

THANK YOU, EVERYONE!

We reached 4,000+ signatures, and our plan is to send this letter out tomorrow (Wednesday 23rd April), to approximately 80 MPs, across all parties and departments.

FGEN (feministgenderequality.network) and TransActual (transactual.org.uk) have thrown their support behind this letter and have made it an official petition for a face to face meeting with MPs.

This letter is aimed at the Government and other MPs, since *Parliament* have to agree any new Statutory Code that the EHRC (under Kishwer Falkner's guidance) put forward on how the Equality Act should now operate, so we need to convince them to utterly reject Falkner's stance. We are also targeting those at the top of policy making, so Secretaries of State / Ministers for Health, Culture and Sport, Prisons, Education, Police, etc. etc.

Huge thanks from me (Philippa East) who initially drafted the letter and began the action, but I've had help from so many wonderful people too.

See below for the letter, for reference, and feel free to use this as a template for any action or campaigns of your own.

Thanks again

Philippa x

As representatives of the transgender community in the UK, we write to you on behalf of the undersigned to express our extreme concern following the recent UK Supreme Court in the matter of *For Women Scotland vs Scottish Ministers*, which ruled that "sex" means birth sex only in the Equality Act. This ruling represents a dire threat to the legal rights, personal safety, and basic dignity of all trans and non-binary people in the UK.

In this letter we wish to explain our particular concerns regarding the ruling and some of the statements made in its aftermath, as well as lay out an appeal for how you, as members of Parliament, might act to rectify this mess.

III-Judged Decisions, III-Judged Comments

The Supreme Court's ruling that the meaning of "sex" as no more than "biology" fundamentally undermines the identities of trans people as a protected class. By definition, a trans person's gender does not align with their birth sex. Therefore, to relegate trans people to the sex of their birth under the law annihilates the most core aspect of a trans person's identity as a trans person.

More broadly, the ruling paves the way for trans people's identities to be dismissed by society, e.g. as a "choice", a "lifestyle" or "performance" or even a "delusion" instead of a medically-, scientifically-, and historically- recognised reality with centuries of precedent. Many people have pointed out that, following this ruling, trans people still have anti-discrimination protections under the Equality Act, by virtue of their gender reassignment protected characteristic. But those protections are meaningless when the law

encourages employers, service providers and the public to view and treat trans people in a way that constantly misgenders them and demeans their very existence.

It is deeply regrettable that this sentiment was promulgated in comments made by EHRC Chair Baroness Kishwer Falkner in her interview with BBC Radio 4 on 17th April 2025.

In her comments, Falkner indicated that all trans women should now be automatically blanket-banned from women's sport and women-only facilities. Trans men will similarly be automatically blanket-banned from men-only sport and from all men-only facilities. Falkner suggested that trans people should seek out some undefined "third space" to use instead. It is notable that Falkner, as Chair of the EHRC, has not offered to advocate for suitable facilities for trans people herself, but instead suggested trans people take on this brutal task themselves.

Her overall approach attacks the very notion of acceptance of trans people in society. Furthermore, Falkner's comments fly in the face of how single-sex services have operated under the Equality Act for the last 15 years, regardless of the definition of "sex" in the Act. Such a policy would place an intolerable burden on trans people's everyday lives, as well as having significant negative consequences for cisgender people. Such automatic blanket bans have always been clearly discriminatory and unlawful under the Equality Act, and it is unclear from the Supreme Court ruling or Baroness Falkner's comments why such bans are suddenly deemed worthy of respect.

Unnecessary and Unprecedented

Baroness Falkner's interpretation of the Supreme Court's ruling flies in the face of the clear intention of the Equality Act as well as years of legal precedent and regulatory decisions. The 2011 Statutory Code of Practice sets out extremely clearly how single-sex services should operate for those with the protected characteristic of gender reassignment. As para 13.57 (p. 197) of the Code states:

"If a service provider provides single- or separate sex services for women and men, or provides services differently to women and men, they should treat transsexual people according to **the gender role in which they present.**"
[emphasis added]

It goes on to make clear that "The intention is to ensure that the transsexual person is *treated in a way that best meets their needs.*" (para 13.58) [emphasis added].

Under the Equality Act, single-sex services have never operated for users, cis or trans, on the basis of their "sex" – "certified" or otherwise. Instead, the drafters of the Equality Act understood that the best way to accommodate trans people in public services was according to **the gender role in which they present**. This allows trans people to "blend in" most comfortably and cause least disruption to others. This is also, in fact, the way that people generally access single-sex services: no birth certificates etc. required. To abandon this approach for one that insists on determining a user's 'biology' would obliterate the guarantees afforded by the Equality Act, subjecting trans and gender non-conforming cisgender people to arbitrary harassment and invasions of privacy.

What's more, in the 2021 case of *AEA vs EHRC*, the judge concluded (paras 6-9) that operating a single-sex service on the grounds of a trans person's birth sex would likely be indirectly discriminatory, because a policy that excludes both cis men and trans women in the same way may place "those with the protected characteristic of gender reassignment at a particular disadvantage compared to others to whom

the PCP is applied.” This disadvantage would absolutely still be the case in practice now – this has not changed.

The drafters of the Equality Act did, of course, include a gender reassignment exception (schedule 3, paragraph 28) allowing a trans person to be excluded from a single sex service regardless of their sex/GRC, so long as this meets the robust test of “a proportionate means to a legitimate aim”. In this way, the Equality Act offered a flexibility which balances the needs of all, one that Baroness Falkner’s approach would cast aside.

Unworkable and Unsafe

Following the Supreme Court ruling, “sex” in the Equality Act currently means birth sex. However, throwing out the principle of access on the basis of “**presenting gender**” in response to this ruling will be confusing and problematic for service providers and all their users, and potentially highly discriminatory and dangerous for trans people, for the following reasons:

1. Under Falkner’s proposals, trans women are presumably to use a men’s facility, and trans men should use the women’s. But bizarrely, under this new interpretation, trans men can also be barred from the women’s due to their masculine appearance, whilst trans women can be barred from the men’s for appearing female. Therefore, the suggestion is that they seek out some hypothetical (and potentially unavailable) third space. This situation is unworkable and dangerous for all, trans or not.
2. Falkner references “third spaces” (e.g. gender neutral changing rooms in clothing stores or gyms) for trans people to use, but these remain relatively rare and inconsistent in their accessibility. It would also be potentially dangerous to trans people to use these facilities, as well as a breach of their privacy, as they will increasingly be seen as the designated ‘trans’ space under Falkner’s proposed regime. The main ways for trans people to avoid outing themselves would involve a) staying at home or b) breaking the law, functionally rendering them second-class citizens.
3. Such third spaces would presumably be open **to both trans men and trans women**, meaning Falkner expects trans people to always use a mixed-sex facility. This creates a preposterous double standard, with all the concerns and criticisms that are so frequently raised about the inviolability of single-sex spaces for cis people utterly disregarded for trans people – all while sex-separated facilities are provided for cis people as a matter of course.
4. Under Falkner’s “biological sex”-based proposal, if a women’s-only service chooses to **include** trans women (as many might wish to do), the provider then has no legal way to exclude cis men from that service, since (under her interpretation) it becomes “mixed sex” and therefore open to women and men alike. This effectively penalises service providers for trans-inclusivity by subjecting them to a double bind.
5. Falkner’s sex-based proposals run the risk of any service user, whether trans or not, who does not present in stereotypical masculine or feminine ways being targeted and harassed for using “the wrong facility”. Any effort to police individuals according to presentation would require inspection of either birth certificates, genitals, proof of chromosomes, or some other indicator of birth sex to determine access for users – an intolerably intrusive and demeaning prospect for all concerned.
6. Falkner indicates that these proposals are likely to also apply to NHS single-sex hospital wards; indeed, we understand NHS England has been consulting on its constitution about exactly this issue. Anxiety about being segregated into a side room or being allocated to a ward that does not match their

presenting gender (once again, potentially outing them as trans) means trans people may avoid seeking the healthcare they need.

7. Baroness Falkner's interpretation of the Supreme Court judgement does not even begin to address the issues this would bring for intersex individuals, whose voices have been completely overlooked.

A Path Forward

Following the Supreme Court ruling, sex in the Equality Act currently means birth sex. But assuming Baroness Falkner's approach is not adopted, single-sex services can still continue to operate as they have done to successfully accommodate all users, whether trans or not. A basic *textual* reading of the Equality Act currently supplied by the Supreme Court is compatible with a recognition of and respect for trans people, and would afford trans people the dignity and acceptance under the law and in society that they deserve.

Indeed, this appears to be exactly the approach that former Justice of the Supreme Court Lord Sumption laid out in his BBC interview on 18th April 2025. In this interview, Lord Sumption stated repeatedly that Baroness Falkner's above interpretation was incorrect, elaborating with the following statements:

Lord Sumption: "...the judgement does not mean that the sporting authorities have got to limit **women's** boxing or **women's** football to **biological women**. They could allow **trans women to compete on the same basis as biological women**."

[...]

Evan Davies: "They haven't made a legal determination that you have to give **women's** toilets to biological women only?"

Lord Sumption: "No." [emphasis added]

The approach suggested by Lord Sumption maintains the inclusive and fundamentally effective arrangement that we have had for the last 15 years. Such an approach would allow trans people to use the facilities that match **the gender role in which they present** regardless of their sex, certified or otherwise, and still be excluded (only) if properly justified. Similarly, this approach would uphold inclusion of trans people in sport (where safe and fair), to allow trans people to participate meaningfully in this important part of life and society.

Treating trans people according to **the gender role in which they present** (not their sex) allows a service provider to run a women's service that includes trans women, while at the same time excluding all men. Services would still have the further option of excluding a trans person if needs be, under the para 28 gender reassignment exception.

Next Steps

We believe that the Government and Parliament needs to now seriously consider how it really wishes the Equality Act to operate in practice. Urgent and effective action must be taken to ensure the forthcoming updated Code of Practice from the EHRC – and governmental guidance across **all** areas of policy – reflects a commitment to let transgender people live their lives safely, with dignity and privacy, just as cisgender people do. If this cannot be achieved through Statutory Guidance alone, then the Government needs to seriously consider the option of amending primary legislation itself to properly recognise and

respect trans identities, and afford trans people the dignity and acceptance under the law and in society that they deserve.

Such effective action cannot take place without the direct involvement of and consultation with members of the trans community. To that end, we appeal to you for a meeting at the earliest opportunity with representatives of FGEN and TransActual to discuss the next steps to take. We also request the government draft a public statement in consultation with us to reassure the many frightened trans people and their allies in this country who are upset with the recent attacks on trans people's rights, safety, and dignity.

Trans people have always existed. We exist now, here, with a plea and offer of help to secure a respectful and equitable future for all the people in this country whatever their gender or sex.

Yours sincerely

Dr Philippa East, Clinical Psychologist and Author

Feminist Gender Equality Network

TransActual

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