

Clear rules and girls' schools



Why is the Girls' Day School Trust's new policy important and what are the implications for other charities and regulators in protecting human rights?

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

sex-matters.org | info@sex-matters.org

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Company number: 12974690

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

Foreword

In December 2021 the Girls' Day School Trust (GDST) published a new Gender Identity policy.¹ The new policy is not a radical departure from the previous one (published in 2016), but is clearly and confidently stated. It is unequivocal about the purpose of the organisation, and about single-sex schools being single-sex:

“The GDST was founded in 1872 with the purpose of giving girls an education they had been denied because of their sex.”

Sex Matters welcomes the new policy and applauds the GDST's leadership. It is particularly timely as the EHRC is expected to publish new guidance on single-sex services early this year.

The GDST states that its new policy is in line with the Equality Act 2010 and the Gender Recognition Act 2004. We agree. But the GDST's statement took courage, because of a lack of clear official guidance from either the Equality and Human Rights Commission (EHRC) or the Charity Commission.

In fact, in 2019 draft guidance for schools by the EHRC said a single-sex school was likely to be discriminating if it did not admit pupils of the opposite sex who identified as transgender.² EHRC backed away from this stance, and the draft guidance was abandoned and never published. But there remains a silence where clear official guidance should be.

This paper looks at GDST's policy, the laws it relies on, the responses to it and the implications for other single-sex charities, and for the regulators: the Equality and Human Rights Commission and the Charity Commission.

¹ <https://brightongirls.gdst.net/wp-content/uploads/2021/12/GDST-Gender-Identity-Policy-December-2021.pdf>

² https://fairplayforwomen.com/draft_ehrc_schools/

1. GDST: knowing what a woman is since 1872

The Girls' Day School Trust is a charity that was established (first as the Girls' Public Day School Company) in 1872 by pioneers of girls' education Maria Grey, Emily Shirreff, Lady Henrietta Stanley and Mary Gurney, at a time when girls were largely excluded from formal education.



If these pioneers were to time-travel 150 years to today, they would be bewildered by many things. But the existence of the two sexes would be instantly recognisable. The group they set out to serve still exists, and their organisation still proudly serves that group.

Today the GDST runs 25 independent schools in England and Wales, catering for girls aged 3 to 18. It educates 20,000 girls each year. Notable alumnae include Olivia Colman, Miriam Margoyles, Samira Ahmed, Professor Mary Beard, Sandie Okoro (World Bank Senior Vice President), Ann Cotton (founder of the Campaign for Female Education), Baroness Virginia Bottomley, and Rabbi Julia Neuberger.

1.1 A clear policy

The GDST's policy sets out its approach to admission criteria, supporting children questioning their gender identity or undertaking to transition, and retaining information on those who legally transition after they have left.

It makes clear that what makes a child a girl is her sex. It says that GDST schools are

“committed to rejecting gender stereotypes and associated narrow definitions of what it means to be a girl”.

Where the previous policy from 2016 talked about “gender assigned at birth” the new one talks about “biological sex”. The policy is solidly based in reality and notes that Gender Recognition Certificates are not retrospective.

“If a trans person receives a Gender Recognition Certificate, they have the right to request that all references to their former name and gender are changed from that point onwards, but their name and gender should not be changed in historic records.”

This does not mean that the GDST is unsympathetic to children having gender-identity issues. The policy says schools will work to support the health and psychological wellbeing of any of their students who are questioning their gender identity or going through transition, with an individual support plan to be discussed and agreed.

The policy makes clear that the Equality Act 2010 provides for single-sex schools. It does not require such schools to consider admitting male children who identify as girls:

“GDST schools are able to operate a single-sex admissions policy, without breaching the Equality Act 2010 on the basis of an exemption relating to biological sex. The GDST believes that an admissions policy based on gender identity rather than the legal sex recorded on a student’s birth certificate would jeopardise the status of GDST schools as single-sex schools under the act. For this reason, GDST schools do not accept applications from students who are legally male.”

1.2 Responses to the policy

There have been positive responses on social media, and from many parents:

“Well done @gdst @cherylGDST. My daughter is at one of your excellent schools chosen precisely for its strong commitment to educating the female sex.”

“I have daughters who attended two different GDST schools and they were extremely inclusive of a range of genders – including trans boys and many non-binary pupils. Being sex inclusive would mean no longer being a single-sex school.”

“I’m also a GDST alumni and I’m very pleased to see this strong unequivocal stance from them on admissions.”

As well as some criticism. Commentator Tom Harwood said:

“A blanket ban is insane. Young trans girls are indistinguishable from their non-trans friends.”

The "Trans Legal Project" responded to the GDST policy, saying:

“The EA 2010 was intended to reduce discrimination against transgender people not increase it. So it seems absurd to interpret the EA 2010 as *requiring* girls’ schools to discriminate against trans girls. A blanket ban on trans girls is likely to be illegal. Using the @EHRC view of the law, a trans girl refused admission under the ban could claim indirect discrimination.”

Adam Wagner, a human rights barrister at Doughty Street, says:

“I agree with this analysis in that a blanket policy is unlikely to be legal under the Equality Act and that the legally correct approach would be to consider each case on its merits.”³

Jason Braier, an employment law barrister at 42 Bedford Row, said his gut instinct on matters of objective justification aligns with Adam Wagner.⁴

GDST’s policy gives an opportunity to examine these arguments.

1.3 Schools without rules?

We think that the law is straightforward: a single-sex school is under no obligation to admit or consider admitting children of the opposite sex. Single-sex admission rules are expressly permitted in the Equality Act. As Legal Feminist noted, not admitting boys is not just a “proportionate” means of having a school that is just for girls; it is the *only possible* way to do so.⁵

That some boys identify as “trans girls”, and may when they grow up decide to transition, does not change this.

The Trans Legal Projects argues against this, pointing to a rarely used sub-clause in Schedule 11 that allows single-sex schools to admit opposite-sex pupils on an

³ <https://twitter.com/AdamWagner1/status/1477775348511260672>

⁴ <https://twitter.com/JasonBraier/status/1477776809311838215>

⁵ <https://twitter.com/legalfeminist/status/1477773300248072196>

exceptional basis and still retain their status as single-sex schools. They say this clause means that single-sex schools *must* consider admitting trans-identifying children of the opposite sex.

However, as the explanatory notes to the legislation make clear, the intention of that provision was to accommodate exceptional practices such as boarding schools that admit teachers' children in certain age groups. It does not create any obligation to consider admitting children of the opposite sex for other reasons.

Even more fundamentally, we think, it is impossible for a school to accept a child on the basis that it will pretend the child is the opposite sex, while simultaneously being honest with other pupils and their parents.

Schools have safeguarding responsibilities for the welfare of all children. It would be impractical, unethical and irresponsible to tell parents that their daughter is in an all-female class (or dormitory, shower-room or trip away) when in fact she is sharing with a member of the opposite sex. It also risks the welfare of the child, who is being encouraged to keep an important secret from his peers.⁶

⁶ Sex Matters has published guidance for schools: <https://sex-matters.org/posts/updates/schools-guidance/>

2. Why is the GDST's policy important and brave?

The GDST's statement is important because it shows that a simple, clear, straightforward, rules-based approach can be articulated and adopted. It took leadership and courage for GDST to develop and publish this policy, because it did not have any clear official guidance to rely on. Other organisations that were established to be single-sex are interpreting the same laws differently, and they appear to have the backing of the EHRC and the Charity Commission.

The GDST policy is also important because it marks a stand against one of the most insidious aspects of radical transgender orthodoxy: the repurposing of institutions set up by previous generations of pioneers to empower women and girls, to tell women and girls that above all their role is to "be kind".

2.1 Other charities think "woman" and "girl" refer to gender identity

Other single-sex charities with similarly long histories include Girlguiding and the Women's Institute. The Guide Association was established in 1909, after girls refused to accept that scouting was "just for boys". The Women's Institute was founded in the UK in 1915, following a model established in Canada.



Agnes Baden Powell, and early founders of the WI (source: Wikipedia)

Both organisations now accept males who identify as women and girls as full members, to be treated as if they were the opposite sex. Girlguiding (the new operating name for the Guide Association) says:

“We treat trans girls and women according to the gender they have transitioned, or are proposing to transition, to. Meaning trans girls and trans women are welcome to be a part of our great charity.”

Girlguiding has expelled leaders who question this policy on safeguarding grounds.⁷

One example of someone considered a woman by Girlguiding in the UK is Monica Sulley, who, became the lead Commissioner for the Southwell division of Girlguiding in July 2021. Sulley came to public attention after posting disturbing pictures on social media featuring weapons and bondage gear.⁸

Similarly, the Women’s Institute says:

“Transgender women are welcome to join the WI and to participate in any WI activities in the same way as any other woman.

“Sex is assigned to a person at birth on the basis of their sex characteristics (genitalia) e.g. male or female. Gender is often expressed in terms of masculinity and femininity, is largely culturally determined, and is assumed from the sex assigned at birth. Gender identity is a person’s sense of their own gender, whether male, female or something else, which may or may not correspond to the sex assigned at birth.”

Demonstrating this, the Women’s Institute in 2021 featured Petra Wenham on the cover of its magazine. Wenham is a married father and grandfather who lived for 70 years as a man before changing “full-time” to womanhood.⁹

There are different views on whether the choice by the Women’s Institute and Girlguiding to include trans-identifying males is a good one (based on inclusivity), or a bad one (based on safeguarding concerns and the loss of female-only associations).

But in any case it is clear that the organisations have changed – they chose a different path to GDST.

⁷ <https://www.thetimes.co.uk/article/34139ed0-bea5-11e8-8d21-451ec1df6b83>

⁸ <https://grahamlinehan.substack.com/p/wtf-are-girlguiding-thinking>

⁹ <https://www.bbc.co.uk/news/uk-england-suffolk-57678491>

Yet Girlguiding maintains that nothing has changed; it is still a single-sex charity.¹⁰ Similarly the Women’s Institute says the “WI lawfully restricts membership to women only” based on the protected characteristic of sex.¹¹

The Equality and Human Rights Commission and the Charity Commission have condoned this. The EHRC said on Twitter:

“We have written to @girlguiding about their website but not to say they are a mixed-sex organisation. Like any membership organisation, the Equality Act allows Girl Guides UK to restrict membership on the basis of sex. We support their choice to have a trans-inclusive policy.”¹²

2.2 The case for coherence

In a recent Supreme Court case Christie Elan-Cane argued for a passport marked “X” instead of “F”, saying that the blanket rule that passports describe the bearer as either male or female breached the Article 8 right to respect for private life of a person who identifies as non-binary. The appeal was unanimously dismissed by the Supreme Court.¹³

The case turned on the question of coherence. Elan-Cane argued that since the NHS and Government Equality Office took non-gendered identity seriously, the Passport Office should too. At the same time it was the Appellant’s case that such a change to HMPO policy “would not necessitate consideration of wider societal concerns” or lead to demands for wider change in other official processes.

The government declined the invitation to step onto this slippery slope, arguing that it has the legitimate aim of maintaining an administratively coherent system. It said that:

“if a change is to be made it should be made coherently across the board or, if not, at least when the issues have been properly considered.”

This was accepted by the Supreme Court.

¹⁰ <https://www.girlguiding.org.uk/making-guiding-happen/running-your-unit/including-all/supporting-trans-members/what-the-law-says/>

¹¹ https://www.thewi.org.uk/__data/assets/pdf_file/0011/529049/NFWI-Equality,-Diversity-and-Inclusion-Policy.pdf

¹² <https://twitter.com/SakuraNoSeirei/status/1107380977750425601>

¹³ <https://www.bailii.org/ew/cases/EWCA/Civ/2020/363.html>

While the government's defence of blanket rules and administrative coherence held the line against X passports, the differing approaches of the GDST and Girlguiding and the inability of the EHRC or Charity Commission to provide clear guidance as to which is right reveals that there is already incoherence.

Before the government even starts to consider whether passports should have an X on them, it should go back and develop coherent administrative policies to enable charities, schools and service providers to act with confidence when providing single-sex services, or operating as single-sex associations.

3. How can the Equality Act be interpreted coherently?

Neither the Equality Act 2010 nor the Sex Discrimination Act 1975 that preceded it was responsible for establishing that women are entitled to meet without men, undress without men and play women's sports, or that organisations could provide women and girls with single-sex services and single-sex education. These things already existed; until the Sex Discrimination was passed, there was no basis on which anyone could have suggested they were unlawful, and the law, which aimed to improve women's standing in public life, was not intended to take them away.

In 1975 the Sex Discrimination Act came into force, banning discrimination on the basis of sex in employment, education, training, housing and the provision of goods and services. It contained exceptions to allow single-sex services, sports and associations where appropriate.

Thus the Equality Act 2010 which succeeded the Sex Discrimination Act sets out a variety of broad exceptions to sex discrimination which allow schools, hospitals, sports, associations, charities and a variety of services to use sex-based rules.

The GDST policy operates under several of these exceptions. The most direct one covers admissions to single-sex schools: **Schedule 11**. As Paragraph 1(2) states, a single-sex school is defined as:

“a school which admits pupils of one sex only”.

Similarly, **Schedule 3 Paragraph 27 (1)** refers to single-sex services and defines them in terms of:

“providing a service only to persons of one sex”.

This includes circumstances where a “person of one sex might reasonably object to the presence of a person of the opposite sex”.

Also relevant is the charity exception (**Part 14 Section 193**). Charities are allowed to restrict their benefits (which include the services they offer) to people with a particular protected characteristic if that is included in their governing document. Associations are also allowed to be restricted to particular groups (**Schedule 16**). Where schools are involved in sports competitions, these operate under the exception for sports (**Section 195**).

These different exceptions cannot operate fairly and consistently if they are interpreted incoherently.

The Equality Act 2010 made it illegal to discriminate against people on the basis of “gender reassignment” by excluding them from jobs, housing, transport, entertainment venues and so on. It was not meant to impose a mandatory obligation to treat a transsexual as if he or she was a member of the opposite sex even in those circumstances in which discrimination on grounds of sex is permitted. Thus gender reassignment clauses were also added to the sex discrimination exceptions that allowed single-sex services to continue.

The Trans Legal Project argues: “The EA 2010 was intended to reduce discrimination against transgender people not increase it”; so they say it is absurd that the Equality Act would require girls' schools to discriminate against trans-identifying male children in their admissions. This is a misunderstanding of the aims of the Equality Act.

3.1 Individual case-by-case assessment is a red herring

It is sometimes argued that individual case-by-case assessment is necessary to exclude trans-identifying people from opposite-sex services, on the basis of this being a “proportionate means of achieving a legitimate aim”. We think this is a red herring.

For a start, although some of the single-sex exceptions include the formula “proportionate means of achieving a legitimate aim”, not all of them do. Schedule 11, the section that refers to school admissions, does not. Nor does the section on religious institutions. These are institutions that are simply and expressly permitted to exist as single sex.

Schedule 11 is clearly intended to protect single-sex schools from challenge to their policy of admitting only one sex. It defines a “single-sex” school, and takes it out of the scope of the provisions prohibiting sex discrimination in the matter of admissions. It would be very odd indeed if such a school might then be required to admit pupils of the opposite sex on the basis that their exclusion was not a proportionate means of achieving a legitimate aim.

Fundamentally, having a rule which excludes members of one sex is not just a “proportionate” means of providing a single-sex environment for members of the opposite sex; it is the *only possible* way to do it.

Accepting the idea of case-by-case assessment would also lead to the intractable practical problem of devising criteria for deciding which males who identify as female should be admitted, and which should be excluded; and for doing this while respecting the information privacy and bodily privacy of all concerned.

The EHRC has recently retreated from saying organisations “must” undertake individualised case-by-case assessment in order to exclude people who want to use opposite-sex services to saying that they “should”. But they have been unable to offer any criteria or guidance that could be used for case-by-case assessment, or guidance on when an organisation should apply it, and when it does not need to.¹⁴

In fact, the reason why “objective justification” is required for some single-sex and separate-sex services by the Equality Act is nothing to do with individual assessment. It is because the broad exceptions cover varied situations. The test is used to distinguish the situations where it is legitimate to maintain a single-sex environment – such as a changing room – from those where it is not, such as a pub bar.

The wording “a proportionate means of achieving a legitimate aim” also appears in the charity exception, which further makes clear that it is not an individual test but refers to the question of defining the limited beneficiary group of a charity. Case law also supports this reading of the expression, such as the Supreme Court case *Seldon v Clarkson Wright and Jakes*, where Lady Hale said:¹⁵

“Typically, legitimate aims can only be achieved by the application of general rules or policies. The adoption of a general rule, as opposed to a series of responses to particular individual circumstances, is itself an important element in the justification. It is what gives predictability and consistency, itself an important virtue.”

3.2 Human rights – limiting the role of the state in your private life

There is another way to think about this: through the underlying human rights, which limit states’ ability to encroach on the personal freedoms of citizens. In particular:

- article 8 – the right to respect for private and family life, home and correspondence
- article 9 – freedom of belief

¹⁴ <https://sex-matters.org/posts/single-sex-services/are-single-sex-services-legal/>

¹⁵ <https://www.supremecourt.uk/cases/docs/uksc-2010-0201-judgment.pdf>

- article 10 – freedom of speech
- article 11 – freedom of association

All of these articles recognise that public authorities should respect citizens' freedom and interfere only:

“...in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

If someone wants to write a book or start a social-media account under a pen name without revealing their sex, that is their own business.

If a male person wants to adopt a traditionally female name, wear dresses and adopt feminine mannerisms, the state should not stop them, or judge their reasons for doing so. The state should not maintain a list of those who adopt this lifestyle. Nor should it harass them or arrest them, or fail to provide protection and justice if they are harassed or attacked. If someone has friends and family members who are willing to interact with them as if they are a member of the opposite sex, the state should not interfere with that (nor should it overlook that these family members also have rights that are not diminished or changed by any of these decisions). But individuals cannot demand that strangers validate their gender identity.

Thus if you believe that “trans women are women”, you are welcome to invite a friend who is a trans-identifying male to your hen night or your girls' night out; that is a matter for you, and you alone. Equally, if you choose to keep your hen night or girls' night out all-female, you are entitled to associate freely in the absence of any males. As an individual, you are entirely free to make these decisions on a case-by-case basis – perhaps you view your friend as an honorary woman in some situations but not others; at the hen-night in the bar, but not at the spa, for instance. Who you invite to your hen night or your book club, or indeed into your bed, is no business of the state.

If people adopt a belief system based on gender identity and the teachings of Judith Butler, the state should not interfere. But not everyone shares this belief, and people who do not share it have the same rights to conduct their private life with privacy, dignity and autonomy – which can mean accessing and using single-sex services.

If you want to treat the idea of transgender identity with gravity and respect you are free to, and if you want to treat it with indifference, humour or robust incredulity you are also free to (as you are with other people's religions). If you feel offended by someone else's indifference, humour or lack of deference, you are free to feel offended. None of this is the business of the state.

Of course you must not engage in behaviour that constitutes harassment under the Equality Act 2010 or criminal law, and your employer (and your school) can require that you treat people with a reasonable standard of professional politeness.

While people have a limited right to keep information about their sex private, in real-life interactions a person's sex is almost always readily perceptible. No law can prevent other people perceiving it, and forcing them to pretend that they can't is an encroachment on their right to freedom of belief and speech (which would need to be justified by one of the reasons that allow interference with these freedoms).

If you want to use the word "woman" to include male people, you can. If you want to identify as "cis", you can. Equally you can reject these neologisms and stick with the meanings of "man" and "woman" that reflect biology and the common law. In general, the words you use to talk about yourself and others are not the business of the state (apart from when it is collecting or communicating information which needs to be understood coherently).

If groups of people who share a belief system want to start associations or charities with others who share that belief, they should be allowed to do so, across a wide range of beliefs and protected characteristics and combinations of beliefs or protected characteristics.

As the Elan-Cane case shows, the difficult questions arise when these rights and freedoms come into conflict with the state seeking to do its job (including protecting the rights of others), or when people demand that the state undertake an action (such as changing the information recorded on passports).

The demand of the "Trans Rights Legal Project", and others who think that the GDST's policy is unlawful, is a demand for the state to step in and require that the GDST abandon its original mission (education for female children), and adopt a different mission in its place (education for young people who believe in gender identity and who identify as "girls").

The state has no obligation to do this, just as it has no obligation to tell you who to invite to your hen party. In fact it has a duty not to.

Furthermore, in the case of an existing charity, trustees are bound by law to act in pursuit of its existing mission, and the Charity Commission has a duty to give them clear guidance, and to hold them to their legal duties.

3.3 Charities must pursue their objects

Charities are not “owned” by their current trustees or their staff; they are held in trust for their beneficiaries.

The beneficiaries are the group set out in the charitable objects in the governing document. Charity law protects the intended beneficiaries of a charity from misappropriation of their intended benefits by interlopers or incompetents taking over as trustees and diverting the assets to some other purpose.

Charities can change their mission and their beneficiary group by changing their objects. The Scout Association, for example, was originally a single-sex organisation for boys, but allowed girls to join in 1976. This was undertaken through an open (and at times vexed) process of consultation and decision within the organisation. When a charity changes its objects, by law that change must be agreed by the Charity Commission.

Girlguiding and the Women’s Institute have not done this. What they have done is change their interpretation of the words “women” and “girls” while pretending that nothing has changed.

Why did they think they could do this? It may be that they thought that the definition of women and girls that would have been recognised by their founders was out of date and bigoted, and could simply be ignored or overridden. They may have considered that their founders were long-dead “white feminists”, dinosaurs tainted by imperialism and discrimination. After all, they may have reasoned, the organisation initially mainly served white, Christian women and girls. Perhaps they saw this as just another step in expanding the scope of “women” and “girls” they include.

But in fact, as the Employment Appeal Tribunal judgment in Forstater recently made clear, the view that women and girls are female is in line with the law, is widely held and remains “worthy of respect in a democratic society”.¹⁶

The EHRC and the Charity Commission should explain that the definitions of the words “women” and “girls” have not changed, and that as trustees their responsibility is to pursue the mission set out in their charitable instruments, or else to change them through their governance process.

Instead they obfuscated. In June 2018 Fair Play for Women wrote to the EHRC asking about the legality of Girlguiding’s position. The EHRC responded stating that organisations can “admit members with more than one protected characteristic and remain within the terms of Schedule 16”.

This was a recognition that male people with the protected characteristic of “gender reassignment” are not in fact the same group as girls and women, and they are treated differently by the Equality Act.¹⁷

It is true that under Schedule 16, which refers to rules on associations, you can have all kinds of associations of people freely choosing to associate together. You can have a group for lesbians (sex and sexual orientation), Somali pensioners (race and age) or “LGBT” people (sexual orientation or gender reassignment). You can have a group for women and “trans women” (men with the protected characteristic of gender reassignment).

But as a charity you cannot coherently and truthfully say that the people involved are all the same sex for the purpose of remaining a single-sex charity (or a single-sex school under Schedule 11) while recognising they are different sexes for Schedule 16.

3.4 Safeguarding the rights of children

Most fundamentally in all of this the words “boys” and “girls”, “men” and “women” are not just words on a page, or strongly held feelings or identities. They are not just equality categories. They are physical realities and vulnerabilities. Girls can become

¹⁶ https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf

¹⁷ <https://twitter.com/fairplaywomen/status/1045332150172758016>

pregnant. One in four women have experienced sexual assault.¹⁸ 98% of perpetrators are male.¹⁹

Safeguarding practices and single-sex facilities are designed to prevent and deter abuse, including opportunistic voyeurism and indecent exposure. This is not the reason for girls' schools, but it is a reason why all schools and other institutions dealing with children and vulnerable people should be clear about being able to talk about the two sexes, and holding everyone to the rules. You cannot safeguard children and teach them about consent if you do not have a culture of honesty, and clear rules and boundaries.

As the Convention on the Rights of the Child states (in Article 3) all actions concerning children must have their interests as the primary consideration:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Rules, laws and policies that are needed to meet the obligation to safeguard children's welfare clearly fall into the category of necessary in a democratic society "for the protection of the rights and freedoms of others" and are a reason to constrain other freedoms.

¹⁸ <https://www.theguardian.com/society/2021/mar/18/ons-survey-finds-one-in-14-women-have-been-victim-of>

¹⁹ <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/sexualoffencesinenglandandwalesoverview/march2020#sexual-offences-in-england-and-wales-data>

4. Conclusion: rights and responsibilities

In 1872 Maria Grey, Emily Shirreff, Lady Henrietta Stanley of Alderley and Mary Gurney set up the Girls' Public Day School Company to provide education to female children ("girls"). Nothing that has happened since then has altered the legitimacy of that aim.

We would rightly view it as an attack on women's rights if the government of the day had tried to prevent the pioneers of women's education from running a school just for girls, including doing that by pretending that it didn't understand the words "women" and "girls".

And it still is today.

This is true of all single-sex charities. The EHRC and the Charity Commission should hold them to their missions rather than allow them to change them surreptitiously by changing their interpretation of the words by which their objects are defined.

This is why the GDST's stand is so important. Its council and headmistresses, like their formidable predecessors, are not just getting on with providing an excellent education to a limited group of girls; they are challenging society around them to recognise that what they are doing is right, fair and just.

People must be free to express themselves in the way that they want, but the words that are used in rules and laws must be allowed to have stable, consistent meanings, for fairness and coherence and for safeguarding. The organisations that sit at the top of those regulatory hierarchies have a basic responsibility to maintain that clarity.

The EHRC should issue clear guidance stating that single-sex rules (that is, rules that exclude all members of the opposite sex) are proportionate wherever single-sex exclusions in the Equality Act are used. The regulators should hold single-sex charities to changing their charitable objects if they want to also admit members of the opposite sex. If they do not, it destroys the coherence of the administrative and regulatory systems which are there to protect everybody's rights.

More resources

Sex Matters has also produced these related documents:

Single-sex services: Providing a women-only service



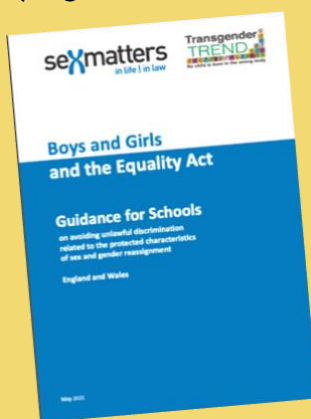
Single-sex services: Model policy



Single-sex services: Doing an equality impact assessment



Boys and Girls and the Equality Act – guidance for schools (England and Wales / Scotland)



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