

How to respond to the call for examples of bad guidance on single-sex provision

The government's Equality Hub is seeking examples of policy or guidance in which public bodies – or organisations that advise public and private organisations – wrongly suggest that people have a legal right to access single-sex spaces and services according to their self-identified gender. It covers England, Scotland and Wales, as these are the parts of the United Kingdom where the Equality Act holds. Northern Ireland is not included as it has different equality laws, but UK-wide guidance is.

The call for input

Submit examples of policy or guidance which might wrongly suggest that people have a legal right to access single-sex spaces “according to their self-identified gender”. Links, screenshots or documents can be attached. You are not asked to give personal information about yourself.

This call for input closes at 11.59pm on Wednesday 26th June 2024.

This is [the link to the government form](#). When you click it, you will see an explanatory page and then a series of screens asking for information.

This briefing will help you to plan your answers. It includes some worked examples.

What is meant by “public bodies”?

This broadly means any publicly funded or operated organisation. As well as central government departments and local authorities, it includes hospitals, universities, schools and colleges, libraries, leisure centres, job centres, police stations and courthouses. If in doubt, send it in.

What are “those that advise public and private organisations”?

These are the industry bodies, trade unions, membership organisations and schemes that provide advice to their members, who may be commercial organisations. For example, the Chartered Institute of Personnel and Development is a charity which provides advice to many employers. UK Active is a trade body which works with gym groups and other sports organisations. They are influential in the private sector, because many employers look to them for legal and policy guidance.

How do you know if guidance is not in line with the Equality Act?

Question 2 in the survey asks: “What issues about how single-sex services or spaces operate have you identified in the example you have submitted? Why do you believe that it is misinterpreting the law?” You don’t have to be a legal expert to respond to this question. For any guidance which suggests that people are entitled by law to use facilities for the opposite sex, you can simply say:

“The Equality Act allows a service provider to provide single or separate-sex services. It does not give people the right to access services for the opposite sex.”

Some examples are straightforward misstatements of the Equality Act

Sample guidance	What you can say
“You have/a transgender person has a legal right to access facilities according to the gender with which you/they identify.”	The Equality Act allows service providers to provide separate services for each sex. It does not give the right for some people to access services for the opposite sex.
“Under the Equality Act 2010 service providers that provide single-sex services or separate-sex services should provide that service to trans and gender-diverse individuals and treat them according to their affirmed gender. ”	The Equality Act does not require service providers to allow people to use services that are provided for members of the opposite sex.
“Trans employees are entitled to use single-sex facilities in accordance with their affirmed gender identity.”	Employers are required by law to provide separate facilities for men and women (apart from unisex facilities in separate enclosed rooms). The Equality Act does not give some staff the right to use facilities provided for members of the opposite sex.
“If a transgender woman wishes to attend a women-only session, she should be accommodated, unless there is a specific reason why this is not appropriate. ”	The Equality Act allows service providers to provide separate services for each sex. This includes having clear rules and policies. It does not require an individual assessment and a specific reason for excluding each individual of the opposite sex.

Some guidance includes half-truths about the Equality Act

Sample guidance	What you can say
<p>“The Equality Act 2010 provides an exemption for single-sex spaces to provide a separate or different service, or refuse a service, to a trans person. This is only to be in cases where they can demonstrate that doing so is a ‘proportionate means of achieving a legitimate aim’. This does not permit single-sex services to have a blanket ban on trans service users.”</p>	<p>This guidance is misleading. It is true that the Equality Act does not permit a blanket ban on “trans service users”, but it does permit single-sex services.</p> <p>This means that a service for one sex can operate with a blanket ban on members of the opposite sex, whether or not they are transgender.</p>
<p>“The Equality Act 2010 prohibits service providers from discriminating, harassing or victimising people on the basis of gender reassignment. This means that you must not ‘misgender’ individuals or exclude them from facilities aligned to their gender identity.”</p>	<p>This guidance is misleading. It is true that gender reassignment is a protected characteristic. But this does not mean it is unlawful to refer to a person’s sex. If a service provider is operating a single or separate-sex service, it is legitimate to recognise whether people seeking to use that service are male or female.</p>
<p>“Under UK law, trans people have a default right to use whichever single-sex area they choose, and can be turned away only if doing so can be legally justified as proportionate.”</p>	<p>This guidance is misleading. It is true that gender reassignment is a protected characteristic. This does not mean that it is disproportionate to provide single-sex areas and enforce clear policies.</p>
<p>“Trans people should never be required to use gender-neutral facilities unless they wish to do so.”</p>	<p>This is not in line with the Equality Act. A service provider is allowed to act proportionately in providing a single or separate-sex service, and within that in actions in relation to users who identify as transgender.</p>
<p>“There is no law or policy prohibiting anyone from using whichever toilet they choose.”</p>	<p>While it is true there is no specific law requiring people to use particular toilets, a service provider or employer is allowed (and may be obliged) to provide separate-sex facilities. It is allowed to enforce these policies by excluding members of the opposite sex.</p>

Some guidance is vague and overly complicated, suggesting there are circumstances where some people should be allowed to use opposite-sex facilities

Sample guidance	What you can say
<p>“Refusing to allow a transgender or nonbinary person to use the facilities they feel most comfortable in may be discrimination. However, you also need to show understanding to those who may be uncomfortable.”</p>	<p>If a service is for “whoever feels comfortable using it”, it is mixed-sex.</p> <p>It is not possible to hold in-depth discussions and negotiations every time a person asks which facilities are female, male or mixed-sex. The Equality Act does not require this.</p>
<p>“You should make sure that trans and non-binary staff have access to appropriate facilities without challenge from others. This needs to be handled carefully, respecting the feelings of all staff in your workplace.”</p>	<p>This policy is likely to be interpreted to mean that “appropriate facilities” could be facilities for members of the opposite sex. Providing services that are clearly single-sex or unisex makes clear to everyone which facilities are appropriate.</p>
<p>“Staff should understand the circumstances in which a person may be excluded from a single-sex space and be prepared to implement this while ensuring dignity and respect for those involved.”</p>	<p>This policy suggests that there is a complex (but unstated) set of considerations about the circumstances in which a female-only service can exclude a person who is not female. This is not required by the Equality Act.</p>
<p>“Support trans and non-binary people to use the facilities they feel most comfortable using, while taking into account the views of others concerning their use of these facilities.”</p>	<p>It is not possible to provide a service that allows men who identify as women or non-binary to non-consensually share the space with women while also taking into account the views of women who expect that a “female” space is not going to be shared with men.</p>

What to do

1. Read our five worked examples below.
2. Collect your own evidence from other organisations (for example a link, screenshot or downloaded document).
3. Use our [worksheet](#) to plan your answers to the survey. Each example must be provided as a separate response but the process is fairly quick.
4. Cut and paste your response into the [government’s survey](#).
5. Tell other people about it! Post your example on social media #BadGuidance.

Submission example 1: Public sector

1. Please attach your example by uploading it or providing a link in the box below. Please then tell us a little more about it by answering the questions that follow.

Surrey County Council's transitioning at work policy says:
Trans+ employees are entitled to use single sex facilities in accordance with their affirmed gender identity. The Government Equalities Office Guidance confirms that a trans person should be free to select the facilities appropriate to the gender in which they present. The Guidance also states that when a trans person starts to live in their acquired gender role on a full-time basis, they should have the right to use the facilities for that gender. The decision as to which facilities to use will rest with the employee and reflect where they feel most comfortable.

2. What issues about how single-sex services or spaces operate have you identified in the example you have submitted? Why do you believe that it is misinterpreting the law?

The Equality Act does not say people have this entitlement. The Equality and Human Rights Commission issued new guidance on single and separate-sex spaces and services in April 2022. This policy may be relying on outdated guidance from the Government Equalities Office.

3. Is this policy or guidance currently in operation? **Yes**

4. Is this policy or guidance available publicly? **Don't know**

5. Who is this policy or guidance aimed at? **The organisation's employees**

6. What sector(s) does this policy or guidance cover? **Public administration (e.g central and local government)**

7. Please tick the option best describing the area covered by this policy or guidance **England only**

8. Which type of organisation produced this policy or guidance? **Public-sector organisation (e.g. government department, local authority, NHS trust)**

9. Does the organisation provide advice, guidance or sample policies to other organisations? **Don't know**

10. What is the name of the organisation that has produced this policy or guidance (if known)?
Surrey County Council

11. If different to the above, what is/are the name/s of any organisations that use this policy or guidance?

Submission example 2: University

1. Please attach your example by uploading it or providing a link in the box below. Please then tell us a little more about it by answering the questions that follow.

[Cardiff University's trans policy](#) says: You have a legal right under the Equality Act 2010 to access facilities – such as changing rooms and toilets – according to the gender with which you identify. This may mean that you may change the facilities you use at the point when you start to live in your affirmed gender. Ultimately it is your choice to use whichever facilities you feel comfortable using.

https://www.cardiff.ac.uk/__data/assets/pdf_file/0004/966532/Trans-Policy-v2.2-English-Apr-21.pdf

2. What issues about how single-sex services or spaces operate have you identified in the example you have submitted? Why do you believe that it is misinterpreting the law?

The Equality Act does not say people have this entitlement. The Equality and Human Rights Commission issued new guidance on single and separate-sex spaces and services in April 2022. This policy may be relying on outdated guidance from the Government Equalities Office.

3. Is this policy or guidance currently in operation? **Yes**

4. Is this policy or guidance available publicly? **Yes**

5. Who is this policy or guidance aimed at? **The organisation's employees, members or clients of the organisation**

6. What sector(s) does this policy or guidance cover? **Education**

7. Please tick the option best describing the area covered by this policy or guidance **Wales only**

8. Which type of organisation produced this policy or guidance? **Other**

9. Does the organisation provide advice, guidance or sample policies to other organisations? **Don't know**

10. What is the name of the organisation that has produced this policy or guidance (if known)? **Cardiff University**

11. If different to the above, what is/are the name/s of any organisations that use this policy or guidance?

Submission example 3: Sector guidance

1. Please attach your example by uploading it or providing a link in the box below. Please then tell us a little more about it by answering the questions that follow.

The University of Leicester provided guidance for the museum sector
<https://player.flipsnack.com/?hash=OTc1OUFBRkY4RDYrdGpxdGFsbTFjaQ%3D%3D&p=2>

2. What issues about how single-sex services or spaces operate have you identified in the example you have submitted? Why do you believe that it is misinterpreting the law?

Page 18 says: “trans users should be free to use the bathroom that they feel most comfortable using”. Page 38 has a similar statement. This suggests that trans people, but not other users, can ignore single-sex signage and expectations, and access any facility. The Equality Act does not say people have this entitlement. The Equality and Human Rights Commission issued new guidance on single and separate-sex spaces and services in April 2022.

Page 27 says: “All children (including trans children) should be provided with the toilets and changing rooms of their choice.” This is contrary to safeguarding advice, which does not delegate the choice of facility to children.

Page 25 lists “trans, non-binary, gender-questioning, gender non-conforming” as part of the protected characteristic of gender reassignment in the Equality Act, citing a first-instance employment tribunal to support this claim. These terms are not mentioned in the Equality Act. A first-instance ET decision does not set a legal precedent. This case, and one in Canada, is cited again on page 36.

3. Is this policy or guidance currently in operation? **Yes**

4. Is this policy or guidance available publicly? **Yes**

5. Who is this policy or guidance aimed at? **Members or clients of the organisation; wider public**

6. What sector(s) does this policy or guidance cover? **Culture, leisure and recreation**

7. Please tick the option best describing the area covered by this policy or guidance **UK (England, Northern Ireland, Scotland, and Wales)**

8. Which type of organisation produced this policy or guidance? **Voluntary sector organisation (e.g. charity or a not-for-profit organisation)**

9. Does the organisation provide advice, guidance or sample policies to other organisations? **Yes**

10. What is the name of the organisation that has produced this policy or guidance (if known)? **Research Centre for Museums and Galleries (RCMG) at University of Leicester**

11. If different to the above, what is/are the name/s of any organisations that use this policy or guidance? **It could be used by any art gallery or museum.**

Submission example 4: Membership scheme

1. Please attach your example by uploading it or providing a link in the box below. Please then tell us a little more about it by answering the questions that follow.

Good Night Out scheme for pubs

<https://www.goodnightoutcampaign.org/wp-content/uploads/2021/03/toilets.pdf>

2. What issues about how single-sex services or spaces operate have you identified in the example you have submitted? Why do you believe that it is misinterpreting the law?

Page 8 says: "The right to use the toilet most appropriate for one's gender has been protected under the Equality Act in the UK since 2010." The Equality Act does not say people have this entitlement. The Equality and Human Rights Commission issued new guidance on single and separate-sex spaces and services in April 2022.

Page 10 says: "Under UK law, trans people have a default right to use whichever single-sex area they choose, and can only be turned away if doing so can be legally justified as proportionate. Under the Equality Act 2010, gender reassignment is currently a protected characteristic and there are legal consequences if your business is found to discriminate against someone because of their gender. This is regardless of where someone is on their transition journey, or if someone is non-binary."As above, there is no such "default right". Non-binary is not recognised in UK law.

3. Is this policy or guidance currently in operation? **Yes**

4. Is this policy or guidance available publicly? **Yes**

5. Who is this policy or guidance aimed at? **Members or clients of the organisation; wider public**

6. What sector(s) does this policy or guidance cover? **Culture, leisure and recreation**

7. Please tick the option best describing the area covered by this policy or guidance **UK (England, Northern Ireland, Scotland, and Wales)**

8. Which type of organisation produced this policy or guidance? **Voluntary sector organisation (e.g. charity or a not-for-profit organisation)**

9. Does the organisation provide advice, guidance or sample policies to other organisations? **Yes**

10. What is the name of the organisation that has produced this policy or guidance (if known)?
GALOP

11. If different to the above, what is/are the name/s of any organisations that use this policy or guidance? **Commercial and other organisations could use this guidance to determine their policies on access to single-sex facilities.**

Submission example 5: Industry body

1. Please attach your example by uploading it or providing a link in the box below. Please then tell us a little more about it by answering the questions that follow.

UK Active's guidance

<https://www.ukactive.com/wp-content/uploads/2023/06/Transgender-Guidance-22-11-2022.pdf>

2. What issues about how single-sex services or spaces operate have you identified in the example you have submitted? Why do you believe that it is misinterpreting the law?

This guidance, which is intended for use by gym operators, gives the impression that each instance of a trans-identifying person wanting to access facilities of the opposite sex must be dealt with individually, based on their wishes and, in some cases, on their appearance. This is unworkable and provides no guidance for staff making decisions, and no certainty for customers, whether transgender or not. This is not in line with the Equality Act. It fails to acknowledge that a proportionate means to a legitimate aim could simply mean excluding all males from a female session or changing area so as to provide a female-only service, and that trans people retain their sex for this purpose (unless they have a GRC).

For example, *Section 2, The Legal Position, part b to d, says:*

You must avoid discriminating against trans people.

A trans person should be treated as belonging to the sex in which they present (as opposed to the physical sex they were born with) unless you can objectively justify treating them differently.

Where a trans person is visually indistinguishable from someone of their preferred gender, they should be treated according to their acquired gender unless there are strong reasons not to do so.

Section 3e, Changing, says: You should support customers to use the changing facilities that are best for them. Sex-segregated changing could be an option and a trans person should be permitted to use whichever single-sex area they choose.

Section 3g, Sessions, says: You should support customers to access the most appropriate session for them. Where a trans customer wishes to attend a sex-segregated session, this should be accommodated where possible, unless there is a specific reason why this is not appropriate and there is no other way of accommodating all parties' needs .

3. Is this policy or guidance currently in operation? **Yes**

4. Is this policy or guidance available publicly? **Yes**

5. Who is this policy or guidance aimed at? 6. What sector(s) does this policy or guidance cover?

Culture, leisure and recreation

7. Please tick the option best describing the area covered by this policy or guidance **UK (England, Northern Ireland, Scotland, and Wales)**
8. Which type of organisation produced this policy or guidance? **Voluntary sector organisation (e.g. charity or a not-for-profit organisation)**
9. Does the organisation provide advice, guidance or sample policies to other organisations? **Yes**
10. What is the name of the organisation that has produced this policy or guidance (if known)? **UK Active**
11. If different to the above, what is/are the name/s of any organisations that use this policy or guidance? **Corporate members of UK Active, as [listed here](#), including the UK's largest gym chain, Pure Gym.**

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Revised version published 11th June 2024