

Sir Chris Wormald KCB  
Cabinet Secretary and Head of the Civil Service  
Cabinet Office  
70 Whitehall  
London  
SW1A 2AS

[pscatherinelittle@cabinetoffice.gov.uk](mailto:pscatherinelittle@cabinetoffice.gov.uk)  
[Chris.Wormald@cabinetoffice.gov.uk](mailto:Chris.Wormald@cabinetoffice.gov.uk)  
[ministerial.correspondence@cabinetoffice.gov.uk](mailto:ministerial.correspondence@cabinetoffice.gov.uk)

cc: Rt Hon Darren Jones MP  
Catherine Little

17th November 2025

Dear Sir Chris

Sex Matters is a human-rights charity that campaigns for clarity about sex in language, law and policy. We were an intervenor in the case *For Women Scotland v The Scottish Ministers* and were thanked for our submissions “which gave focus and structure to the argument that ‘sex’, ‘man’ and ‘woman’ should be given a biological meaning”.

On 16th April 2025, the UK Supreme Court issued its decision in that case. The effect of that decision was, among other things, to clarify that “sex”, “woman” and “man” in sections 11 and 212(1) of the Equality Act 2010 mean (and have always meant) biological sex, biological woman and biological man respectively (§264). This is an important clarification and requires the protected characteristics of sex and gender reassignment not to be conflated in a manner which removes the protections they were enacted to provide.

Duty bearers under the act are required to comply with the law **right now**; they do not have the option of waiting for guidance from the Equality and Human Rights Commission before coming into compliance with the law. They must set policies that are lawful, and clearly communicate those policies to staff. We are very concerned that they are not doing so.

The Equality Act is designed to protect employees and service users from discrimination and harassment and to ensure that frontline workers do not carry liability for policies decided “above their pay grade” while their employers escape it. Provisions in Part 8 (Sections 106–112) address the chains of accountability and causation between employers and employees, and other parties causing, inducing or instructing contraventions of the Act.

**Sex Matters is a human-rights charity promoting clarity about sex in law, policy and language**  
[sex-matters.org](https://sex-matters.org) | [info@sex-matters.org](mailto:info@sex-matters.org)

Trustees: Naomi Cunningham (chair), Michael Biggs, Rebecca Bull, Charlotte Cadden, Julia Casimo, Emma Hilton, Anya Palmer, Claire Weir | CEO: Maya Forstater

We believe that the Cabinet Office's **Gender Identity and Intersex Model Policy Package**,<sup>1</sup> produced by the previous government in 2019 and still in force across departments, instructs, authorises or approves of departments, individual managers and staff (including the trans-identifying people it is designed to support) committing basic contraventions of the Act – discrimination and harassment related to sex. The Cabinet Office bears responsibility in this.

Key sections of concern are (emphasis added):

4. The guidance **applies to all civil servants** employed by the department, including those on probation and fixed-term appointments. The principles also apply to anyone who works alongside civil servants but is not an employee of the department, such as contractors, consultants and agency workers.

20. In [Insert department] and the Civil Service, a transgender person **will be supported whatever their personal transition entails**.

58. All individuals have the right to express their identity at work and present in their gender. This could mean... **using any appropriate single sex toilets and other facilities**.

61. It is assumed that the **individual knows which facilities are the best match** for their gender identity and expression. Some transgender, non-binary and intersex individuals may feel most comfortable using gender neutral facilities where present, but this is a matter of personal choice.

*Example: A trans man who has recently transitioned wishes to build confidence in his new gender expression before starting to use male facilities, so makes the decision to use a gender neutral toilet until he feels more comfortable using the male toilets. **He should not be asked to use gender neutral facilities**; this is completely his choice.*

75. The Civil Service has a **zero tolerance** approach to bullying, harassment and discrimination. Those found to be bullying, and/or harassing and/or discriminating against employees or customers can **face disciplinary procedures** including charges of gross misconduct leading to dismissal.

77. Transgender, non-binary and intersex individuals **are entitled to the same levels of respect and fairness as others in life and the workplace**. Individuals are entitled to their views and beliefs. However, this does not mean that they are entitled to express these in a way that **may cause distress to others in the workplace**.

82. Harassment is **unwanted actions or comments that are demeaning and unacceptable to the recipient**. It may be related to any personal characteristic of the individual, and may be persistent or an isolated incident.

84. People may experience bullying, harassment or discrimination regardless of how they identify. Transphobia is the specific fear or dislike of someone because they are transgender. This includes **refusing to accept an individual's gender identity**.

87. Misgendering is using a word, such as a pronoun or form of address, which **does not correctly reflect an individual's gender identity** and may happen in person, over the phone or in writing. This can include refusing to accept an individual's gender identity.

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<sup>1</sup> [Gender identity and intersex policy](#)

88. Incidents of deadnaming and misgendering can be accidental and managers and individuals should be mindful that mistakes will sometimes happen when an individual begins their transition. If this occurs, the individual should discreetly apologise, **correct themselves** and move on from the incident. If they don't take this action, if the recipient feels comfortable in doing so, they should correct the person who made the mistake, saying that they understand a mistake has been made, and again, move on.

89. However, **deliberate, continued and/or repeated incidents** are unacceptable and should be dealt with using the bullying, harassment and discrimination policy. *[Insert link]*

90. **Outing is disclosing a person's transgender, non-binary or intersex status** without their consent.

91. Managers have a key role in creating an inclusive environment and preventing incidents of bullying, harassment and discrimination. They should be alert to the behaviours of other employees and tackle **inappropriate behaviour** where it arises. Not doing so risks giving a green light to others to behave inappropriately.

93. The gender identities of individuals **must be respected at all times**. It remains unacceptable to use former names and/or incorrect pronouns while the individual concerned is not present.

The effect of the policy is to authorise or approve individuals who identify as trans or non-binary using toilets and changing rooms designated for the use of members of the opposite sex, and to subject those who complain (using ordinary sex-based language and concepts reflected in the Equality Act) to career-damaging disciplinary procedures.

## The law

Government departments following this policy are employers in relation to their own staff, and also service providers insofar as visitors use the facilities in their buildings. Section 40 of the Equality Act 2010 makes it unlawful for an employer to harass an employee on the basis of sex or belief. Section 29 makes it unlawful to harass a service user on the basis of sex.

While the policy correctly says: "Transgender, non-binary and intersex individuals are entitled to the same levels of respect and fairness as others in life and the workplace", this does not mean they are entitled to use facilities provided for members of the opposite sex.

In accordance with section 26 of the act, harassment is made out where *inter alia* a person engages in unwanted conduct related to a relevant protected characteristic and that conduct has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

The entry by a man into a toilet or changing room which has been designated for the use of women is, for the women, unwanted conduct relevant to a protected characteristic (sex) and it has, at least, the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment. It is therefore unlawful. For the avoidance of doubt, a man who identifies as transgender, a "trans woman" or "non-binary" is a man.

Subjecting a female staff member to a disciplinary process if she complains about a male colleague using the female facilities is harassment and victimisation in relation to the protected

characteristic of sex. The same can also be true for a male member of staff forced to share the men's toilets with female colleagues who identify as "trans men" or "non-binary".

As such, the effect of the policy is to authorise or approve of harassment of employees or service users. As noted above, that is unlawful as a result of (at least) sections 29 and 40 of the 2010 act. The policy is, therefore, unlawful: *R (A) v Home Secretary* [2021] 1 WLR 3931.

Furthermore, it requires managers and colleagues to take part in this harassment of their colleagues by subjecting them to discriminatory disciplinary procedures, thus exposing those involved in implementing the policy to potential grievances, tribunal claims and legal liability.

Section 109 of the act addresses liability of employers and principals. It provides that anything done by an employee must be treated as also done by the employer, unless the employer took all reasonable steps to prevent the employee from doing that thing, or from doing anything of that description.

Section 110 addresses the liability of employees and agents. It provides that employees and agents are liable unless they can rely on a statement by the employer or principal that doing that thing is not a contravention of this act, and it is reasonable for them to do so. The employer commits an offence if it "knowingly or recklessly" makes a statement confirming the lawfulness of its policy "which is false or misleading in a material respect".

Section 111 provides that a person A who is in a relationship where they may commit a basic contravention against person B must not "instruct, cause or induce" that person to commit a basic contravention against person C.

### **We call on you to defend or withdraw the policy**

We were pleased that the Prime Minister welcomed the clarity of the Supreme Court's judgment but have been disappointed by the slow and reluctant pace at which government departments are acting to bring their policies into line with the law.

We understand that a revised model policy in relation to transgender staff is currently being developed by the Cabinet Office. However, while this work is ongoing, the existing model policy has not been withdrawn and many departments have therefore not withdrawn their own policies which are based directly on it.

This means that civil servants and contractors are placed in a situation where they may experience unlawful unwanted conduct (harassment) and less favourable treatment (discrimination) related to the protected characteristics sex and belief, and where they are being instructed to commit contraventions of the Act, as managers, by following the policy.

It is the responsibility of the Cabinet Office to confirm whether it believes the actions authorised and approved by the current model policy **are lawful** or else to **withdraw it**.

Please let us know that you will either:

- (a) provide a statement confirming that you believe that taking the actions set out in the model policy **is lawful** or
- (b) **withdraw the policy immediately** and tell departments to disregard it.

Choosing (a) would mean would mean that you do not agree that the following actions authorise or approve of contraventions of the act:

1. **Allowing men to use women's facilities and vice versa** (allow individuals to use "any appropriate single sex toilets and other facilities" (58) based on the assumption that the individual knows "which facilities are the best match for their gender identity" (61), promising that they will be supported "whatever their personal transition entails"(20)).
2. **Instructing managers that they cannot require staff members to use the unisex facilities** (61) (and thus allowing them to use opposite-sex facilities if they do not wish to use the correct facilities for their sex)
3. **Treating complaints or disagreement with this policy as bullying, harassment or inappropriate conduct** ("refusing to accept an individual's gender identity"(84), "using a word... which does not correctly reflect an individual's gender identity"(87)) and bringing such speech acts under bullying, harassment and discrimination for which disciplinary procedures can be instigated (75, 77, 82, 89, 91, 93).

As you will know it is the Supreme Court, and not the EHRC that authoritatively determines the law. The EHRC may provide guidance to assist duty bearers to understand their obligations, but its role is not to determine the law or to interpret the EA 2010 (see Grosset v City of York Council [2018] ICR 1492, CA, §42 per Sales LJ; §68 per Arden LJ).

If as an employer, service provider and public authority, the Cabinet Office, and civil service employers are currently following policies or practices that, in consequence of the Supreme Court's decision in FWS, are unlawful, it will be no defence to any claim against them to say that they are awaiting guidance from the EHRC.

**Please respond by 1st December 2025.**

Yours sincerely



Maya Forstater  
CEO