

2 May 2025

## OVERVIEW AND SCRUTINY COMMITTEE

A meeting of the **Overview and Scrutiny Committee** will be held on **Tuesday, 13th May, 2025 at 10.00 am** in the **Council Chamber, Forde House Offices, Newton Abbot, TQ12 4XX**

PHIL SHEARS  
Managing Director

### Membership:

Councillors Bullivant, Cox, Hayes, Major, C Parker, Radford, Rollason, Sanders (Chair), Smith, Steemson, Swain, J Taylor and Thorne

**Please Note:** The public can view the live streaming of the meeting at [Teignbridge District Council Webcasting](#) (public-i.tv) with the exception where there are confidential or exempt items, which may need to be considered in the absence of the press and public.

**Please Note:** Filming is permitted during Committee meeting with the exception where there are confidential or exempt items, which may need to be considered in the absence of the press and public. This meeting will be livestreamed on Public-i. By entering the meeting's venue you are consenting to being filmed.

## A G E N D A

1. **Apologies**

2. **Minutes** (Pages 3 - 8)

To approve the Minutes of the meeting held on 4 February 2025

3. **Declaration of Interests**

4. **Public questions (if any)**

Members of the public may ask questions of the Chair. A maximum period of 15 minutes will be allowed with a maximum period of three minutes per questioner. The deadline for questions is no later than three working days before the date of the meeting i.e. should the meeting be on a Thursday the deadline would be the Friday before at 5pm.

5. **Review of Equality and Diversity Policy** (Pages 9 - 38)

Background papers attached  
Report to follow

6. **Executive Forward Plan**

To note forthcoming issues anticipated to be considered by the Executive over the next 12 months. The Executive Forward Plan can be found [here](#).

7. **Overview and Scrutiny Forward Plan**

To review the Committee's forward plan which can be found [here](#)

8. **Scrutiny of Executive Decisions**

The Executive Minutes can be found  
<https://democracy.teignbridge.gov.uk/ieListMeetings.aspx?CId=135&Year=0>

9. **Executive Member Biannual Updates**

To receive biannual updates from Executive Members for

- Finance & Corporate, Cllr Parrott
- Economy, Estates and Major projects, Cllr Palethorpe
- Environmental Services, Cllr Williams
- Neighbourhood Services, Cllr Goodman-Bradbury

10. **Outside Organisations Representatives Updates**

To receive updates from representatives on:

- Teign Estuary and Coastal Partnership, Cllr Hook
- Teignmouth Town Centre Partnership, Cllr Williams
- Devon Authorities Strategic Waste Committee, Cllr Williams
- Devon Building Control Partnership, Cllr G Taylor
- Stover Canal Trust, Cllr Buscombe

11. **OS Annual Review Report**

Chair to report

12. **Feedback from Task & Finish Groups**

13. **Councillor Questions (if any)**

Members of the Council may ask questions of the Chair of the Committee subject to procedural rules. The deadline for questions is no later than three clear working days before the meeting.

If you would like this information in another format, please telephone 01626 361101 or e-mail [info@teignbridge.gov.uk](mailto:info@teignbridge.gov.uk)

## **OVERVIEW AND SCRUTINY COMMITTEE - MINUTES**

### **TUESDAY, 4 FEBRUARY 2025**

#### **Present:**

Councillors Bullivant, Cox, Dawson, Foden, Hall, Hayes, James, Major, Nuttall, Radford (Vice-Chair), Rogers, Rollason, Ryan, Sanders (Chair), Smith, Swain and J Taylor

#### **Members in Attendance:**

Councillors Atkins, Hook, MacGregor, Palethorpe, P Parker, Parrott, G Taylor and Williams

#### **Apologies:**

Councillors C Parker, Steemson and Thorne

#### **Officers in Attendance:**

Graham Davey, Housing Enabling and Development Manager

Kay Fice, Scrutiny Officer

Martin Flitcroft, Director of Corporate Services

Christopher Morgan, Trainee Democratic Services Officer

Jon Lloyd Owen, Head of Housing

Helen Williams, Research Officer

Jack Williams, Performance Data Analyst

## **75. APOLOGIES**

Apologies had been received from Cllrs C Parker, Steemson and Thorne

The Chair took the opportunity to welcome the new members to the Group: Cllrs Smith, J Taylor and Swain. Cllr Atkins is no longer on the Group.

Information from the CfGS (Centre for Governance & Scrutiny) is available on the Councillors sharepoint site and the Chair is looking into offering training opportunities, particularly for new members

## **76. MINUTES**

The wording in the first bullet point under the heading A number of questions and comments were raised was discussed and replaced with the following words

- Concerns were raised regarding the budget. The S151 Officer indicated concerns re the budget gaps but stated that plans were in place to address this through the work of Modern 25 and the MTFP Task & Finish Group

It was proposed by Councillor Radford, seconded by Councillor James and

RESOLVED The Minutes of the meeting held on 7 January 2025 be approved and signed as a correct record by the Chair with the above amendment

**77. DECLARATION OF INTERESTS**

None

**78. PUBLIC QUESTIONS (IF ANY)**

The question and answer to the Question raised by a member of the public is attached to the Agenda for the meeting

The supplementary question 'what is a woman?' would receive a response in writing in accordance with our procedures and constitution

**79. COUNCILLOR QUESTIONS (IF ANY)**

The questions raised by Cllr J Taylor are attached to the Agenda of the meeting.

There were no supplementary questions

**80. EXECUTIVE FORWARD PLAN**

There were no questions asked or comments raised by members of the Committee or the Executive members who were present on the Executive Forward Plan

**81. OVERVIEW AND SCRUTINY FORWARD PLAN**

It was noted that the link to the Overview & Scrutiny Forward Plan may not be working correctly and this would be addressed.

The Committee was assured that some areas such as South West Water/Environment Agency and Rural Broadband issues were still on the list to be followed up. It was suggested that Devolution proposals could be scrutinised by O&S.

The Chair took the opportunity to explain that there would normally be items on this Agenda to cover 'Updates from the Councils appointed representatives' and that these would be scheduled for future meetings and be no longer than 10 minutes to allow a time for questions.

All Executive members have been advised that their Bi-annual reports would recommence from the April O&S meeting and also be limited to 10 minutes plus questions. If any items would benefit from more time or a wider audience, they should consider asking for a members briefing to be arranged. It was noted that the members briefings by Portfolio Holders were very helpful.

## 82. Q3 PERFORMANCE REPORT 2024/25

Questions/comments on the report included:

- Page 27 Vital, Viable Council. Jack Williams explained that the report was based on exceptions so if everything was on track it would not be specifically mentioned. More details were requested of the types of complaints e.g. Officers, Councillors or Process
- Delivery of housing: Quarterly inspections used to take place and the view expressed that they should recommence
- Section 7 Moving up a gear. Briefing requested on the ward specific cycle project. It was recognised that CIL and S106 financial reporting would be helpful at Ward level and this would be progressed
- Roof over our heads – updated information would be included in the Members Newsletter if possible. Officers advised that the data was updated annually rather than throughout the year as it is received from Building Control and Contractors. Regarding affordable housing it is estimated that 180 houses will be delivered by Housing Associations (target 128 so the over achievement should be celebrated). Subject to the adoption of the new Local Plan, there is confidence that numbers will improve relating to affordable homes in rural areas and Adaptive homes. Regarding affordable housing officers get information direct from the Housing Associations as they are required to meet targets from Homes England
- Do we refer to the Land Registry quarterly data? Not for completions as that comes through Building Control
- 5% of self-build - do we have numbers available? Some is available online but not sure how up to date that is.
- There is evidence that collaborative work is achieving results e.g. Dartmoor National Park
- Are we confident that we can achieve the targets set by Government? 720 in the Local Plan (if approved) which is achievable
- Regarding 'affordable' are we referring to 'buy' or 'rent'? The greatest need is for one bedroom properties. Affordable rent is a legislative term and is 80% of the market rent. The new Local Plan refers to Social rent which is nearer to 50 or 60% of the market rent. Shared ownership is also an option. The Council are actively encouraging the delivery of 1 and 4 bedroom properties. One bedroom properties are being encouraged with their own front doors which has the added benefit of avoiding shared areas with the associated service charges
- There may be setbacks arising from the recent refusal of 2 significant planning applications. What action will be taken to review the reasons behind the refusals and accountability of issues that should have been resolved before they came to committee? Refer to the Interim Head of Development Management for a written response on the planning process. The impact is difficult to quantify and will be considered in the delivery action plan. The planning Task & Finish Group will consider these issues when it reconvenes

- What are we, as a Council, doing to help with housing? Everything we possibly can, including flats above shops in the Town Centre, although separate entrances are required. If any member knows of any premises that could be suitable, please let officers know so that opportunities can be investigated. The Chair explained that the informal pre-scrutiny meeting in December covered Housing in some detail
- It was noted that there had been some excellent work in bringing empty properties back into use including previously utilising various schemes to give loans/grants to businesses/owners who then leased the properties back to the Council at affordable rent levels
- The high cost and threat of eviction in private rental properties is affecting many residents. This was covered at the December meeting but it was suggested that we need to find ways of communicating to residents that Teignbridge do care about the situation

The meeting adjourned at 11:08 am

### **83. FINAL FINANCIAL PLAN PROPOSALS 2025/26 TO 2027/28**

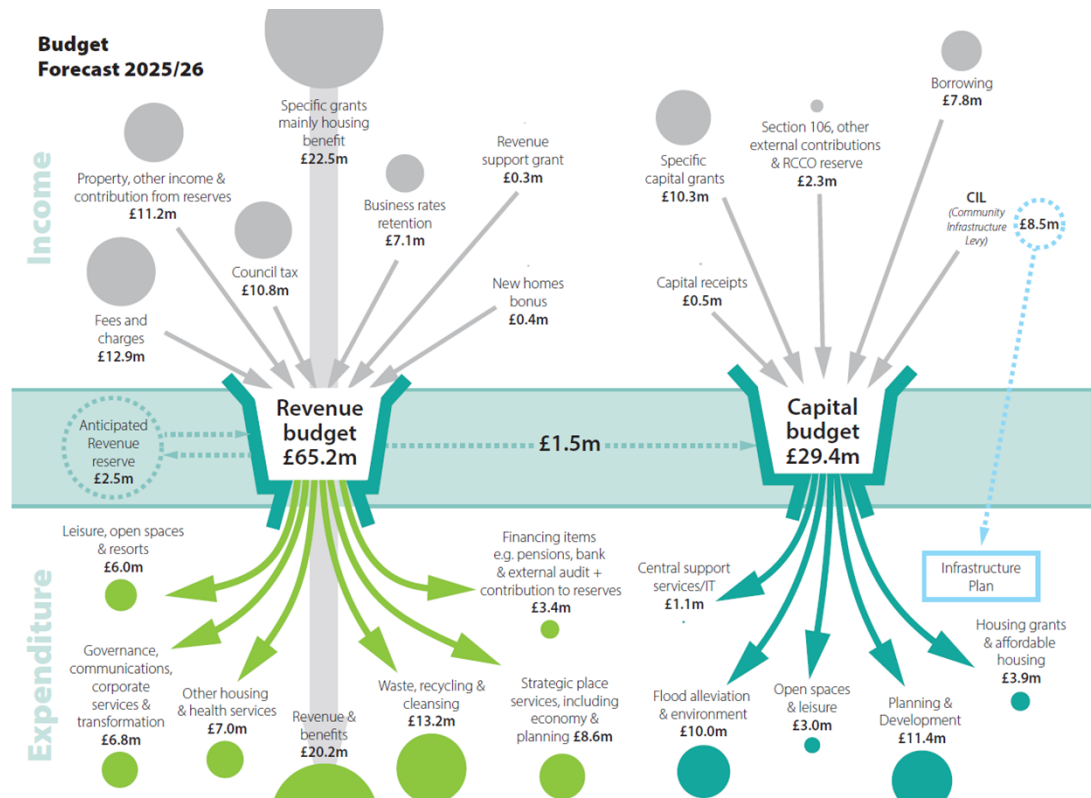
The meeting restarted at 11:25am

Cllr Parrott, Executive member for Finance & Corporate and Martin Flitcroft presented the final financial plan budget proposals for 2025/26 to 2027/28, noting that the closing date for consultation feedback was yesterday and these would be reported to Executive on 11 February and Full Council on 25 February

The main changes since the draft budget was considered include:

- 1) The removal of £1m contribution to the Local Government pension fund following information received from the Pension Fund manager due to the uncertainties of devolution. This will remain in the funding Reserve figure
- 2) The addition of an additional Appendix regarding departmental budgets

Martin Flitcroft explained the budget for 2025/26 in pictorial form split between Revenue and Capital and Income and expenditure.



The floor opened up for questions/comments which included:

- Paragraph 3.9 referred to additional National Insurance costs of 2% which were only partly funded by the Government. The estimated costs are £538,000 with partial funding of £140,000 leaving a net sum of approximately £400,000 as a problem for the Council which will be funded from Reserves
- Attention was drawn to line 14 of Appendix 4 (use of Reserves) and reference made to the work of the MTFP working Group who must focus on key areas including Fees & Charges and carry out a comprehensive review of the Capital Programme and dovetail with the work of Modern 25
- There was a proposal that any spending on projects that affects post devolution spending should cease but this was not supported and the majority of views expressed felt that the Council should continue with projects to support residents of the District
- Prudential borrowing limits the amount we can borrow but we are currently only borrowing internally. Should borrowing be required Councils borrow from the PWLB (Public Works Loans Board), not at commercial rates. Prudential indicators that are currently being developed will form part of the final budget report
- Towns and Parishes Precepts will be part of the final budget papers (Appendix 15)
- Appendix 6 Increase in Fees & charges will have reflected changes recommended by the MTFP Task & Finish Group where possible and is a mixture of fee increases and increased usage

- A question was raised about the Council's position on holding vacancies and it was confirmed that the full establishment is included in the budget and a separate target for vacancy management. Service managers would review any vacancies in line with service requirements and should any slippage occur this would be reflected during budget monitoring against the credit target (time required to recruit etc)
- Any proceeds of sale arising from the Assets Review would more than likely be capital income and not revenue
- The impact of Devolution will have to be considered in due course

It was RESOLVED to approve the budget as set out in the Agenda

#### **84. FEEDBACK ON TASK AND FINISH GROUPS**

The Task & Finish Groups are on hold at the moment so the chairs of the groups for Planning, Leisure and MTFP are working on their agendas in readiness

CLLR SUZANNE SANDERS  
Chair



**ON THE INSTRUCTION OF**

**TEIGNBRIDGE DISTRICT COUNCIL, LEGAL SERVICES**

**RE: SINGLE SEX SPACES**

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**OPINION**

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1. I am grateful to those instructing me for the kind brief to advise in this most interesting of matters.
2. Where appropriate I have translated statutory provisions and associated explanatory notes directly in to the main body of this opinion. The intention is that it is easier to navigate than reams of appendices.

**Background and Instructions**

3. I am instructed to advise ostensibly in respect of a provision criteria or practice (PCP) which is not of narrow application but has arisen specifically in the context of single sex spaces at the Broadmeadow Leisure/Sports Centre in Teignmouth.
4. This is a divisive issue and inevitably engages a range of competing agenda, not to mention competing rights and obligations – these are explored in detail below but by way of background discussed at abstract level here.
5. As a minimum, it is arguable that there is tension between the protections for the protected characteristic of sex, and the protected characteristic of gender reassignment. A birth woman is entitled to protection from discrimination by virtue of her sex. A transgender woman, who was male at birth, is entitled to protection from discrimination attributable to her acquired sex and her gender re-assignment. In practical terms, where a woman complains that she feels unsafe for example in sharing a changing room with a transgender woman (a birth man), but that transgender woman feels unsafe if required

to share a changing room with other men then there is an immediately apparent tension. It is also arguable that gender dysphoria is capable of amounting to a disability and is therefore also potentially a protected characteristic under the Act for this reason.

6. Further, it has been said that gender critical beliefs are philosophical beliefs which are also protected by the Equality Act. Gender critical philosophy may be put as having as its irreducible minimum the proposition that sex is biological, natal and immutable. This must attract the counterpoint that a rejection of gender critical beliefs is also a protected philosophical belief.
7. It is clear that disquiet has developed amongst residents of the TDC demographic and some TDC members (whether for themselves or for the residents) have taken exception to, or challenge, the suggestion that transgender people should be able to use changing and toilet facilities designated for single sex, other than by reference to their sex at birth.
8. There is plainly a practical issue in terms of managing single sex spaces and access to them. How is one to police access? If women in a single sex female only space were considered to be women by reference to their biological sex at birth, how is that checked? If those who acquired the female sex sufficiently as to hold a gender recognition certificate, how can that be checked? At what point is it legitimate for service users to feel uncomfortable? What if a woman does not look sufficiently feminine? Can that legitimate a challenge to that person using the single sex space? Where is the line? If a positive recruitment policy is in place to improve workplace diversity, such that under represented groups for example black and ethnic minority groups are particularly encouraged to apply<sup>1</sup>, how is that policed? It is difficult to imagine that we might ask if people are black enough to be considered black. It is difficult to imagine that someone who identifies as being of some particular origin or creed would be required to provide some proof that their bloodline is sufficiently intact or specific so as to warrant recognition as they identify. In a world where the most casual empiricism makes it clear that people are from multiple backgrounds and mixed and varied heritage, we do not consider the input of some new heritage into the gene pool to operate so as to dilute ethnic origin and nor do we arbitrarily determine at what

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<sup>1</sup> For example, in pursuit of s.159 Equality Act 2010

point there is such dilution as to render the connection, or identification tenuous at best. Generally, it is surely right that where someone identifies their ethnic origin in one way or another, they are taken to be right.

9. There are cultural factors that might inform the ethnicity with which someone might align. Can it not be said that gender is in part socially constructed?<sup>2</sup>
10. The debate in respect of Broadmeadow has developed over time and has escalated recently.
11. At a full council meeting on 30 July 2024 there were various questions from members of the public (with varying degrees of traction from other members) which focussed on the provision and management of single sex spaces, such as toilets and changing facilities. Those questions deteriorated and many became speeches rather than questions. A good deal of them employed pejorative language, suggesting that transgenderism is a sexual fetish or a cult.
12. This language is problematic for a series of reasons:-
  - (i) It might be hate speech and is at least inflammatory and unhelpful to rational and balanced debate;
  - (ii) It is not supported by evidence;
  - (iii) Those expressing such views are entitled to hold them and to express them, and it is an immediate tension of other rights and liberties to seek to stifle the expression of them.
13. Fortunately, the third point is met in such meetings in that members of the public have an opportunity to ask questions in a carefully constrained and managed forum. It is not a public meeting for a public debate where any and all views can be expressed – the opportunity is to ask questions, not to pursue any particular view.

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<sup>2</sup> In some respects, this question lies at the heart of the debate. The distinction between sex and gender and the treatment of this distinction in law. The very question, what is a woman (for the purposes of the legislative regime, plainly), lies before the Supreme Court at the moment.

14. If it were right that a transgender woman might experience sexual attraction to women who were women from birth, and that is to inform whether or not there should be access to single sex spaces, what are we to do with homosexual people? Should male single sex changing spaces be available only to heterosexual males, so that none could be worried about the prospect of a gay male experiencing same sex desire in the single sex space? It is easy to dismiss such a suggestion as an absurdity, but it is exactly the sort of complaint and rhetoric that was explored when the decriminalisation of homosexuality was explored, when the promotion of it in schools was considered, when other protections were developed to tackle discrimination against homosexual people and communities. How would it in any event be policed? Surely a gay male could simply hold out to identify as a straight male, use the facilities and be responsible for all the matters that trouble the gender critical debate.
15. Is the point not that any person of any gender who uses any space, single sex or otherwise, for the pursuit of sexual gratification, poses a risk of harm? Any such behaviour cannot be condoned, or tolerated, and is very likely to be criminal.
16. What do we learn about provision of facilities such as accessible toilets or changing or so called “disabled” facilities? What is the justification for that being gender neutral? Are disabled people not entitled to gender identification (whether by reference to birth sex or acquired sex)? Can it not be said that the degendering of disabled people is in fact a species of harassment contrary to the Equality Act 2010 by itself? Should those who do not need to use accessible facilities be prevented from using them?
17. To what extent does it matter to distinguish between male, female, trans-male and trans-female and non-binary or gender fluid identifying people?
18. Against this background, it is also unquestionably the case that women, or women who were biologically female at birth, are absolutely entitled to use public facilities without fear of harassment or discrimination. It is simply not realistic to say that once an individual has acquired a different sex, then for all purposes their birth sex is irrelevant. For example, in *R(App. McConnell) v Registrar general for England and Wales [2020] EWCA Civ 559* Mr McConnell, a trans-male, who held a gender recognition certificate, underwent artificial insemination and gave birth to a child.

19. For completeness, and whilst not strictly relevant to this advice, it is worth observing that it is not merely the use of single sex spaces that present a legitimate legal professional and public debate. For example, the well-known question of whether a transgender athlete should compete in sports by reference to their birth sex or acquired sex.<sup>3</sup>

## **The Law**

20. I caveat this at once with the warning that *For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)* UKSC 2024/0042 has been heard in the Supreme Court and that judgment is presently reserved. It is entirely likely that there will be changes to this opinion and those instructing me will of course be alive to the evolution of the jurisprudence in this area.
21. In fact, the law in terms of gender recognition has been developing in recent decades. Gender reassignment at the time of *P v S and Cornwall County Council* [1996] IRLR 347 was not recognised in domestic UK law as a freestanding protected characteristic – an issue pursued in the ECJ resulting in an amendment to s.2A Sex Discrimination Act 1975, which defined gender reassignment as a process which is undertaken under medical supervision for the purposes of reassigning a person’s sex by changing physiological or other characteristics of sex, and includes any part of such a process.
22. Later, in *Bellinger v Bellinger* [2003] UKHL 21, the House of Lords concluded there were four typical steps or stages in, or of, gender reassignment, (i) psychiatric assessment, (ii) hormonal treatment, (iii) a period of living as a member of the opposite sex under professional supervision and (iv) surgery.
23. A good deal of the jurisprudence exists in the employment law field. In *Croft v Royal Mail Group plc (fly Consignia)* [2003] IRLR 59 an employee notified her employer that she wished to start living as a female. Discussion ensued about the use of female toilet facilities, initially offering her the disabled toilet and subsequently there being

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<sup>3</sup> It is notable that this point is answered in part by reference to s.195 GRA 2004 which provides that it is not discriminatory, or more properly it is not a contravention of the Equality Act 2010 to do anything that is intended to ensure fair competition or safety of competitors in a gender affected activity.

discussion about whether a specifically lockable and separate cubicle could be provided.

24. I pause here to note that *Croft* was in part informed by, and which continues to be good and applicable law, regulation 20 of the Workplace (Health, Safety and Welfare) Regulations 1992 which provides that at paragraph (c) *separate rooms containing conveniences are provided for men and women except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside.* (emphasis added).

25. This regulation would seem to illuminate the discussion in part.

26. The current statutory regime may be found in the Gender Recognition Act 2004 and the Equality Act 2010.

27. Section 9(1) GRA provides that “*Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).*”

28. A GRC can be issued on an application by a person pursuant to s.1 GRA which provides

*(1)A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of—*

*(a)living in the other gender; or*

*(b)having changed gender under the law of a country or territory outside the United Kingdom.*

29. The GRC connotes the acquired gender.

30. The GRC will be granted (if it is granted) pursuant to section 2 which says in terms

*(1)In the case of an application under section 1(1)(a), the Panel must grant the application if satisfied that the applicant—*

*(a)has or has had gender dysphoria,*

*(b)has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,*

*(c)intends to continue to live in the acquired gender until death, and*

*(d)complies with the requirements imposed by and under section 3.*

31. There is also provision for a GRC to be granted in other circumstances pursuant to s.3A et seq (for example with regard to a protected marriage) but this need not detain us here.

32. Evidence must be provided in support of such an application, which is set out in s.3. The requirements are detailed but essentially there must be (i) two reports, one of which must be by a registered medical practitioner in the field of gender dysphoria and the other which must also be a medical practitioner or registered psychologist but need not be in the field; and (ii) a statutory declaration dealing with matters such as how the application meets the criteria in s.2, details of marriage or civil partnership and the like.

33. I take the attention of those instructing me to s.22 GRA 2004 which section should be considered in its entirety for its full force and effect. This creates offences in terms of disclosure of information.

34. The Equality Act 2010 falls next to be considered.

35. I mention for completeness that those instructing me are subject to the Public Sector Equality Duty pursuant to s.149 EA 2010:

*(1)A public authority must, in the exercise of its functions, have due regard to the need to—*

*(a)eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b)advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

*(c)foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

36. The point is perhaps most relevant to the Council's careful and judicious management of the meeting on 30 July. Seeking to ensure that such meetings are not infected with pejorative and inflammatory language and ensuring that appropriate protocol and procedure is followed is an entirely appropriate and proportionate means of achieving that.

37. By s.4 EA 2010, Gender Reassignment and Sex are both protected characteristics.

38. Section 7 provides on terms:

*(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.*

*(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.*

*(3) In relation to the protected characteristic of gender reassignment—*

*(a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;*

*(b) a reference to persons who share a protected characteristic is a reference to transsexual persons.*

39. Further, by section 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.*



40. It is important to note that the definition of Gender Reassignment for the purposes of the EA is significantly wider than simply those persons with a GRC. It is likely that someone with a GRC also has the protected characteristic of sex. A trans person without a GRC will not have the protected characteristic of sex, but will still potentially have the protected characteristic of gender reassignment.

41. Indeed, the explanatory notes to s.7 provide

*A person who was born physically male decides to spend the rest of his life living as a woman. He declares his intention to his manager at work, who makes appropriate arrangements, and she then starts life at work and home as a woman. After discussion with her doctor and a Gender Identity Clinic, she starts hormone treatment and after several years she goes through gender reassignment surgery. She would have the protected characteristic of gender reassignment for the purposes of the Act.*

*A person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully 'passes' as a man without the need for any medical intervention. He would have the protected characteristic of gender reassignment for the purposes of the Act.*

42. It is therefore very plain indeed that there is no requirement for there to have been any surgical or even medical aspects of gender reassignment engaged in order to enjoy protection. A change of attributes of sex<sup>4</sup> can be sufficient to manifest the characteristic.

43. Conduct prohibited pursuant to the EA 2010 may be found in chapter 2 of the act and is concerned with matters such as direct discrimination, indirect discrimination, harassment and victimisation. I consider the key points below.

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<sup>4</sup> Perhaps an unfortunate term, given it is the more socially constructed concept of gender that lends itself to outward or even stylistic changes, such as clothing, hair styling, one's name.

44. S.13 EA 2010 provides:

**13 Direct discrimination**

*(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*

45. S.19 EA 2010 provides:

**19 Indirect discrimination**

*(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

*(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

*(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim*

46. Since January 2024, S.19A provides:-

**19A Indirect discrimination: same disadvantage**

*(1) A person (A) discriminates against another (B) if—*

*(a) A applies to B a provision, criterion or practice,*

*(b) A also applies, or would apply, the provision, criterion or practice to—*

*(i) persons who share a relevant protected characteristic, and*

*(ii) persons who do not share that relevant protected characteristic,*

*(c) B does not share that relevant protected characteristic,*

*(d) the provision, criterion or practice puts, or would put, persons with the relevant protected characteristic at a particular disadvantage when compared with persons who do not share the relevant protected characteristic,*

- (e) the provision, criterion or practice puts, or would put, B at substantively the same disadvantage as persons who do share the relevant protected characteristic, and*
- (f) A cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.*

47. Harrassment is dealt with in s.26 on terms:-

## **26 Harassment**

*(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B's dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(2) A also harasses B if—*

*(a) A engages in unwanted conduct of a sexual nature, and*

*(b) the conduct has the purpose or effect referred to in subsection (1)(b).*

*(3) A also harasses B if—*

*(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,*

*(b) the conduct has the purpose or effect referred to in subsection (1)(b), and*

*(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.*

*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

*(a) the perception of B;*

*(b) the other circumstances of the case;*

*(c) whether it is reasonable for the conduct to have that effect.*

48. Section 27 then addresses victimisation:-

### **27 Victimisation**

*(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act—*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

*(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

*(4) This section applies only where the person subjected to a detriment is an individual.*

*(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

49. There are various examples (many of which are speculative – it is necessarily fact and case specific) within the literature of acts which might contravene these legislative provisions.

50. Refusing a trans applicant a job role because they intend to dress differently to the gender assigned at birth. Failure to alter photographs on an employee ID badge after a

person has undergone gender reassignment. Requiring a trans person to use disabled toilets.

51. It is worth pausing to remember the working definition of a trans person, by reference to s.7 and the associated explanatory notes.
52. The question this immediately admits then, is the position as to gender fluid or non-binary identification. On one analysis, the wording in s.7 is focused on a proposal to move away from birth gender (or, in fact, from an acquired gender). It requires a change in an attribute, or an intention to undergo a change, it does not require a complete change, it does not require an adoption of a new gender.
53. Indeed, this view can be distilled from the decision in *Taylor v Jaguar Land Rover Ltd (ET/1304471/2018)*. This case however is not a binding authority, and certainly not as to wider principle. It has been the subject of criticism but the question remains at large.
54. That said, the word “reassigning” connotes, if it does not entail, the move from one thing to another. If that is so, then for the purposes of the act there remains only a binary distinction. Male, or female. The law recognises the possibility of reassignment from one to the other. That is a process and the law recognises as much. Protection therefore is engaged whether the process is intended, is in progress, or is complete.
55. We are left, nevertheless, with some issues of a practical if not theoretical nature. For example, dressing in a way incongruous with ones birth sex might be protected by s.7 if it is for the purposes of reassigning a person’s gender. It is not likely to be protected if it is transvestitism or sexual in nature. It is not likely to be protected either if it is part of gender fluidity.
56. The problem is at once apparent, particularly for those instructing me. In the context of public users of changing spaces, for example, how can it possibly be determined whether or not there is an outward expression of gender reassignment such as to be protected by the act, or a temporary manifestation of gender fluidity.<sup>5</sup>

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<sup>5</sup> Notably in *Taylor v Jaguar Land Rover*, the complainant was essentially exploring life in a new gender. It might be said that represents part of a process, it might not. It was plainly not on a whim but whilst the outcome of reassignment is binary, the personal journey associated with that is surely far from binary.

57. It is worth recording section 29 which provides:-

***29 Provision of services, etc.***

*(1) A person (a “service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.*

*(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—*

*(a) as to the terms on which A provides the service to B;*

*(b) by terminating the provision of the service to B;*

*(c) by subjecting B to any other detriment.*

*(3) A service-provider must not, in relation to the provision of the service, harass—*

*(a) a person requiring the service, or*

*(b) a person to whom the service-provider provides the service.*

*(4) A service-provider must not victimise a person requiring the service by not providing the person with the service.*

*(5) A service-provider (A) must not, in providing the service, victimise a person (B)—*

*(a) as to the terms on which A provides the service to B;*

*(b) by terminating the provision of the service to B;*

*(c) by subjecting B to any other detriment.*

*(6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.*

*(7) A duty to make reasonable adjustments applies to—*

*(a) a service-provider (and see also section 55(7));*

*(b) a person who exercises a public function that is not the provision of a service to the public or a section of the public.*

*(8) In the application of section 26 for the purposes of subsection (3), and subsection*

*(6) as it relates to harassment, neither of the following is a relevant protected characteristic—*

*(a) religion or belief;*

*(b) sexual orientation.*

58. So much for the framework of protections. The tensions and competing rights are set out above. The legislation recognises, at least to some degree, and attempts to provide a route through in the form of Part 7 of Schedule 3 to the EA 2010.

59. The index provisions are paragraphs 26, 27 and 28 and are as follows:-

***Separate services for the sexes***

*26(1) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services for persons of each sex if—*

*(a) a joint service for persons of both sexes would be less effective, and*

*(b) the limited provision is a proportionate means of achieving a legitimate aim.*

*(2) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services differently for persons of each sex if—*

*(a) a joint service for persons of both sexes would be less effective,*

*(b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex, and*

*(c) the limited provision is a proportionate means of achieving a legitimate aim.*

*(3) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.*

***Single-sex services***

*27(1) A person does not contravene section 29, so far as relating to sex discrimination, by providing a service only to persons of one sex if—*

*(a) any of the conditions in sub-paragraphs (2) to (7) is satisfied, and*

*(b) the limited provision is a proportionate means of achieving a legitimate aim.*

*(2) The condition is that only persons of that sex have need of the service.*

*(3) The condition is that—*

*(a) the service is also provided jointly for persons of both sexes, and*

*(b) the service would be insufficiently effective were it only to be provided jointly.*

*(4) The condition is that—*

*(a) a joint service for persons of both sexes would be less effective, and*

*(b) the extent to which the service is required by persons of each sex makes it not reasonably practicable to provide separate services.*

*(5) The condition is that the service is provided at a place which is, or is part of—*

*(a) a hospital, or*

*(b) another establishment for persons requiring special care, supervision or attention.*

*(6) The condition is that—*

*(a) the service is provided for, or is likely to be used by, two or more persons at the same time, and*

*(b) the circumstances are such that a person of one sex might reasonably object to the presence of a person of the opposite sex.*

*(7) The condition is that—*

*(a) there is likely to be physical contact between a person (A) to whom the service is provided and another person (B), and*

*(b) B might reasonably object if A were not of the same sex as B.*

*(8) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.*



### ***Gender reassignment***

*28(1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within subparagraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.*

*(2) The matters are—*

*(a) the provision of separate services for persons of each sex;*

*(b) the provision of separate services differently for persons of each sex;*

*(c) the provision of a service only to persons of one sex.*

60. I also set out the explanatory notes which support the legislation:-

*Part 7: Separate and single services.*

### ***Separate services for the sexes: paragraph 26***

#### ***Effect***

*729. This paragraph contains exceptions to the general prohibition of sex discrimination which allow the provision of separate services for men and women.*

*730. A provider can deliver separate services for men and women where providing a combined service would not be as effective. A provider can deliver separate services for men and women in different ways or to a different extent where providing a combined service would not be as effective and it would not be reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex. In each case such provision has to be justified.*

*731. The exceptions also cover the exercise of public functions in respect of the “back-room” managerial, administrative and finance decisions which allow separate services to be provided.*

### ***Background***

*732. This paragraph replaces similar provisions in the Sex Discrimination Act 1975 that only cover public functions. The exceptions have been extended to cover all services, whether privately or publicly provided.*

### ***Example***

- *It would not be unlawful for a charity to set up separate hostels, one for homeless men and one for homeless women, where the hostels provide the same level of service to men and women because the level of need is the same but a unisex hostel would not be as effective.*

### ***Single-sex services: paragraph 27***

#### ***Effect***

*733. This paragraph contains exceptions to the general prohibition of sex discrimination to allow the provision of single-sex services.*

*734. Single sex services are permitted where:*

- *only people of that sex require it;*
- *there is joint provision for both sexes but that is not sufficient on its own;*
- *if the service were provided for men and women jointly, it would not be as effective and it is not reasonably practicable to provide separate services for each sex;*
- *they are provided in a hospital or other place where users need special attention (or in parts of such an establishment);*
- *they may be used by more than one person and a woman might object to the presence of a man (or vice versa); or*

- *they may involve physical contact between a user and someone else and that other person may reasonably object if the user is of the opposite sex.*

*735. In each case, the separate provision has to be objectively justified.*

*736. These exceptions also cover public functions in respect of the “back-room” managerial, administrative and finance decisions which allow such single-sex services to be provided.*

### ***Background***

*737. This paragraph replaces some similar provisions that only covered public functions and some that applied to services in the Sex Discrimination Act 1975. These exceptions have been extended to cover both services and public functions.*

### ***Examples***

*738. These exceptions would allow:*

- *a cervical cancer screening service to be provided to women only, as only women need the service;*
- *a fathers’ support group to be set up by a private nursery as there is insufficient attendance by men at the parents’ group;*
- *a domestic violence support unit to be set up by a local authority for women only but there is no men-only unit because of insufficient demand;*
- *separate male and female wards to be provided in a hospital;*
- *separate male and female changing rooms to be provided in a department store;*
- *a massage service to be provided to women only by a female massage therapist with her own business operating in her clients’ homes because she would feel uncomfortable massaging men in that environment.*

### ***Gender reassignment: paragraph 28***

#### ***Effect***

*739. This paragraph contains an exception to the general prohibition of gender reassignment discrimination in relation to the provision of separate- and single-sex services. Such treatment by a provider has to be objectively justified.*

### ***Background***

*740. This paragraph replaces a similar provision in the Sex Discrimination Act 1975.*

#### *Example*

- *A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.*

61. This illuminates (or at least partly de-casts the shadows otherwise shrouding) the legislation. We can distil a series of principles.

- 61.1 It is legitimate to provide separate male and female changing facilities;
- 61.2 It is legitimate, potentially, that a service provided for women should be limited in its availability to women only.
- 61.3 The reference is to “sex” which means that those with a GRC are *prima facie* entitled to use a facility designated for the sex they have acquired.
- 61.4 There is an exception in the case of conduct otherwise amounting to gender reassignment discrimination in the context of provision of separate services for separate sexes.
- 61.5 It might therefore be legitimate to provide the service of changing facilities to women only who are women by reference to the sex assigned to them at birth.
- 61.6 This applies whether or not a person has a GRC.
- 61.7 The conduct must be a proportionate means of achieving a legitimate aim.
- 61.8 Such conduct must be capable of being objectively justified.
- 61.9 Even if that is right, the interests of a trans person must be similarly protected and upheld. Whilst it might be that a trans woman could be excluded from a women only changing facility, it cannot be the case that she should be required

to use the men only changing facility, or a disabled changing facility – that in itself might amount to discrimination or harassment.

62. The Equality and Human Rights Commission provides guidance on. Separate and single sex service providers in the context of the Equality Act sex and gender reassignment provisions.
63. Ultimately, following such guidance is not a sure way of ensuring compliance with the law. Such decisions are for courts and tribunals. However, paying heed to the guidance and demonstrating engagement with it (as a minimum) will certainly insulate those instructing me from criticism and potentially from litigation and liability.
64. The EHRC helpfully suggest that a policy for the treatment of trans people should be developed if it would be helpful to develop it, and should make provisions for circumstances where the policy should be started from. With great respect to the regulator, that is a meaningless tautology and hopelessly inadequate in terms of guidance.
65. Nevertheless, there is some analysis proffered by the regulator which is quite helpful.
66. A single sex service, such as single sex changing rooms, might be provided legitimately on the basis that women might reasonably object to the presence of a man in the facility, and vice versa.
67. Proportionality and legitimacy of aim is pervasive and, much as it might appear obvious, those instructing me need to demonstrate consideration of the proportionality of providing separate and single sex spaces.
68. Protection of the privacy, dignity and safety of others is likely to be regarded as a legitimate aim.
69. Impact on all service users must be balanced.
70. The EHRC refers to a gym with separate-sex communal changing rooms and suggests that where there is a concern for the safety and dignity of trans men changing in an

open plan environment, there might be a decision to introduce an additional gender neutral changing room with self contained units.

71. The EHRC also gives an example where a community centre conducts a survey and determines that some service users would not use the centre if facilities were open to members of the opposite biological sex, and so it introduces a policy of inviting all users to either use the toilet for their biological sex or the gender neutral facilities.
72. Availability of resources is relevant. A small facility where all changing rooms are lockable and individual (or where there are perhaps only two cubicles available) might not need to consider exclusion of any individuals because privacy and decency can be protected, irrespective of sex or gender, through the provision of separate cubicles.
73. Decision making must be evidence based, reasoned, and be very clearly a balanced exercise, taking in to account the needs of all affected groups.

## **Discussion**

74. This is an intractable and high profile problem. It is also plainly case specific. The development of a new leisure facility presents different challenges to the management of other parts of TDCs estate and portfolio.
75. Aside from the logistical point that building or constructing a facility is likely to admit more flexibility than considering a policy with respect to an existing facility, any part of the estate which is a work place is subject to the Workplace (Health, Safety and Welfare) Regulations 1992 in addition to the Equality Act 2010.
76. TDC might be regarded as being a well resourced party (compared, for example, to a small independent high street shop) but the resources are not unlimited, there are budgetary constraints and an obligation to manage public financial resources properly and proportionately.
77. In the particular context of Broadmeadow, I have considered the development plans carefully and it is plain that the facilities provided are, male facilities, female facilities, village facilities and accessible facilities.

78. Notably, these facilities are largely constitutive of individual lockable cubicles. The male WC (as so titled on the plan) consists of two closed toilet cubicles, and one single occupancy locked shower and changing room. There are three sinks and a range of lockers in the open area.
79. The Female WC (as so titled on the plan) mirrors this save that there appears to be one additional lockable shower and changing room with baby change facilities.
80. Both facilities are accessed from a main hallway.
81. There is then a village changing facility. There are no facilities in the open space, apart from lockers. There are five combination shower/changing cubicles, which are each self contained. There is then a total of 12 changing cubicles which again are each lockable and self contained.
82. There a family changing room accessed off the village changing facility.
83. My instructions are that an Equality Impact Assessment was undertaken in the design of the Broadmeadow facility. No doubt that EIA was undertaken with vigour and care.
84. A good deal of rhetoric that has attended any controversy about this proposal suggests that these facilities do not protect trans people but also, and perhaps more ardently put, it exposes women and children to the risk of abuse and attack.
85. There are two matters that flow from that. Firstly, whether or not the village changing facilities should be replaced with single sex spaces and secondly who should be admitted to those single sex spaces. Those matters are inherently self defeating.
86. I make the following observations:-
- 86.1 Each of the facilities, male, female, accessible or village, include separate self contained changing cubicles.
- 86.2 Members of the public can self select. If they are uncomfortable using single sex spaces (for whatever reason) they can use the village changing space. If they are uncomfortable using the village changing space they can use the single sex changing space. There should be no risk to dignity and privacy in any space,

least of all the village changing space, because the cubicles and showers are all entirely self contained. These are not the open changing spaces and showers either of old or as particularly anticipated by the guidance given by the EHRC.

86.3 Simply saying *“I do not wish to use a space that a male has used before me”* is not objectively a good enough reason to inform decision making by TDC.

86.4 Two out of the six available toilets (all of which are in locked cubicles) are available to all sexes and genders.

86.5 There is simply no evidence I have seen that there is a risk posed to members of the public or to any individual member or group of members, above and beyond that which presents anyway. That is of course not to decry or dismiss the risk or the devastating and catastrophic impact of abuse of women and children (or anyone else, for that matter). It is also not to overlook the point that those who pursue paraphilic fetishist or other sexually motivated behaviour should not be regarded as the same, or sharing the same protected characteristics, as members of the LGBTQ+ community. The question is whether the approach to the balancing of the interests of those with protected characteristics is a proportionate means of achieving a legitimate aim. The protection of individuals or groups of individuals from abuse is plainly a legitimate aim. But it is unsustainable to say, against the evidence presently available to me in any event, that the Broadmeadow design is such as to expose women and children (or any others) to an unacceptable degree of risk.

86.6 There have not been complaints within the remainder of the TDC portfolio about inappropriate behaviour by any person.

86.7 There has been consultation with bodies such as the police to ensure risk management has been accounted for in the design process.

87. The question then, is what is to be done.



88. It seems to me that TDC should consider an attitude survey of some description. There should, as far as possible, be a representative sample taken of service users, including some contributions from trans identifying service users. Careful thought will need to be given to how that is managed so as to ensure that there is a reliable data sample – there is an inherent and obvious problem with participants being self selecting resulting in wild distortion in data set with wholly inadequate confidence intervals.
89. Any considerations should facilitate qualitative as well as quantitative outcome. The danger is subjectivity but on balance it seems to me important for qualitative dimensions to be considered. That a majority of women object to sharing spaces with trans women without more would be no more legitimate than the majority of women insisting on there being no single sex service provision. The quality (ie the detail, not the standard) of the views and preferences expressed need to be explored.
90. If the prevailing view were to be fear of harm or abuse, then the question is whether there is a less drastic, or more proportionate means of achieving the aim. For example, a raising of awareness about the consultation with the police and other steps taken in respect of safety at the design stage.
91. Procedure might be introduced for dealing with people who are concerned about behaviour – for example “go to the reception desk and ask for Karen” and similar schemes which are designed in an entirely anonymous fashion to alert staff to the fact that someone feels uncomfortable or there is inappropriate behaviour.
92. Proportionately must surely admit other considerations such as there being no restrictions on intersex/intergender groups being in lifts and other such spaces which might be confined. The changing facilities are individual locked cubicles.
93. Training staff to deal with the situation and guiding customers/service users clear represents a key activity. TDC might decide to limit single sex spaces at Broadmeadow to those of biological sex and invite everyone to use the village facilities. That might well represent a reasonable balance of competing interests. Such a conclusion can only be reached if it is considered to be a proportionate means of achieving a legitimate aim. I cannot answer that in this opinion – that is for TDC to consider when its has taken in

to account the factors I have discussed and suggested. In all likelihood, it will be an extension of the equality impact assessment undertaken.

94. Staff should be aware if that is the policy (and I do not there suggest a standalone policy for the treatment of trans people is an essential step) and training can and should be provided on how to manage that, and records be kept of the delivery of such training.
95. I do not see that the availability of village changing facilities poses a problem under the Equality Act in the context of Broadmeadow.
96. Examples of public bodies falling foul of the legislation no doubt may be found. Anecdotally, it is frequently the case that where this happens important steps have been overlooked. For example, an equality impact assessment might not have been done. This would inevitably expose an authority to criticism. The quality of an EIA is less likely to attract immediate criticism, unless it is manifestly unreasonable or overlooks some obviously important criteria – safety as an example. This is mitigated with careful and considered discharge of responsibilities – something which seems to have attended the actions taken by those instructing me in this particular context.
97. As to wider implications for the balance of the TDC estate, I think it is likely that consideration should be given to the labelling of accessible toilets as being facilities specifically for the disabled. They should be promoted as both accessible and as gender neutral. Consideration should be given to realistic and proportionate means of reassigning some facilities as gender neutral or village – particularly those which have entirely self contained facilities/individual cubicles.
98. In all other respects the fundamental question for those instructing me when making decisions against the current legislative framework is whether or not the conduct pursued or proposed is a proportionate means of achieving a legitimate aim, balancing the interests of all service users. The law does not ask the impossible, you are required to do what you reasonably assess to be right in all the circumstances.

**Jonathan Ward**  
**Magdalen Chambers**

## **Informal Pre-Scrutiny meeting**

**Notes of meeting held at 2pm on Tuesday 4 February 2025**

### **Attendance:**

**O&S Committee Members** - Cllrs Sanders (Chair), Radford (Vice-Chair), Bullivant, Cox, Dawson, Hall, Hayes, Major, Nuttall, Rogers, Rollason, Ryan, Smith, Swain & J Taylor

**Other members (observers)** – Cllrs Parrott, Palethorpe, Hooke, Atkins, MacGregor, Bradford & P. Parker

**Barrister** – Jonathan Ward, Magdalen Chambers

**Officers** – Paul Woodhead, Amanda Pujol, Rebecca Hewitt & Kay Fice

The meeting had been arranged for Overview & Scrutiny members to review the Notice of Motion (NoM) referred from Council regarding the Equality Act and Council compliance. The Barrister and head of Legal would provide advice, answer questions and clarify understanding as part of the briefing.

*The NoM originally submitted by Cllr J Taylor, requested O&S to set up a working group to review the relevant policies, call independent experts/witnesses and gather such evidence as it considers appropriate to:*

1. Agree a definition of single sex spaces, for males and females owned or managed by TDC and any appropriate service provision
2. Consider whether the Council's policies discriminate against anyone on the grounds of protected characteristic, unless lawful and proportionate. This includes those with the protected characteristic of Gender reassignment
3. Make any recommendations to the Council as it considers appropriate

### **Areas for consideration:**

- What are the Council's legal obligations
- Is the Council compliant with the Act
- Does the Council need to agree a definition of single sex spaces
- What guidance/policies exist
- If not, what does the Council need to action/implement

At the start of the meeting, it was stated that the information covered during the briefing must remain confidential and was legally privileged. No recording would be permitted, and members were asked to close laptops/iPads.

Copies of the written response from the Barrister were distributed to the members of the Overview & Scrutiny Committee (and subsequently returned at the end of the briefing) and time given for the document to be read

### **Comments/questions raised included the following:**

- Reference was made to a case in Manchester City Council and guidance from UKACT but officers clarified that was not a Teignbridge Document or Policy
- Paul Woodhead stated that the Council is not acting unlawfully within the Equality Act and clarified that under the law the test is not 'right or wrong' but has to be 'reasonable in the circumstances'. Cllr Taylor challenged on this point as there is no single sex policy in place, but the Barrister explained that the existence of a policy was not the only way to evidence compliance. There is no requirement for the Council to have a single sex policy, but it must comply with the Equality Act
- Some of the gender recognition issues were very specific and complex and awaiting definition from the supreme court
- Regarding comments made that men were accessing female changing facilities, there is no evidence of this being raised through complaints at the centres or to the Council
- The Barristers advice in paragraph 96, demonstrates that claims that the Council EIA form is inadequate is not valid
- As a reminder to all those present, the status of the changing facilities at each of the Centres was clarified:
  - Dawlish: Male/Female/Unisex
  - Newton Abbot: Wet side - Male/Female Cubicles/Family  
Dry side - Male/Female Cubicles/Unisex
  - Broadmeadow:
    - The refurbishment works will deliver Male, Female, and Village cubicle based changing and a unisex accessible wet room and toilet.
- At Broadmeadow there were floor to ceiling walls/doors and the design had been consulted on-
  - The Council undertook a consultation with the community prior to the Broadmeadow designs
  - The refurbishments at Broadmeadow aimed to allow more flexible space and make the centre more inclusive for a range of people with protective characteristics
  - Single sex changing provision has always been part of the design for Broadmeadow
  - Devon and Cornwall Police designing out crime specialist staff reviewed the proposals and gave feedback on design
  - Staff training will be provided before the Broadmeadow facility re-opens
- The issue of EIAs were raised again and claims that users of other areas e.g. Forde House were being put at risk. It had not been raised as a concern by users or the Barrister.

- It was recognised that there would be different EIAs depending on the circumstances and that this was an area that the council continued to develop within the current capacity of officers
- A question was raised - what is the definition of a single sex space? There is ongoing work by the South-West Equality Network, Bristol has a single sex policy, and the Devon Equality Network is considering whether a similar policy should be developed in Devon. The Barrister supported a considered approach to this issue as there could be accusations of unreasonably fettering discretion if rushed
- It was suggested that paragraphs 88 onwards were prioritised focussing on actions to ensure that women are safe
- Officers highlighted paragraph 90 regarding legitimate aims and stressed that there was no police evidence or officer evidence to support concerns
- Concerns were expressed that Broadmeadow could be being used as a vehicle to promote ideology
- One member had personal experience of the benefits of village changing
- At the public consultation regarding Broadmeadow there was more feedback on the communal areas from the 5 people and a few councillors who attended
- From the 350,000 visits last year, no reported issues or concerns
- Guidance and training continue to be provided for staff with officers committed to providing training and guidance to officers once Broadmeadow reopens
- Exemplary staff at the Leisure centre are feeling 'tested'
- Paragraphs 88 – 90 are operational and linked with the training and development of the Policy and involved the police in the design JT confirmed public consultation on the design (including changing areas) was completed and supported
- 91 Officers will ensure training and guidance is in place before we reopen the site.
- 92 an observation
- 93 – 96 are operational and in hand, in place, endorsing and EIA. Officers confirmed training will be provided
- 97 Officers are reviewing
- 98 no comments
- Advised that the Council was at risk of further action if staff asked those using male/female facilities to prove their sex
- Rebecca Hewitt was thanked for supporting Leisure Centre staff and Chairs of Committees
- Those present had found the report from Counsel comprehensive and thanked the officers for giving them the opportunity to receive this briefing.

It was agreed that the salient points would be brought to the next meeting of the formal Overview & Scrutiny Committee for the Committee to consider how it wishes to respond to the NoM.