

Trans matters in UK schools: Understanding the impact of the For Women Scotland decision

22 April 2025  Vicky Wilson and Ben Greene

What has changed?

The Supreme Court Decision in *For Women Scotland v The Scottish Ministers* UKSC/2024/0042 ('FWS') has clarified the definitions of 'sex', 'man', and 'woman' for the purposes of the Equality Act 2010 ('EqA') as being based on biological sex (i.e., sex at birth).

This interpretation contrasts with the previous understanding endorsed by the Equality and Human Rights Commission, which suggested that sex for the purposes of the EqA could be changed by a Gender Recognition Certificate (GRC), introduced by the Gender Recognition Act 2004. This decision marks a significant shift, as many educational institutions have developed policies under the former interpretation.

Inclusion in schools

Despite the legal clarifications, it remains crucial for schools to foster an inclusive environment that supports all students, including transgender and non-binary students. Schools should explore alternative strategies to promote inclusion and participation in all aspects of school life.

Continued protections and safeguarding

The Supreme Court has emphasised that trans and non-binary students are still protected under the EqA. Notably, the case of *Taylor v Jaguar Land Rover Ltd* 1304471/2018 supports a broad interpretation of the protected characteristic of 'gender reassignment'. These protections extend to preventing discrimination, harassment, and victimisation based on actual or perceived sex, or association with a sex. Ensuring safety and safeguarding against harm remains paramount.

Schools must continue to protect trans and non-binary students from discrimination, harassment, and victimisation. The broad interpretation of 'gender reassignment' as a protected characteristic under the Equality Act should be a guiding principle in safeguarding these students.

In a highly politicised and emotionally charged area such as sex, gender and trans inclusion, schools must be clear that any mistreatment based on these characteristics or associated protected beliefs is unacceptable and will be addressed promptly and sensitively.

Single sex facilities in schools

The use of single-sex spaces such as toilets and changing rooms in schools may need re-evaluation in light of the FWS decision. Schools should consider the safety, privacy, and dignity of all students while seeking ways to accommodate everyone's needs, which may be challenging, especially in older buildings with limited facilities.

Trans participation in school sports

The FWS decision directly impacts policies regarding trans participation in gender-specific sports competitions. Schools will need to review their sports/PE policies to ensure they align with the new legal interpretation, keeping in mind the specific exceptions in the EqA that can justify a difference in treatment based on biological sex when decisions are based on safety or fairness.

Policy review and revision

Senior school leaders and governors should pause and understand their organisation's position before reacting to the ruling. It's clear that schools will need to review their policies regarding gender identity and inclusion to ensure they align with the legal definitions as clarified by the Supreme Court. It is important to get the response right and to carefully consider any policy changes before they are introduced.

The impact of the Supreme Court decision on admissions policies to single-sex schools will require careful consideration of legal, ethical, and practical factors to ensure compliance with the law while striving to maintain an inclusive educational environment.

Regarding anti-bullying policies, schools may wish to strengthen specific provisions to protect transgender and non-binary students – and will also want to ensure that these policies are enforced and that all students understand the consequences of discriminatory behaviour.

Training and awareness

Effective change management will be key if there are changes to be made to school policies. It will be important to educate staff, students and the whole school community about this case, any changes being made to school policies, as well as the importance of inclusivity and respect for all. Transparency and good communication will help manage expectations and clarify the school's stance on inclusion and compliance with the law.

Handling disputes and legal challenges

The implications of the FWS decision may affect ongoing disputes or policies within the school setting. Schools should:

- Manage any changes or adjustments carefully and effectively.
- Prepare to handle disputes that may arise due to policy changes or misinterpretation of the law.
- Review current cases and policies to assess their impact and adjust strategies accordingly.
- Anticipate questions and possibly challenges from students, parents, and external bodies regarding their policies on trans inclusion.
- Consider stays and extensions in legal challenges.

Employment

In FWS, the Supreme Court has gone to great lengths to emphasise that its conclusion does not remove important protections under the Equality Act 2010 for trans people.

This is all the more notable because the Supreme Court was not obligated to provide such reassurances.

The question before the Court in FWS was not whether trans individuals should be protected under the Equality Act 2010 (under the protected characteristic of gender reassignment, they were, and still are) – but instead, it had the far narrower remit of deciding what Parliament meant when it wrote the words “man”, “woman” and “sex” in the Equality Act 2010.

Employers should remember that, notwithstanding the decision in FWS, the Equality Act 2010 states that employees must not be discriminated against because of gender reassignment (which is defined broadly as a person who proposing to undergo, undergoing or having undergone a process to reassign their sex). Importantly, a person does not need a GRC to qualify for this protection.

Protection from discrimination

This protection from discrimination (including from direct and indirect discrimination, as well as harassment) applies to the offer of employment, the terms on which employment is offered and in affording opportunities for promotion or other benefits. In some circumstances, it may also be possible for a trans individual to bring a sex discrimination claim because they have been perceived to be a particular gender.

The Supreme Court accepted that its ruling might create some difficulties for a trans individual seeking to bring an equal pay claim (where an actual comparator of the opposite sex is required) but acknowledged that these inherent difficulties would have been present had the Court reached a different conclusion.

FWS does not, in our view, signal a dramatic U-turn in public policy on equality and diversity. When the decision is carefully considered, the Supreme Court, in its precise and nuanced judgment, has taken the opportunity to reiterate the importance of equal opportunities legislation and of continued commitment to addressing unlawful discrimination in the workplace.

Pastoral/HR support

Students and staff impacted by this decision may require additional pastoral support.

Available support for schools

By addressing these key issues, schools can navigate the legal landscape effectively while continuing to provide a safe and inclusive environment for all students.

We're here to help. Our teams have expertise across education, equality, employment and sports law, and we're well-equipped to support schools in navigating these changes. We can assist in developing or revising equality policies and responding to legal challenges or claims.

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