

Overview and Scrutiny Committee 13 May 2025

Please note: This is the additional information referred to as 'Report to follow' on the Agenda.

Extract of Agenda Full Council 29 October 2024 - Notice of Motion

Motion 2

The following motion on Full Council Review of Equality and Diversity Policy has been presented by Cllr Taylor and supported by Cllrs Daws, Lake, Hall, Macgregor, Bradford

"It is my view and that of many others, as can be seen by the reaction of the public, to what occurred at the last meeting of the Council, that sex matters.

It is my further view that this Council cannot continue to ignore and sideline the centrality of sex as a key factor of discrimination and deny women single sex spaces, where they are necessary, proportionate and legitimate to the objectives of upholding their Safety and dignity.

I ask that you consider why we have toilets and changing rooms for women and girls only and why the Authority places a sign outside those facilities when a male cleaner is in a female only toilet or changing room. When you have answered those questions, you will have identified the legitimate reason for taking the proportionate action, of not allowing biological males into women only spaces.

This equally applies to men's facilities but in my opinion the legitimate aim is more likely to be around dignity and privacy rather than safety. However, the religious practices of some men may prevent them using a facility which could be accessed by biological women.

To lawfully establish a single sex provision, you must meet at least one of a number of statutory conditions and show that limiting any service or provision, on the basis of sex, is a proportionate means of achieving a legitimate aim. So, you need a legitimate aim and to achieve it you must act proportionately.

According to the Equality and Human Rights Commission (EHRC), a legitimate aim for a single sex toilet and changing room, include: reasons of privacy, decency, to prevent trauma, safety and to support religious practices but could include many others. It supports that, as long as it is a proportionate means of meeting the legitimate aim, then trans people can be excluded. (Including those with a Gender Recognition Certificate). Therefore, it stands to reason that if the presence of a member of the opposite sex is the cause, then the exclusion of that person, to meet the legitimate aim, is reasonable and proportionate.

They go on to say that even if you cannot prove that such an act is proportionate to achieving a legitimate aim then it MIGHT be unlawful. It doesn't say that it is but just that it MIGHT be.

Consequently, I am proposing that the matter be deferred to O&S so that a working group can be set up to review the Council's relevant Policies, call independent experts/witnesses and gather such evidence as it considers appropriate in order 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 a 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."*

Extract of Minutes of Full Council meeting 29 October 2024

Councillor Jane Taylor presented and proposed the Motion on the Full Council review of Equality and Diversity Policy. This was seconded by Councillor MacGregor.

Fewer than two thirds of those present agreed to debate the Notice of Motion.

RESOLVED

The Notice of Motion be deferred for consideration by the Overview and Scrutiny Committee.

Overview and Scrutiny

The Informal Pre-Scrutiny Meeting held on Tuesday 4 February 2025 considered the above Notice of Motion with regard to the Equality Act and Council compliance. As part of the briefing the Barrister and Head of Legal was available to provide advice, answer questions and clarify understanding.

It was agreed that the salient points would be brought to the next meeting of the formal Overview & Scrutiny Committee for it to consider how it wished to respond to the Notice of Motion. The next formal meeting is being held on 13 May 2025.