

Dr Nicola Williams,
Director, Fair Play for Women Ltd

By email only:

outlook_5CED553FC8535925@outlook.com;

nicolawilliams@fairplayforwomen.com

Cc: Alix Luddington

Our ref:

Friday 17 July 2020

Dear Nicola

Subject: EHRC position on the census question regarding sex

Dear Nicola

Thank you for your email of 25 June to Rebecca Hilsenrath, to which I have been asked to reply. I welcome you seeking clarification on the EHRC's position on the census question regarding sex.

The EHRC considers it important to collect accurate data on all protected characteristics for the purposes of equality monitoring and analysis. There is clear user need to produce accurate datasets on both sex and on the trans, non-binary and intersex populations, many of whom have the protected characteristic of gender reassignment. This is both to inform service provision but also to monitor the progress of equality over time.

Unfortunately many survey questions, including those in the census, have not historically been designed to measure the protected characteristics in the 2010 Act or previous equality legislation. We work with statistics providers, through the Government Statistical Service and ONS, to advise on how datasets could be developed or improved to measure protected characteristics in the population more accurately. This is an ongoing process for all protected characteristics.

T: 020 7832 7800

E: correspondence@equalityhumanrights.com

equalityhumanrights.com



[@ehrc](https://twitter.com/ehrc)



Historically the census question on sex has never been defined with regard to the legal sex of the respondent. Respondents have never been asked to answer the sex question with what is on their birth certificate or Gender Recognition Certificate. Effectively the sex question has always collected the self-declared sex of the respondents. For most respondents, their answer would have aligned with their birth certificate; however, the groups for whom it did not would have been indistinguishable in the data. The ONS have developed a specific approach to improve the data to identify the population who are transgender, and provide continuity with previous census data for the existing sex question.

As you point out, this is done through two questions. The first one is the same question as previous censuses (Q3) and is mandatory. This has been included to ensure continuity with previous censuses and achieve the highest response rates possible. Then there is an additional voluntary question (Q27) which asks whether the respondent's gender identity is different from that registered at birth. It is hoped that by using answers from the two questions the ONS will be able to produce datasets consistent with past censuses but that also identify the populations who are transgender.

In the context of this methodology, and to ensure it is as effective as possible, it is essential that members of the trans, non-binary and intersex population answer Q3 as consistently with each other as possible, so that, when combined with Q27, it creates the most valid datasets possible. If Q3 is retaining its self-declared basis for those who are trans, non-binary and intersex then the guidance must ensure this is consistently applied, or it must be very clear in the guidance as to when respondents should diverge from answering in their self-declared sex.

Additionally, insisting that people who are trans, non-binary, intersex or of varying sex characteristics record their legal sex rather than lived identity would force trans people without Gender Recognition Certificates to 'out' themselves. It would also leave people liable for an offence if they wrongly record their legal sex and could therefore undermine response rates and the accuracy of any datasets.

T: 020 7832 7800

E: correspondence@equalityhumanrights.com

equalityhumanrights.com



[@ehrc](https://twitter.com/ehrc)



Our advice is consistent on both these points. The adverse impacts of the methodology not being effective through either inconsistent answers or reduced response rates would be that the datasets would not be improved from their current state which cannot distinguish the size of the trans and non-binary population.

The EHRC considers this methodological approach will comply with equality data collection requirements of the Equality Act 2010. While the legal definition of sex in the Equality Act 2010 is binary (male or female) we believe that the number of respondents who are transgender, non-binary, intersex or of varying sex characteristics is small and will therefore not negatively affect estimates of the numbers of women and men in the population and the services that need to be planned for.

We understand that the ONS agreed to pursue further testing of the guidance and its effect on responses. We welcome this evidence-based approach to informing the guidance.

Thank you again for raising this issue with us.

Yours sincerely



Melanie Field

Executive Director – Strategy and Policy, and Wales
Equality and Human Rights Commission

T: 020 7832 7800

E: correspondence@equalityhumanrights.com

equalityhumanrights.com



[@ehrc](https://twitter.com/ehrc)

