

## **STATEMENT ON EHRC GUIDANCE ON SINGLE AND SEPARATE SEX SPACES**

APRIL 4, 2022

This new EHRC guidance is appalling and harmful. It encourages bigotry and discrimination. Its 'examples' include invitations to organisations to blanket ban trans women from exercise classes and women's toilets on a 'biological' basis. Blanket bans are unlawful according to the EHRC's own Statutory Guidance which states that a case-by-case approach is required. They are also inconsistent with case law. Further, in 2021, the EHRC gave Trans Legal Project a written assurance that blanket bans of this sort were unlawful.

This new guidance seems also to assert that 'privacy and dignity' can be obtained if trans men, who are in many circumstances identical in appearance to cisgender men, were to use female toilets. The guidance also conflates discrimination law covering services to the public and discrimination law covering employment.

This new guidance is not Statutory Guidance. Organisations are not compelled to follow it. We do not believe a court would support it and we believe that there is a strong chance it would be overturned in Judicial Review. In the meantime, we urge organisations to continue to comply with the EHRC's own Statutory Guidance as breaches of Statutory Guidance (which, bizarrely, this new material from the EHRC contradicts) can be used as evidence in court.

In the context of services, the law states that trans women can be excluded from separate-sex spaces as a proportionate means of achieving a legitimate aim. Bigotry is not a legitimate aim. Nor is trying to drive trans people completely out of society because of ungrounded and confected fears. It would be absolutely unthinkable for the EHRC to announce guidelines of this sort in respect of any other minority group within British society. If they did so there would be a colossal outcry and we hope that one will follow in response to this.

Trans Legal Project  
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