Twitter Thread by Sex Matters

Sex Matters
@SexMattersOrg

Any organisation considering whether they should stay in the @stonewalluk schemes should consider that they are not in line with the @EHRC employers code of practice.

Why take the risk of signing up to a scheme that is different from the law?

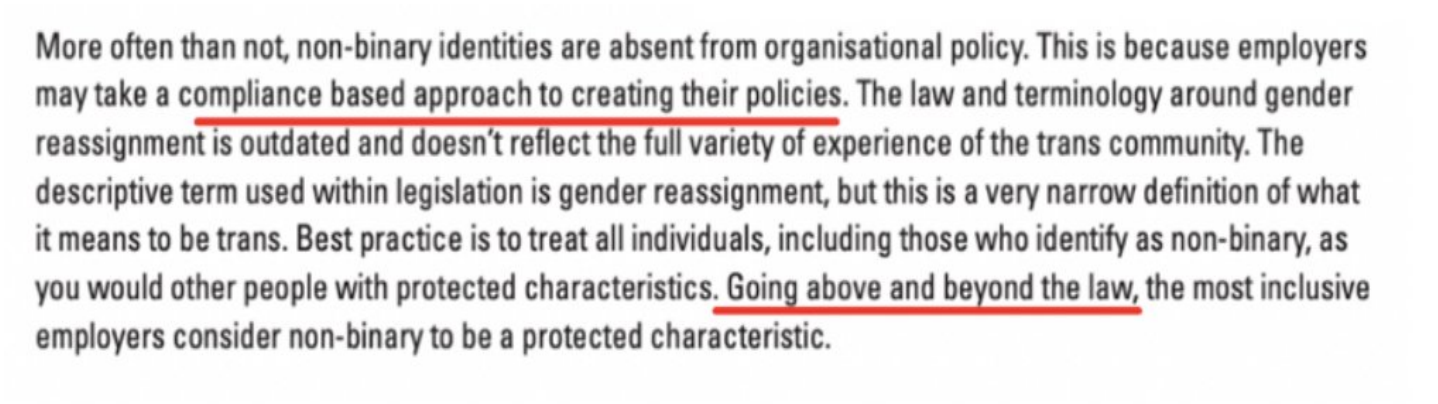
Stonewall tells employers to "acknowledge the limitations of the Equality Act (2010)"



It advises against using language based on compliance with the law saying this is "outdated" and may "cause offence"



Ignore what the law says about protected characteristics says Stonewall guidance



"Gender Identity" and "Gender Expression" are treated as protected characteristics.

They are not.

[Stonewall Workplace Equality Index Survey 2021]

- *The policy (or policies) should clearly state that the organisation will not tolerate discrimination, bullying or harassment against employees on the grounds of sexual orientation or gender identity and/or trans identity.*
- *These may be listed along with other protected characteristics.*

A. Explicit ban on discrimination, bullying and harassment based on sexual orientation (bronze award requirement)
B. Explicit ban on discrimination, bullying and harassment based on gender identity and gender expression (bronze award requirement)
C. An example of biphobic bullying or harassment
D. An example of homophobic bullying or harassment
E. An example of transphobic bullying or harassment
F. Clear information about how to report an incident and how complaints are handled
G. None of the above

"Best practice" monitoring is not in line with GDPR or Equality Act

Ignores sex, substitute gender identity

BEST PRACTICE MONITORING QUESTIONS

Use the following questions when asking employees and job applicants about their gender identity and sexual orientation.

Asking about gender identity:

1. WHAT BEST DESCRIBES YOUR GENDER?

a. Female
b. Male
c. I use another term (for example, non-binary): _____
d. Prefer not to say

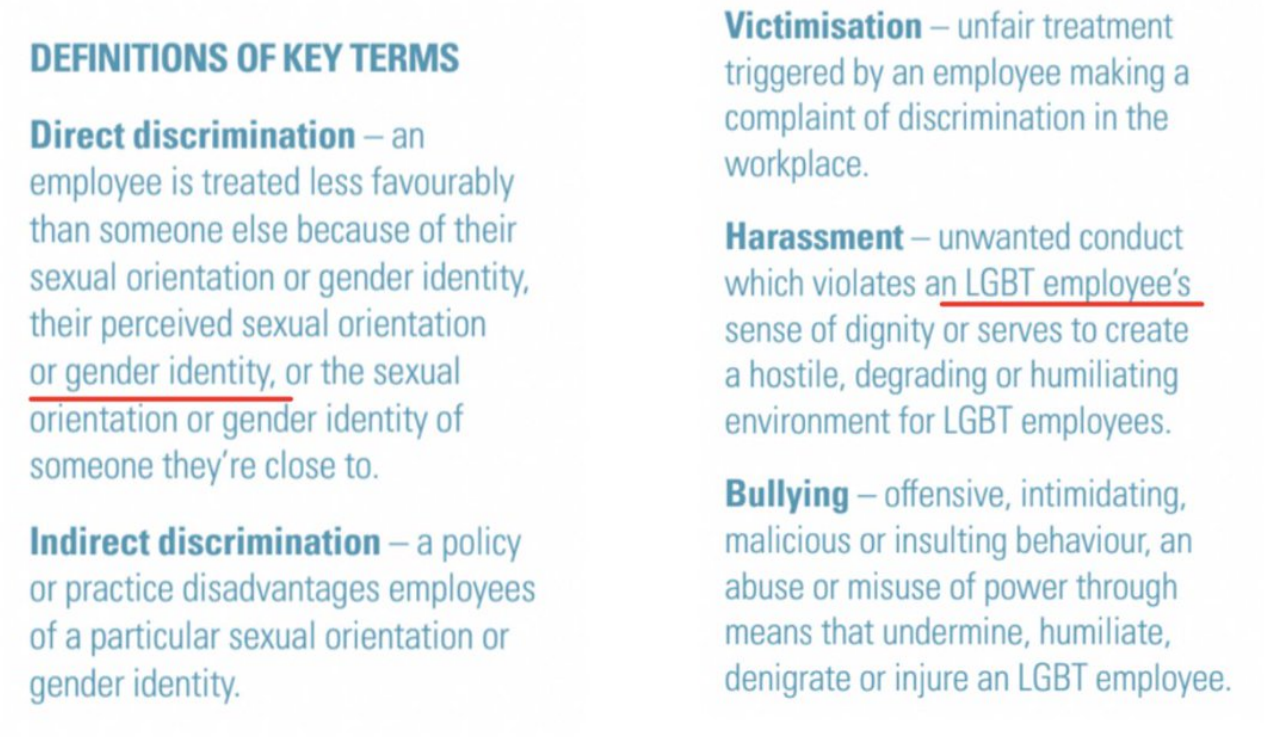
2. DO YOU CONSIDER YOURSELF TO BE TRANS?

a. Yes
b. No
c. Prefer not to say

Here you should consider including a short definition of trans: *'Trans is an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth.'*

Giving employees the space to define their own identity for all questions is important – including an open text box will allow you to collect the most accurate information. This option will capture the experiences of employees who don't identify as female or male. These employees may use a range of terms including, but not limited to, non-binary. To ensure you're considering the experiences of all employees who identify outside of binary genders, you should report on the experiences of all employees who select this option. This analysis can be reported as 'responses of employees using another term' or it can be explained that, for example, 'respondents used a variety of terms, we will refer in our reporting to 'non-binary respondents' as an umbrella term for these respondents' .

And more confusion and conflation of protected characteristics...



DEFINITIONS OF KEY TERMS

Direct discrimination – an employee is treated less favourably than someone else because of their sexual orientation or gender identity, their perceived sexual orientation or gender identity, or the sexual orientation or gender identity of someone they're close to.

Indirect discrimination – a policy or practice disadvantages employees of a particular sexual orientation or gender identity.

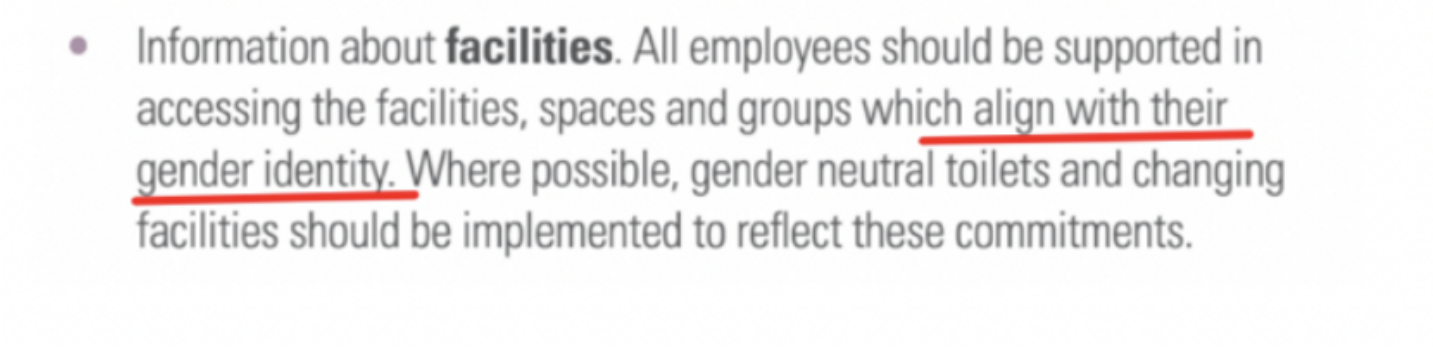
Victimisation – unfair treatment triggered by an employee making a complaint of discrimination in the workplace.

Harassment – unwanted conduct which violates an LGBT employee's sense of dignity or serves to create a hostile, degrading or humiliating environment for LGBT employees.

Bullying – offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure an LGBT employee.

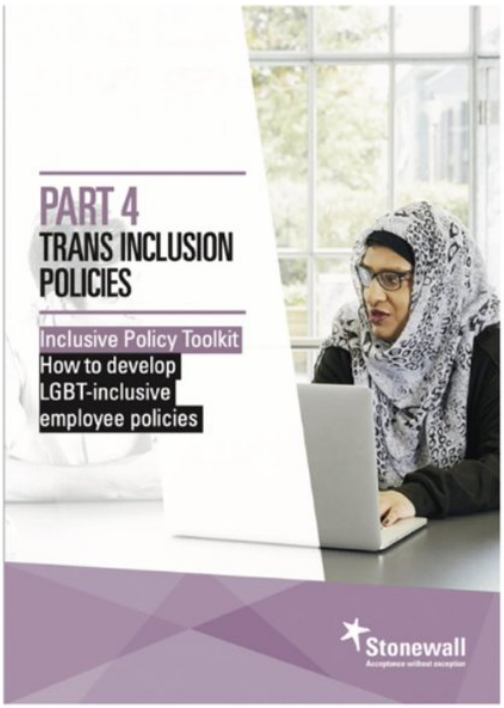
The EHRC said specifically in AEA v EHRC that this is not right.

It can be a proportionate means to a legitimate aim to have facilities which are *single sex* and which do not include people on the basis of gender identity.



- Information about **facilities**. All employees should be supported in accessing the facilities, spaces and groups which align with their gender identity. Where possible, gender neutral toilets and changing facilities should be implemented to reflect these commitments.

No consideration of what this policy means for inclusion of women and girls, including those from faith groups.



- Information about **facilities**. All employees should be supported in accessing the facilities, spaces and groups which align with their gender identity. Where possible, gender neutral toilets and changing facilities should be implemented to reflect these commitments.

"The University is committed to supporting the right for trans individuals to use the correct facilities for their gender identity, including changing rooms and toilet facilities. A trans employee should not be required to use disabled toilet facilities, nor facilities of their former assigned gender. Where female-only spaces exist within the University, they should be open to all whom self-define as women, including trans women."

University of Wolverhampton, Trans and Gender Reassignment Policy

"High barrier of proof"... this does not come from the Equality Act.

The Equality Act says circumstances where "a person of one sex might reasonably object to the presence of a person of the opposite sex".

FACILITIES

Trans people are frequently denied access to spaces, facilities, events and groups that are gender specific. This can particularly affect trans women accessing 'women-only' spaces. Reasons given for this exclusion include a belief that trans women 'aren't real women', and a concern that other members of a group would feel uncomfortable with the presence of someone that they perceive to be a man.

There is a legal exemption in the Equality Act 2010, which means that public bodies which provide single-sex services can in some circumstances legally exclude trans people. In order to do this they need to prove that this is a 'proportionate means to achieve a legitimate end'. They also need to prove that there is no other way they could have made sure that everyone could access the service. This is a high barrier of proof, and there is very little case law which shows where an organisation could legitimately use this provision.

Organisations should take care to comply with the Equality Act... all 9 protected characteristics.

Stonewall guidance does not help them do this and puts them at risk of facing discrimination and harassment claims in relation to other protected characteristics

sexmatters
in life | in law



Age



Sex



Race



Disability



Pregnancy



Religion or belief



Sexual orientation



Marriage & civil partnership



gender reassignment