achieving a legitimate aim.

If the charity takes a single-sex approach for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic of sex (or sex and another protected characteristic) then it does not have to make any other justification.

If you think about that, this makes a lot of sense. Charities aren't public authorities, and they are paid for, by and large, out of private donations, not taxes. If you want to run a bicycle repair project for disadvantaged teenagers and young adults up to 21 in your area, and a group of middle-aged women want to join it because they feel they missed out on acquiring these skills when they were younger, you're entitled to say: "Sorry, that's not what *this* charity is for. If you think there's a need for bicycle-repair charities for middle-aged women, go and set one up."

If your charity does not specify women in its objects you can still provide female-only services, but you need to justify them on a service-by-service approach in the same way as non-charities.

An association such as a club can restrict its members (and its guests) to people with a particular protected characteristic. For example: a female-only youth group, a women's book club, an association of Chinese Women, a fell-walking club for women, a Christian Women's Association. The membership rules do not need to be written down but it can help to avoid ambiguity and conflict if they are.

## **What about trans-identifying males?**

If you're satisfied that you're entitled to run a single-sex service or operate as a single sex association – whether you're a charity or not – it follows that you're quite

straightforwardly entitled to exclude everyone whom the law regards as male. That includes any trans-identifying male ('transwoman') who doesn't have a Gender Recognition Certificate (GRC). No ifs and no buts: so far as both material reality and the law are concerned, trans-identifying males without GRCs are men, and you're entitled to exclude men. You're not excluding them because they are trans – you're excluding them because they are men. (It was suggested in a recent court case *AEA v EHRC* that excluding men might be indirectly discriminatory against people with the protected characteristic of gender reassignment. That is true, but not in a way that matters here: if it's lawful to run a single-sex service at all, you've already justified the rule excluding men as being a proportionate means of achieving a legitimate aim.)

The legal position in relation to trans-identifying males who do have a GRC is slightly more complicated. In the case of trans-identifying males with a GRC, the law deems them to be women. Nevertheless, they remain biologically male, and the likelihood is that **you and your other service users will be able to tell that they are male.**

So – in practice – all the reasons why you want to exclude males from your service will apply with equal force to trans-identifying males who have GRCs.

Our view is that trans-identifying males with GRCs can still be lawfully excluded. That's because the reason you don't want to let them use your service is that they are biologically male. Their presence would have the same effect on the other users of the service as a male person without a GRC. Even if the law deems them to be women, you and your service users are still likely to read them as male.

That means that, in excluding them, what you are doing is still discriminating directly on grounds of sex. In legal terms, you are 'wrong' about which sex they are, because the law thinks they are women and you read them as men. But that doesn't matter: discrimination on grounds of your perception of someone's sex (even if in some artificial legal sense your perception has to be regarded as 'wrong') is still direct discrimination on grounds of sex. That's something you're allowed to do, because you're running a single-sex service.

So in both cases, our clear view is that if you have good reason to run a single-sex service at all, you should always be allowed to exclude all males from those services.

### **Health warning**

**Until there have been more test cases, all legal advice on whether you are or are not allowed to exclude trans-identifying men**



(transwomen) from single-sex services has to be treated as provisional. So although we are confident we have read and understood the relevant law correctly, there is a contrary view – and until the courts have ruled on these questions, there can be no certainty.

## More resources

Sex Matters has also produced these related documents:

Single-sex services:  
**Doing an equality impact assessment**



Single-sex services:  
**Model policy**



You'll find these plus updates and other resources in the [Single sex services section](#) of our website.

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Company number: 12974690

Registered office: 63/66 Hatton Garden, Fifth Floor Suite 23, London, EC1N 8LE