Wales Committee input on single sex services guidance

**As discussed during an extraordinary meeting of the Wales Committee on Thursday 3rd March 2022, 09:00 – 10:00, via Webex**

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# **Present**

Alison Parken Martyn Jones

Geraint Hopkins Mark Sykes

Jackie Killeen Ruth Coombs

Marcial Boo Ruth Doubleday

Melanie Field

# **Notes from meeting**

* Jackie Killeen provided an introduction to the paper including an explanation of background, terminology, and the sensitivity of this topic. It was explained that the guidance is designed to be used by service providers and has been written as part of the EHRC’s role as a regulator.
* **The Chair and Wales Committee members commended the guidance for being clear, balanced and helpful**, noting that it is difficult to please all audiences within this space. The Chair remarked that the Board has dedicated a great deal of time to discussing this sensitive topic.
* A Committee member offered four suggestions for the guidance, as follows:

1. The inclusion of an opening statement stating that the guidance is consistent with the EHRC’s approach as a regulator and applies the law as it stands. **Clarifying the purpose of the guidance would be helpful in managing stakeholder expectations.**

2. The inclusion of links to summaries of relevant case law which may be of use to service providers.

3. With reference to point 3 on page 8, it can be difficult to apply policies flexibly. **The EHRC needs to recognise that it is difficult for service providers to develop consistent policy whilst also thinking about situations where they will depart from that policy.**

4. With reference to point 6 on page 9, would this be strengthened by the inclusion of reference to Equality Impact Assessments (EIAs)?

* Another Committee member queried how the guidance differs from existing guidance. Jackie Killeen explained the nuances. **It was agreed by all present that further discussion was needed regarding issuing a legal explainer alongside the guidance**, however this would need to be thought through very carefully.
* Several Wales Committee members asked whether the guidance has been ‘road-tested’ with any organisations. Jackie Killeen and Melanie Field noted that some conversations had taken place with service providers and campaigning organisations, and that the EHRC has reiterated that the forthcoming guidance reflects what is written in the law. **The Wales Committee recommended that the guidance is sufficiently road-tested with stakeholders prior to publication, particularly within the women’s support sector.** Understanding how the guidance may be received would avoid the creation of unnecessary problems for the Commission. Relatedly, the EHRC must consider whether the guidance will help women’s support services to make decisions without risking their funding.
* **The Wales Committee further recommended the inclusion of a range of scenarios and examples to explain the guidance and to state where legal descriptions or guidance will come from elsewhere**, such as in relation to schools or the provision and use of toilets.
* **Service providers may also benefit from guidance on *how* to assess situations and apply policies flexibly** – see for example point 3 on page 8.This was reiterated on numerous occasions by the Committee.
* In terms of terminology and language, a Committee member suggested the phrase ‘treating people according to need’ as opposed to ‘treating people differently’. **The need for a glossary of terms or explainer was endorsed to eliminate the potential for confusion or conflation of the terms biological sex, gender, and gender identity.**
* **Several other specific queries were raised in relation to the language used in the guidance,** as follows:

1. Point 3 on page 6 - the document is highly focused on the protection of women’s spaces however this needs to be balanced. Some stakeholders in Wales have been very vocal about the need to balance men’s and women’s rights.

2. Point 5 on page 7 - if the parentheses around ‘or vice versa’ are removed this should create a more balanced feel.

3. Regarding the example on pp.7-8, would it be helpful to clarify whether this is looking at individuals rather than a blanket situation? For example, what would the implications be if the same decision was made repeatedly and appeared to be inflexible?

4. Point 2 on page 8 – the example makes reference to gender recognition certificates (without capitalisation) which might be incongruent with the text on page 10 about not needing ‘Gender Recognition Certificates’.

* To end, Jackie Killeen thanked the Committee for their comments. The Chair provided a recap of the key points raised and thanked all for their time and input.
* A member of the Wales Committee that was unable to attend the meeting provided comments via correspondence, a copy of which has been included in full in Appendix A below. To summarise this feedback, it was noted that the paper assumes a baseline level of knowledge about the terminology and issues discussed in the guidance - something that not all organisations possess. The guidance would therefore be strengthened by recommendations for staff training and signposting to the EHRC for further advice.

# **Appendix A: Comments from Wales Committee member received via correspondence**

* I note the update on the progress so far and feel it is positive to see how this process has also led to further opportunities to review, update and amend the Code of Practice on Services.
* It is positive to see feedback has been sought from stakeholders and that it has been positive with regards to accessibility in particular. My feedback is predominantly focused on accessibility and I have considered this guidance from the perspective of a small charity, business or organisation who may have never come into contact with a lot of this terminology or even previously considered or come into contact with the trans community.
* With regards to the explanation of protected characteristics (page 5, annex A), I think this is a good explanation and like how it has linked the ERHC website to offer a broader understanding of protected characteristics.
* Pages 6-9 of the guidance give a number of examples to help strengthen understanding which I think is great to aid accessibility – case studies may also be useful here and can help further aid accessibility when the example may be a little more complicated or nuanced.
* It is helpful to see sections highlighted as ‘questions to answer’ and ‘practical steps to take’ – pages 9-10 of the guidance.

My suggestions are as follows:

1. As part of the ‘practical steps’ – would  it be useful here to recommend further staff training on certain areas relating to equality and human rights, and provide a signpost back to the EHRC site for guidance? The document seems to assume a baseline understanding of the issues - perhaps more signposting around trans issues may be helpful here.

2. Where referring to specific schedules and legislation, could this be made more subtle? It may feel intimidating for some reading the guidance who have never come across this before and could be off-putting or make people feel out of their depth.

3. Where it says ‘who is this guide for?’ – could it be more explicit in saying it doesn’t matter if you are a charity, or from the private or public sector, this guidance is relevant to you and you must meet the requirements. There is quite a lot of legislation that is only in place for the public sector, or for organisations who employ more than a certain number of staff – this is not an example of that kind of legislation.

4. Regarding ‘proportionality,’ this is an area that needs more consideration in this guidance. My interpretation of what is proportionate may be vastly different to that of those producing the guidance. What does it mean? How do ensure my actions/decisions have been proportionate? Is there any guidance or advice to help me better take proportionate action etc.?