

Rt Hon Caroline Nokes MP
Chair, Women and Equalities
Committee

From: Baroness Kishwer
Falkner, Chairwoman

Our ref:841Nokes

Friday 28 January 2022

Dear Caroline,

I am writing to update you on our progress in producing guidance for service providers of single sex services, and to respond to related recommendations made by your Committee in its Reform of the Gender Recognition Act (GRA) inquiry report, published on 21 December 2021.

Single sex services guidance

We are committed to providing clarity on the law so that service providers and users understand their rights and responsibilities. In developing our guidance we have identified areas where our statutory Code of Practice on Services, Public Functions and Associations, on which our guidance is based, could be clearer.

We have decided to take this opportunity to review the Code and make revisions to improve its legal clarity. This means a short delay to the production of our guidance whilst we work on the relevant sections in the Code. We now plan to publish our guidance, along with proposed revisions to these aspects of the Code, in February. This will ensure service providers and users have guidance available on which they can rely, whilst we begin the formal process of revising the Code.

As you will be aware, revising the Code involves the Commission consulting relevant stakeholders on our proposed changes and Ministers laying the revisions before Parliament. We remain committed to bringing clarity on this as quickly as possible, and will seek input from your Committee when doing so.

Reform of the Gender Recognition Act (GRA) report

You ask at paragraph 75 of your report that we cooperate with your Committee. I reiterate without hesitation our wish to engage constructively with your Committee in its work. We recognise and value the important scrutiny role that your Committee performs.

We wrote in our letters to your Committee of 27 November 2020 and 13 January 2021 that, given the UK Government's decision in September 2020 to not pursue legislative reform of the GRA, we would focus on other priorities such as our enforcement work to tackle discrimination. We did provide oral evidence to your Committee on 16 June 2021. You will know, however, that we have written to the Scottish Government to set out our views on its forthcoming proposals to reform the process for changing legal sex. We are clear in our new Strategic Plan for 2022-25 that clarifying the law and fostering good relations between groups provides opportunities for us to engage on these issues, and look forward to discussing them with you over the coming period.

At paragraphs 158 and 170 of your Committee's report, you urge us and the UK Government to publish guidance on this area of the law. As explained above, we will do so. Our guidance will be sufficiently broad to

be useful for a range of service providers, but we intend to consider how best to produce more sector-specific guidance, including with worked examples, later in the year. This may include guidance for domestic abuse and sexual violence services.

Your Committee also recommended that we work with the UK Government and the Sports Council Equality Group (SCEG) to publish guidance on the sporting exceptions in the Equality Act. We provided comments to Sport England ahead of the September 2021 publication of the SCEG Guidance for Transgender Inclusion in Domestic Sport. It is our view further feedback on this guidance should be gathered by relevant sporting bodies and competitors before the need for further material is considered.

Your Committee's report refers at paragraph 226 to previous commitments made by the UK Government to gather evidence to advance equality for non-binary and intersex people, recommending that we "undertake research ... so that proposals to allow for legal recognition of non-binary people can be brought forward". We continue to believe, as we have stated since 2018, that detailed research is necessary to better understand the nature of the equality and human rights issues faced by non-binary people. But building a robust evidence base in this area would be a significant undertaking, which we cannot currently commit to alone, particularly in an uncertain funding climate.

We will nonetheless continue to support others' work to better understand this important set of issues, and to use our litigation and enforcement powers to protect trans people's rights and clarify areas of uncertainty

where necessary.

We would be happy to discuss these issues with you further should that be helpful.

Yours sincerely,



Baroness Kishwer Falkner

Chairwoman, Equality and Human Rights Commission