

WRN Sports Group

Sex-segregated Sport in the UK

A lawful approach to policy making



**WOMEN'S
RIGHTS
NETWORK**



Written by WRN Sports Group and WRN Legal Department

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Terms used in this document

Sex – Female or Male.

Female - of or denoting the sex that can bear offspring or produce eggs, distinguished biologically by the production of gametes (ova; large) that can be fertilised by male gametes.

Girl – Female under the age of 18 years.

Women – Adult Female.

Male – of or denoting the sex that produces gametes (small), especially spermatozoa, with which a female may be fertilised or inseminated to produce offspring.

Boy – Male under the age of 18 years.

Man – Adult Male.

Gender – a term that was once used interchangeably with ‘sex’ to mean male or female. Gender is a social construct.

Transgender policy – the policies published by individual National Governing Bodies (NGBs) of UK Sports that describe eligibility criteria for male and female categories.

Executive Summary

Women's Rights Network (WRN) is dedicated to defending the sex-based rights of women and girls, including protection of the female category in sport and recreational activities, from grassroots through to the elite level.

We have investigated the Transgender Policies of UK Sports' National Governing Bodies (NGBs) and discovered that only 8 out of 77 are fully committed to safe and fair sport for women and girls at all levels.

Among 69 unfair sports are some that pose a higher risk to the physical safety of women and girls if males are allowed to self-identify into the female category, including those where there is direct contact (e.g. Tae Kwon Do and Judo), tackling (e.g. football) or hard balls in play (e.g. cricket and hockey).

These unfair policies, many of which allow males who self-identify as women into the female category, are misrepresented as 'inclusive'. Every time a male is included in female sport, a woman or a girl is excluded and loses out. The compromise to safety, dignity and welfare, and the loss of opportunity is an unacceptable outcome of an 'inclusive policy' for women and girls in sport.

It is our assertion that a policy allowing males to self-identify into women's sport constitutes unlawful discrimination.

Some international governing bodies have reviewed their policies:

- World Rugby policy set a precedent for safety in a contact sport by fully protecting the women's game.
- World Aquatics prioritised fairness by creating an open category alongside a protected female category.
- World Athletics have introduced a ban on those who have been through male puberty.
- The International Cricket Council updated their regulations to protect the integrity of the women's game and the safety of players.

In the UK we have a specific sex-based exception in the Equality Act, guidance produced by the UK Sports Councils, and Government strategies intended to encourage women into sport to buttress sports policies against claims that males can become eligible for the female category. These resources provide all the information NGBs need to justify the protection of female sport.

Our report will help anyone tasked with writing a sport-based transgender policy, giving them confidence that it is wholly justifiable to exclude males from women's sport.

Recommendations

We call on all UK sporting organisations to bring their policies in line with discrimination law and the relevant guidance.

- Female athletes or participants, and women's groups should be consulted in any policy review process, or on any new policies that have an impact on the female category.
- UK sports organisations must ensure they provide single-sex facilities (toilets, showers and changing areas) where the safety, privacy and dignity of women and girls is fully protected.

Protecting the integrity of the female category with lawful and practical policies is the only way to provide safe and fair sport for all women and girls. **There can be no compromise.**

Introduction

There are large disparities between the policies that different National Governing Bodies (NGB) of UK sports employ to define the eligibility of males into the women's category. Women's Rights Network introduced the WRN Fair Sports Awards¹ to highlight those sports that support fairness and safety for women and girls from grassroots to elite levels of sport. And those that do not. We analysed the Transgender Policies of Sports' National Governing Bodies (NGBs) recognised by the Sports Councils of the UK, and the results are in the table below:

| AWARD | POLICIES | EXAMPLES | NUMBERS |
|---------------|---|-------------------------------------|---------|
| Gold / Silver | Commitment to fair and safe sport for women and girls | Rugby, Volleyball, Triathlon | 24 |
| Rotten Tomato | Unfair / Unsafe Sport for women and girls | Football, Hockey, Pool, Tae Kwon Do | 53 |



As of February 2024, 53 out of 77 UK National Governing Bodies of sports have been awarded the WRN Rotten Tomatoes award - their policies allow males to take part in female sport and activities, and in many cases also allow them into female toilets and changing facilities.

Protecting the female category is in line with the Government's strategy for women's sport², the UK Sports Council's own guidance³ and a specific exception within the Equality Act 2010 (Section 195)⁴. In addition, a new report from the Policy Exchange (Levelling the playing field: Why women and girls matter in amateur sport⁵) is the source of a wealth of information on the importance of retaining the integrity of the female category, particularly at grassroots level, and how statistics are becoming meaningless as organisations collect data based on gender identity rather than sex.

¹ <https://www.womensrights.network/sporting-body-policies>

² <https://www.gov.uk/government/publications/get-active-a-strategy-for-the-future-of-sport-and-physical-activity>

³ <https://equalityinsport.org/resources/index.html>

⁴ <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/14/5>

⁵ <https://policyexchange.org.uk/wp-content/uploads/Levelling-the-playing-field.pdf>

UK Sports Councils Guidance

Recognising the increasing need for practical support and advice, the UK Sports Councils published their guidance for transgender inclusion in domestic sport in 2021 following an extensive research and consultation exercise³. The guidance draws on the three principles of safety, fairness and inclusion and concludes that these cannot be balanced; there cannot be meaningful competition where there is inclusion of males in the women's category in gender-affected sport due to retained differences in strength, stamina and physique in males, with or without testosterone suppression.

Equality Act

Section 195 of the Equality Act 2010 is clear; NGBs and other sports organisations in the UK can legitimately discriminate on the grounds of sex (*i.e.*, exclude males from female sport) where:

*"physical strength, stamina or physique are major factors in determining success or failure, and in which one sex is generally at a disadvantage in comparison with the other. It also makes it lawful to restrict participation of transsexual people in such competitions if this is necessary to uphold fair or safe competition, but not otherwise."*⁴

As stated in the exception, discrimination on the grounds of sex is not overridden where an individual has the protected characteristic of gender reassignment, even if they have a Gender Recognition Certificate (GRC). The Equality Act is clear that it is lawful for sporting organisations to discriminate against these individuals where it is necessary to do so for safety or to ensure fair competition. The For Women Scotland judgement upheld by Lady Haldane in December 2023 (where a person is issued with a full GRC, their sex becomes "for all purposes" that of their acquired gender) has not affected this exception, according to the Equality and Human Rights Commission⁶.

It is lawful under the Equality Act 2010 for sports to exclude males from the female category in order to provide safe and fair sport for women and girls.

Sports' governing bodies can be reassured that they are not breaking the law if they exclude males from the female category, even if they are in possession of a Gender Recognition Certificate.



If your board or management staff would like training on your obligations under the Equality Act 2010, we are happy to recommend **UK Equality Network**⁷ who specialise in delivering bespoke Equality Training.

Legal action

Despite the fact that it is lawful for them to exclude men who identify as women from the female category, a number of sporting organisations appear to have been discouraged from doing so by the fear that trans-identified males may bring legal cases alleging discrimination. However, with the help of Fair Play for Women, a group of female pool players are bringing a case against the organising

⁶ <https://www.equalityhumanrights.com/media-centre/news/statement-uk-athletics-position>

⁷ www.UKequalitynetwork.co.uk

bodies of pool on the grounds that allowing males to self-identify into in the female category is unlawful discrimination against female players on the grounds of sex⁸, given the physical advantages that male players have arising from male puberty that cannot be eliminated by testosterone suppression. This situation demonstrates that sporting bodies cannot avoid the risk of litigation simply by employing a policy of self-identification that allows males to play in the female category.



To date, there have been no successful discrimination cases where males who identify as women have been excluded from women's sport.

Female pool players are bringing a case on the grounds that allowing males to self-identify into the female category is unlawful discrimination on the grounds of sex.

To be clear, the Equality Act 2010 is statutory law, and it cannot be overridden by any internal policy or appeal to outside circumstances.

This is evidenced by two relatively high profile incidents involving 'gender critical' women and organisations which attempted to justify unlawful discrimination against those women by reference to internal policies:

1. In October 2022 Nottingham City Council apologised for unlawfully cancelling an event by Julie Bindel to be held in one of its libraries⁹. The Council had cancelled the event because it believed Ms Bindel's views were not in line with its policies, and it subsequently admitted that this was unlawful discrimination against Ms Bindel.
2. In August this year The Stand Comedy Club in Edinburgh apologised to Joanna Cherry MSP for cancelling an event at which she was to speak because their staff did not agree with her (gender critical) views and reinstated the event¹⁰. Ms Cherry published her Counsel's opinion¹¹, which included the following paragraphs:

"No justification for direct discrimination

4.30 Further, as we have noted above, such direct discrimination because of religion or belief cannot as a matter of law be justified: see e.g. R (E) v Governing Body of JFS [2010] 2 AC 728.

4.31 Salt 'n' Sauce Promotions Ltd (The Stand Comedy Club) cannot escape a finding of direct discrimination by saying that it was forced by circumstances beyond its control (whether their staff's stated unwillingness to work at the event, or their professed inability to ensure effective avoidance of any possible unrest or violence from third parties attendees or outside protesters objecting to Ms. Cherry[s] protected philosophical beliefs.)"

⁸ <https://www.crowdjustice.com/case/let-women-play-pool/>.

⁹ <https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/51859-council-admits-decision-to-cancel-talk>

¹⁰ <https://www.heraldscotland.com/politics/23519096.stand-comedy-club-reverses-decision-ban-joanna-cherry/>

¹¹ <https://joannacherry.scot/images/Note.pdf>

These two cases make clear that no sporting organisation can appeal to internal policies to justify unlawful discrimination against women.

Case-by-case assessments and safeguarding policies

The England and Wales Cricket Board (ECB) have a policy of self-identification with the eligibility of male inclusion into the female category being assessed on a case-by-case assessment based on a 'social' model, *i.e.*, there is no requirement to reduce testosterone levels or provide any medical details for eligibility.

Note that the UK Sports Councils guidance document provides several reasons why case-by-case assessments are unlikely to be practical or verifiable when considering eligibility into gender-affected sports. :

“NGBs may wish to consider the following when determining the appropriateness of this:

- *It has not been scientifically validated as to whether any parameters of physical capacity or ability can be defined with a certain cut-off point at which someone is considered appropriately 'female' or appropriately 'male'.*
- *Many tests related to sports performance are volitional. This means a person must try their very best to get an appropriate measurement. It is difficult to foresee how someone could be expected to provide maximal effort when a positive outcome for them relies on achieving a lesser result.*
- *Panel members are unlikely to be able to manage a situation in which their decisions can determine the suitability of some individuals, and not others. In the absence of a scientific rationale this places the panel members in a difficult situation.*
- *Case-by-case analysis may fall outside of the provisions of the Equality Act (whereby provision is for average advantage not individual advantage) and may be based on criteria which cannot be lawfully justified. Some transgender people will be included, some will be excluded through criteria outside of their own control.”*

The ECB published a further 'Disparity Policy' in 2023¹² with the purpose of addressing disparities between players and safeguarding on the pitch in recreational cricket and places the onus on umpires and match officials to maintain health and safety on the pitch through a subjective evaluation of the participants' physical ability, not unlike the case-by-case assessments the ECB employs for transgender inclusion. In fact, it seems there is some overlap in the ECBs Trans inclusion policy and the Disparity policy that cannot be ignored – match officials are required to '*resolve the disparity*', by, for example, '*requesting that a stronger player exercise caution*', but in any judgement on eligibility, '*priority should be given to the individual(s) whose strength, stamina and/or physique is consistent with the level, age group or category of the game when reasonably judged taking into account the diversity characteristics of the individuals involved*'.

NGBs and other sporting organisations should consider whether and how their policies expose them to liability as far as the safety of female participants is concerned. Stating that there may be disparities arising from, for example, a stronger individual, is an admission that there is a possibility of serious injury. Yet the ECB leaves immediate decisions on eligibility to play to untrained match officials, who in the recreational game may be a parent, player or another volunteer. It is also unlikely that

¹² <https://resources.ecb.co.uk/ecb/document/2023/>

subjective decisions on disparity will be applied in a consistent manner, which opens up the possibility of confrontation.

Case-by-case assessments of male eligibility into the female category are subjective, inappropriate and likely to be discriminatory. These processes lack transparency.

Internal policies, such as those designed to address physical disparities, are an admission that there is a risk of serious injury to females. Decisions on eligibility to play are unfairly left to match officials on the day.



International Olympic Committee (IOC) policy

The IOC moved away from an eligibility policy based on testosterone levels in their Framework on Fairness, Inclusion and Non-discrimination on the Basis of Gender Identity and Sex Variations policy document published in 2022, and instead asks International Federations to work on the premise of ‘*no presumption of advantage*’, insisting that any exclusion of males from female sport must be based on ‘*robust and peer-reviewed research*’ proving unfair or disproportionate competitive advantage¹³. This approach, which focuses on human rights rather than science, biology or medical aspects, was immediately criticised in a position paper signed by a group of 38 experts and scientists including the head of the World Athletics medical department, the International Cycling Union medical director and the chair of the World Rowing Sports Medicine Commission¹⁴. The policy paper states that one of the main consequences of the 2022 IOC policy is that it gives a green light to self-identification, which in itself equates to there being ‘*no eligibility rules*’.



The 2022 IOC policy on Inclusion and Non-discrimination on the Basis of Gender Identity and Sex Variations asks International Federations to work on the premise of ‘*no presumption of advantage*’ and equates to there being no rules on eligibility.

Trying to provide robust and accurate results from a test that relies on maximum performance is highly questionable.

It is not possible for any UK sporting organisation to cite the latest IOC Framework policy when drafting their own documents; IOC policy is not in line with UK Equality law, and, as required by the

¹³ <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC>

¹⁴ <https://cdn.dmcl.biz/media/file/228734/positionpaper.pdf>

IOC, the burden of proof falls on International Federations to provide evidence-based eligibility criteria, yet none have done so to date.

UK Initiatives

Men are on average more likely to be physically active than women; levels of activity among women have not quite returned to pre-pandemic levels whereas they have returned to those of 2018-2019 for men¹⁵. To try and address this disparity, among other issues, the Government published a Get Active strategy in August 2023 with the aim of providing opportunities for everyone to get active “by making sure that the sport and physical activity sector is accessible, inclusive and sustainable”¹⁶. The scope of the Get Active campaign goes beyond organised sport to include all types of physical activity and one of the directives is to focus on the least active members of society, specifically mentioning the Local Delivery Pilot Schemes ‘This Girl Can’ and ‘We Are Undefeatable’ promoted by Sport England to tackle the practical and social barriers experienced by women and girls, as a direct result of their biology.

Sport Northern Ireland have a corporate plan covering 2021-2026 that aligns with Active Living - The Sport and Physical Activity Strategy for Northern Ireland, working with the Department for Communities, other government departments and strategic partners in delivering a strategy to maximise the power of sport¹⁷.

It is important to capture accurate sex-based information on data and registration forms. Tackling inequalities is not possible if only self-identified gender is recorded.



¹⁵ <https://sportengland-production-files>

¹⁶ <https://www.gov.uk/government/publications/get-active-a-strategy-for-the-future-of-sport-and-physical-activity>

¹⁷ http://www.sportni.net/wp-content/uploads/2022/06/sSportNI-Corporate-Plan-2021-26-2_compressed.pdf

Consultation with stakeholders

Many sports have introduced a Transgender Policy without consulting those athletes / participants who are most affected by changes to eligibility for the female-only category, *i.e.*, women and girls. This has caused a great deal of distress among female athletes and has led to either the threat of boycotting a high profile event, as in the case of female cyclists at the British National Omnium Championships where Emily Bridges was due to compete in March 2022¹⁸, or forfeiting the chance to win a prestigious title, as pool player Lynne Pinches did against male competitor Harriet Haynes in the Women's Champion of Champions tournament in November 2023 where she conceded the final to signal her frustration at a u-turn in the English Pool Associations decision to protect the female category and instead allow males into the women's game. Other female pool players have also conceded matches against male players^{19,20} or they are self-excluding from events²¹.

While policy must be drawn up with due regard to the law, sports should ask women for their views, ideally as an anonymised survey to encourage genuine opinions and concerns that women and girls may have, with well-framed questions that do not lead to biased results.

Changing rooms and toilets in sports facilities

The provision of single-sex changing areas, showers and toilets, and the exclusion of males who identify as women from female-only facilities is a complex and contested topic. However, due to the spotlight falling on this area in recent years, there is greater clarity, and specific, detailed advice is available from experts on discrimination law. Importantly, there should be a zero tolerance approach to any potential breaches in the safeguarding of children, and this applies to all sporting activities and is therefore relevant to all NGBs and sporting organisations.

Both Fair Play For Women²² and Sex Matters²³ have published comprehensive expert guidance for service providers on single-sex services, including toilets and changing areas.

The overarching principle to be applied is that it is lawful to provide female-only facilities to achieve the legitimate aim of safety and privacy for women and girls when in a state of undress, and service providers may be at risk of litigation by not providing a female-only changing area. Furthermore, it is lawful to exclude all males, including those who self-identify as women, those on any kind of gender reassignment pathway and even those with a GRC (part 7, Section 28 of the Equality Act 2010), meaning that it is lawful to discriminate against males with a GRC or any individual claiming the protected characteristic of gender reassignment, as a proportionate means to achieving a legitimate aim (the safety and privacy for women and girls when in a state of undress):

¹⁸ <https://www.independent.co.uk/sport/uci-british-laura-kenny-british-cycling-katie-archibald-b2087941.html>

¹⁹ <https://twitter.com/PinchesLynne/status/1728035724740460771>

²⁰ <https://twitter.com/ReduuxMag/status/1728092278785286308>

²¹ <https://www.dailymail.co.uk/news/article-12738301/Women-pool-star-refuses-play>

²² https://fairplayforwomen.com/changing_rooms/

²³ <https://sex-matters.org/posts/publications/guidance-for-service-providers-on-single-sex-services/>

Single-sex services

Equality Act 2010

2010 c. 15 ► SCHEDULE 3 ► Part 7 ► Single-sex services

- 28 (1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.
- (2) The matters are—
- (a) the provision of separate services for persons of each sex;
 - (b) the provision of separate services differently for persons of each sex;
 - (c) the provision of a service only to persons of one sex.

EA2010 Explanatory notes says:

739. This paragraph contains an exception to the general prohibition of gender reassignment discrimination in relation to the provision of separate- and single-sex services. Such treatment by a provider has to be objectively justified.

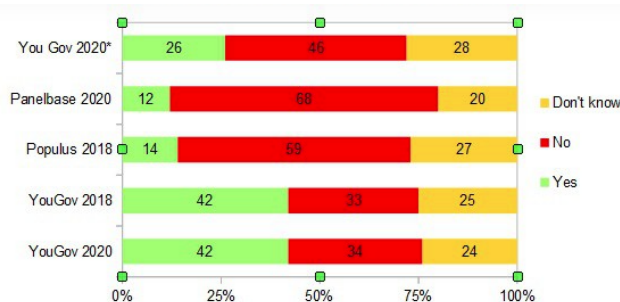
EHRC statutory code says:

13.57 ...the Act does permit the service provider to provide a different service or exclude a person from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate.



Fair Play for Women have also analysed the results from several public polling exercises asking questions about the acceptability of allowing males who identify as women access to women's changing rooms. They found that in five polls conducted between 2018 and 2020, there is never a majority in favour of letting males into female changing rooms, and even less support for self-identification into female changing rooms when the question stipulates that the man still has male genitalia²⁴. Allowing intact males into female changing rooms is not popular with the public.

²⁴ <https://fairplayforwomen.com/polldata/>



YouGov 2018 & YouGov 2020: A transgender woman is someone who was biologically male at birth, but now identifies as a woman. Do you think transgender women should or should not be allowed to use women's changing rooms?

Populus 2018: Do you think someone who identifies as a woman but was born male **and still has male genitalia** should or should not be free to use female changing rooms where women and girls are undressing/showering?

Panelbase July 2020 Q48: Do you think someone who identifies as a woman but was born male **and still has male genitalia** should or should not be free to use female changing rooms where women and girls are undressing/showering, even if those women object?

YouGov2020*: Do you think a transgender woman who has **not had gender reassignment surgery** should or should not be allowed to use women's changing rooms?

Emma Hardy has started legal proceedings against David Lloyd clubs based on their service provisions under the Equality Act 2010. Following protracted communications with David Lloyd management, they failed to satisfactorily answer Emma's simple question "Does our family membership include the prospect of our 11 and 13 year old daughters being naked in front of and alongside, naked men whilst in the female changing room?" The claim is of indirect discrimination against women who believe that sex is binary and immutable, and breach of contract; they are misleading their customers by allowing members to access changing rooms according to their "gendered appearance", rendering the meaning of signage stating 'Female' changing rooms as, in fact, 'Mixed sex' changing rooms²⁵.

David Lloyd follow UK Active guidance on Transgender Access which relies on frontline staff making a subjective assessment on whether the appearance of a male is "consistent with the gender in which they present" and therefore sufficiently acceptable to be allowed entry into single-sex space when they arrive at a leisure facility, or as a result of "issues or concerns"²⁶.

²⁵ <https://democracythree.org/help-emma-sue-david-lloyd>

²⁶ <https://www.ukactive.com/wp-content/uploads/2023/06/Transgender-Guidance-22-11-2022.pdf>

The outcome of this case will be interesting and is likely to set much needed legal precedence on the provision of female-only changing areas.

Conclusions

National Governing Bodies (NGBs) and other sporting organisations have a statutory duty to exclude males from female sport. There can be absolutely no compromise in welfare and safeguarding at any level.

Following the publication of the UK Sports Councils Guidance in 2021, some National Governing Bodies have amended their policies to protect female sport; however, many NGBs continue to prevaricate around reviewing their unfair policies and guidance, and in doing so they are failing in their duty to provide fair and safe sport for women and girls.

Women's Rights Network calls on all UK sporting organisations to uphold their statutory duties and bring their policies in line with discrimination law and the relevant guidance. It is not acceptable to continue to put women and girls at risk of harm or injury, be that physical or emotional, from males in their sex-segregated sport or recreational activities.

References

| Document | Website link |
|---|----------------------|
| UK Public General Act - Equality Act 2010 | Link |
| Equality Act 2010: Guidance | Link |
| UK Sports Councils Guidance for Transgender Inclusion in Domestic Sport 2021 | Link |
| UK Sports Councils Guidance for Transgender Inclusion in Domestic Sport – Summary of Background Documents | Link |
| Further relevant resources from the UK Sports Councils | Link |
| Department for Culture, Media and Sport Get Active: a strategy for the future of sport and physical activity | Link |
| Fair Play For Women Advice to service providers about female-only changing rooms | Link |
| Sex Matters Guidance for service providers on single-sex services | Link |
| Levelling the playing field: Why women and girls matter in amateur sport Policy Exchange | Link |

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