

Nick Stowe, CEO, Monsoon
Andrew Wood, General Counsel, Monsoon

18 April 2022

Dear Mr Stowe and Mr Wood,

Sex Matters is a human rights organisation concerned with clarifying law and policy on sex. We were concerned to hear that Monsoon has publicly apologised for refusing to permit a young man who identifies as non-binary to use your fitting rooms to try on a prom dress.

Reports in the press are unclear about whether Monsoon has a policy of offering women's fitting rooms at all, or whether it now makes its fitting rooms open to both sexes. **This should be urgently clarified and the answer made clear to customers at the point of use.**

Exclusively single-sex services are allowed by the Equality Act. The Equality and Human Rights Commission has recently produced guidance to support service providers to understand this.¹

As a business selling clothing for women, Monsoon can make use of the single-sex service exceptions in the Equality Act. In particular, the criteria set out in Schedule 3 Paragraph 27 (4) allow an exception from sex-discrimination claims to providers of a service for just one sex in situations where:

- (a) a joint service for persons of both sexes would be less effective, and
- (b) the extent to which the service is required by persons of each sex makes it not reasonably practicable to provide separate services.

Most women prefer to change or try on clothes in the absence of adults of the opposite sex (even where there are cubicles). This is a basic matter of privacy and dignity, as well as of inclusion for Muslim women, Jewish women, disabled women and others.

A joint (i.e. mixed) fitting room that allows in males who prefer to wear women's clothing (such as "trans women", transsexuals and crossdressers) is less effective. And the number of such males who wish to try on women's clothing is not likely to be large enough to make it reasonably practicable to provide separate male or unisex fitting rooms in stores.

Providing **only** women's fitting rooms is a policy that is a proportionate means to a legitimate aim. It is also a policy that can be communicated to staff and customers with respect and clarity. **This is the policy we recommend.** (You could, alternatively, offer separate male fitting rooms in your stores, but you might find that there is little or no demand for them.)

¹ <https://www.equalityhumanrights.com/en/advice-and-guidance/separate-and-single-sex-service-providers-guide-equality-act-sex-and-gender>

As the EHRC guidance sets out, the existence of trans people does not make it unlawful to provide services for only one sex.

Additional legal liabilities to consider on adopting mixed-sex fitting

If you are considering making your fitting rooms mixed-sex, even though this is not required by the Equality Act, you should be aware of the risk to your brand reputation, as demonstrated this week on social media.

Furthermore, you should also consider potential legal liabilities:

1. **Claims of harassment** based on sex by women who have assumed your fitting rooms are exclusively for females, only then to encounter males.
2. **Claims of harassment** from male transgender customers, based on the protected characteristic of “gender reassignment”, if they are allowed into female fitting rooms only to be confronted by unhappy female customers.
3. **Increased risk of sexual harassment** from allowing any man into your fitting rooms.²
4. **Claims of indirect discrimination** (based on sex and religion/belief) from women who are unable to use mixed-sex fitting rooms.
5. **Claims of indirect discrimination based on the protected characteristic of gender reassignment** from male (trans) customers on the basis that your fitting-room policies include them, but your clothing range is not designed for their body shape and size.
6. **Claims of direct discrimination from male potential employees** if you employ only female staff to supervise mixed-sex fitting rooms.
7. **Claims of harassment, sexual harassment and indirect discrimination** from female employees required to come into contact with partially undressed men.

It is simpler, less risky and more commercially attractive to use the Equality Act single-sex exception (in Schedule 3 paragraph 27) to lawfully provide simple, clearly described, female-only fitting rooms, and to support your employees to deal politely but firmly with men like Charlie, for the benefit of your female customers.

Please can you confirm what your policy is? We would be happy to meet with you to discuss it, and to provide assistance.

Yours sincerely,



Maya Forstater
Executive Director, Sex Matters



Helen Joyce
Director of Advocacy, Sex
Matters



Naomi Cunningham
Chair, Sex Matters

² <https://www.thetimes.co.uk/article/unn-in-danger-8lwbp8kqk> Of 134 complaints over 2017-2018, 120 reported incidents took place in gender-neutral changing rooms and just 14 were in single-sex changing areas.

