



EQUALITY MATTERS

Why organisations must
get the balance right.



Diversity and fairness are business assets.

A reputation of inclusiveness and fairness makes it easier to recruit and retain the best staff. Your people are generally happier, more productive and absences are reduced. In addition, it builds social capital with stakeholders and clients. It is also the right thing to do.

But, in building diversity, there is a knotty issue: when the rights of one group impinge on the rights of one or more other groups, as in the ever-increasing conflict around access to single-sex spaces. A dispute that is principally between transwomen and women.

In large part, the contention was created by incorrect guidance from official sources.

In these increasingly litigious times, it is paramount that your organisation is able to safely navigate any arising conflict in order to protect your operations and reputation.

Official sources.

Incorrect guidance was published by the Equality & Human Rights Commission (EHRC) and the Government Equalities Office (GEO).

Due to AEA's intervention, in July and August 2020 a large number of EHRC guidance documents were amended or removed entirely from EHRC website. There was no public announcement and external organisations were not notified. The guidance had been in place for 10 years. GEO's guidance has existed for 6 years but, due to AEA's intervention, it is currently under review.

However, that incorrect guidance continues to be disseminated by numerous management consultancies and training organisations.

As a consequence, misguidance is reflected in the policies and practices of countless organisations. Unwittingly, such companies are at risk of reputational harm and may well be legally exposed.

Is your organisation at risk?

Look at page 5 to see if your policies and practices reflect EHRC or GEO guidance.

If they do, users of the facilities you provide (such as toilets or changing rooms), or your employees, may well have good grounds for complaint and you could find yourself on the wrong side of the law.

What should you do?

A review of your policies and practices would be prudent.

Diversity is an unquestionably positive aim and it is entirely right that trans people are protected and supported.

But all of the protected characteristics defined in the 2010 Equality Act are entitled to the same consideration.

When devising policy and practices, it is essential, though not always easy, to ensure an equitable balance of rights between all relevant protected characteristics. It is imperative that the rights of all protected characteristics are taken into fair deliberation when devising policy and practices.

These are highly litigious times.

To avoid legal exposure, it is vital for organisations to not only be fair but to be demonstrably fair.

AEA can help you do that.



Who is AEA?

AEA is a Community Interest Company limited by guarantee. AEA's principal aim is to further the professional and personal interests of women and girls.

However, AEA's consultancy and training is rooted in the law and is impartial.

The legal instruments we draw on are: Gender Recognition Act 2004, the Equality Act 2010, Human Rights Act 1998, and Workplace (Health Safety and Welfare) Regulations 1992.

On matters relevant to the 'single-sex exception', the overwhelming majority of training has been delivered by trans-focused training organisations with an understandable emphasis on the 'trans perspective'. For the sake of balance, AEA consultancy and training incorporates the 'women's perspective'.

Balancing the rights and needs of competing interests can be difficult.

AEA can help you get it right.



Ann Sinnott
AEA Director

What did EHRC guidance say?

EHRC guidance was aimed at all types of organisations, including the private sector.

EHRC's guidance routinely used the term 'gender' – which isn't a protected characteristic – instead of 'sex'. Including, confusingly, in sections about service provision and the single-sex exception. That incorrect usage has been amended.

Additionally, many guidance documents contained variations of this statement:

"Where someone has a gender recognition certificate they should be treated in their acquired gender for all purposes and therefore should not be excluded from single-sex services."

That breached the 2010 Equality Act and was removed from guidance. Someone with a GRC can be lawfully excluded from single-sex spaces, provided it is a proportionate means to achieve a legitimate aim.

An example of amended guidance can be seen here: <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-businesses>.

What does GEO Guidance say?

Guidance documents on providing services to transgender customers and on employing transgender staff, state:

"A trans person should be free to select the facilities (such as toilets or changing rooms) appropriate to the gender in which they present."

"It is not appropriate to treat a person without a GRC differently from one with a GRC."

Both statements are incorrect and breach the 2010 Equality Act and legally-binding workplace regulations.

There is no automatic right of access to single-sex spaces.

There is a legal difference between those with a GRC and those without. Someone with a GRC is legally designated the opposite sex. Those without a GRC remain their birth sex.



AEA Training

A 3hr workshop for up to twenty staff, with a focus on:

1. Equality Act 2010 and Gender Recognition Act 2004
2. Interaction between those two Acts
3. Interplay between 'Protected Characteristics'
4. Applying/Not applying the 'Single-Sex Exception'
5. Human Rights Act 1998, relevant Articles
6. Workplace (Health, Safety) Regulations 1992

You will:

- Gain a clear understanding of relevant legislation
- Understand the parameters of the 'single-sex exception'
- Acquire an analytic method to fairly balance competing rights
- Be better equipped to mitigate discord

Part One

Equality Legislation

Q & A

Part Two

Applying/Not Applying the Single-Sex Exception

Q & A

AEA Consultancy

AEA will work with your organisation to:

- Ensure your existing EDI policy is legally compliant.
- Help you to develop a legally compliant EDI policy.
- Navigate the potential for contention between protected characteristics.
- Ensure you understand the concept of 'proportionality' and the lawful application/non application of the single-sex exception.

We will highlight areas of unease, risk, potential conflict, legal exposure and signpost possible mitigation measures.

An example of our two-part consultancy package:

1. Client Risk Profile

In relation to inclusion and the single-sex exception, we will assess your policies and practices – in the context of service-provision and the workplace – for reputational risk and legal liability.

2. Mitigate Risk

We will highlight means and methods by which identified risks and legal exposure may be mitigated.



‘Thanks for the very informative and comprehensive session on equality law today. Lots to think about in terms of how we balance everyone’s needs.’

Morrisons Supermarkets

‘Very informative. Illuminating info – especially on the law.’

Melissa. Teacher, Oxfordshire

‘Constructive information to take back to colleagues.’

Lucy. HR Professional, Birmingham

‘Very interesting, especially in regard to legalities.’

Mike, Researcher, London

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