Twitter Thread by sexnotgender.info

sexnotgender.info
@Sexnotgender_

Hi @SouthOxon @WhiteHorseDC @Alexa_Kantor @EHRC @EHRCChair @KishwerFalkner @RJHilsenrath @trussliz @GEOgovuk

The Equal Opportunities Monitoring section in your job applications has 'gender' in what appears to be a list of protected characteristics under Equality Act 2010.

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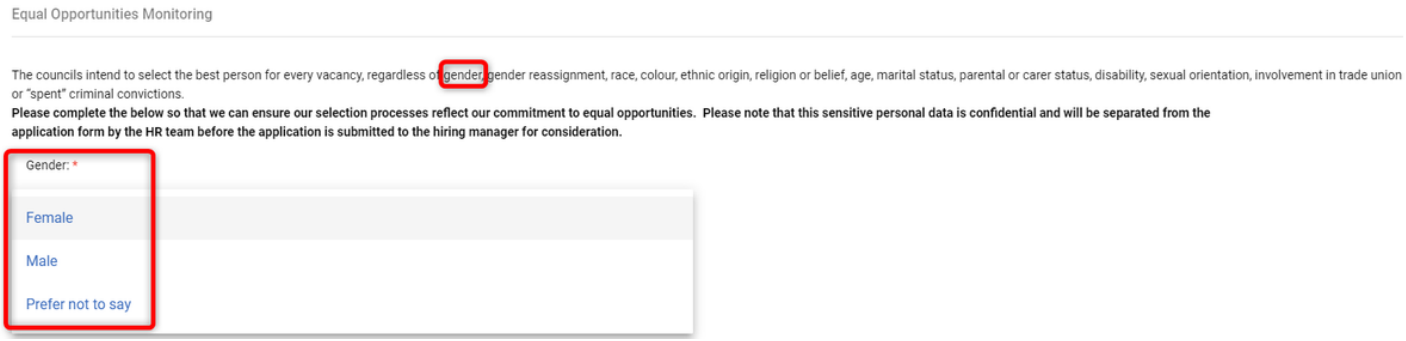

'Gender' is not a protected characteristic under the Equality Act 2010 and is not defined in the Act.

https://t.co/qisFhCiV1u

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PART 2

EQUALITY: KEY CONCEPTS

CHAPTER 1

PROTECTED CHARACTERISTICS

4 The protected characteristics

The following characteristics are protected characteristics—

age;

disability;

gender reassignment;

marriage and civil partnership;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

Sex is the protected characteristic under the Act, but that is not on your list.

'Gender' is not a synonym for sex.

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You then ask for the 'gender' of the applicant with options:

Female
Male.

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Again, 'gender' is not a protected characteristic under the Equality Act 2010 and is not defined in the Act.

https://t.co/qisFhCiV1u

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The following characteristics are protected characteristics—

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marriage and civil partnership;

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race;

religion or belief;

sex;

sexual orientation.

Sex is the protected characteristic and the only two possible options for sex are 'Female' and 'Male' as defined in the Act and consistent with biology.

https://t.co/CEJ0gkr6nF

'Gender' is not a synonym for sex.

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11 Sex

In relation to the protected characteristic of sex—

(a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

Asking about a personal characteristic such as 'gender' that is not a protected characteristic under the Act, may be in breach of the GDPR by processing personal - and potentially Special Category - data without a lawful basis.

7/13

If you choose not to gather data on specific protected characteristics (such as sex), you cannot have the information required to ascertain whether or not you could be discriminating on protected characteristics in recruitment. This could be vital in an employment tribunal.

8/13

If you choose to discriminate on characteristics (such as 'gender') that are not protected characteristics under the Act, you may inadvertently indirectly discriminate on protected grounds.

9/13

Given these errors and your use of incorrect terms, it's not clear how you can meet your Public Sector Equality Duty or how you have met it in the past given your data could have been corrupted by those who didn't provide their sex.

10/13

Nor is it clear how you can have had due regard to the other duties given the data you have collected.

11/13

Language and meaning of words are important and proper use & understanding of terms is vital so that the public is aware of what rights they have and what your duties are. Any confusion or inconsistency over meaning may prevent people from accessing their rights in law.

12/13

Will you undertake to correct these errors and to review all your other policies, documents, reports, etc to ensure compliance?

Please respond.

https://t.co/RJAWJ1vJ6s

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