

Giles (2019) Twitter thread sent to Scottish Affairs journal and editor. 1 August 2019. [Last retrieved 12 October 2020].

1.

 **Harry Josephine / Drone at #EdFringe** [redacted] 8h

Dear [redacted] and editor [redacted] your publication 'Losing sight of women's rights' has a key and deliberate omission of the EHRC's Statutory Code of Practice which renders the argument fundamentally flawed. [equalityhumanrights.com/sites/default/...](https://equalityhumanrights.com/sites/default/...)

**Gender reassignment discrimination and separate and single-sex services**


13-57

If a service provider provides single- or separate sex services for women and men, or provides services differently to women and men, they should treat transsexual people according to the gender role in which they present. However, the Act does permit the service provider to provide a different service or exclude a person from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate.

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2.

 **Harry Josephine / Drone at #EdFringe** [redacted] 8h

Replying to [redacted]

The paper argues that trans inclusion in single-sex services is the result of "policy capture". As the quotation above demonstrates, it is in fact the result of the statutory legal advice on the Equality Act given by the relevant body.

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 **Harry Josephine / Drone at #EdFringe** [redacted] 8h

The paper chooses not to cite the statutory code of practice - an astonishing omission given its subject - instead choosing to cite a blogpost from EHRC which may, through misreading, indicate a change in advice. It does not. I have this in writing from EHRC.

What we have said in our statement does not alter our position on trans equality. The Commission generally encourages organisations and service providers to be trans inclusive. This means treating trans people according to their gender identity and only excluding trans people facilities in exceptional circumstances, where this can be justified.

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 **Harry Josephine / Drone at #EdFringe** [redacted] 8h

There are similar deliberate omissions & miscitations throughout the paper. For example, they claim that Engender are fully trans-inclusive \*because\* of Scottish Government funding (misciting para 24 as para 2.4 by the way. The citation does not say this. [engender.org.uk/content/public...](https://engender.org.uk/content/public...)

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 **Harry Josephine / Drone at #EdFringe** [redacted] 7h

They then proceed to deliberately omit this letter from Engender clarifying that policy positions are completely independent of the Scottish Government. The function of their miscitation is to tendentiously sew doubt, not to honestly create knowledge.


[engender.org.uk/news/blog/lett...](https://engender.org.uk/news/blog/lett...)

Our organisations wrote to you in your role as Convener on 22 January to confirm that our funding from Scottish Government does not require any of us to adopt any particular policy positions, and that we have autonomy with regard to the content of our policy advocacy. We are aware that the Minister for Older People and Equalities copied you into a letter on 24 January that confirmed that equalities organisations are funded to be 'critical friends' of Scottish Government, and to offer advice based on expertise. We are proud of our independence and the impact of our advocacy and its outcomes for women's and girls' equalities and rights. Critical recent successes for our organisations include: the Domestic Abuse Act, inclusion of the principle of equality and non-discrimination on the face of the Social Security Act, the forthcoming gender pay gap action plan, *Equally Safe*, publication of guidance on gender equal pay in the early years with the Care Inspectorate, split payments of Universal Credit, a post-implementation review for the Fairer Scotland Duty, implementation of the Barnahus model, expansion of advocacy for rape complainers, the *Building Equality* employability programme for domestic abuse survivors, and the recommendations of the First Minister's Advisory Council on Women and Girls.

We regret that you continue to repeat an accusation about our autonomy that has been denied, and for which you can offer no evidence.

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6.

 **Harry Josephine / Drone at #EdFringe** [redacted] 7h

The paper also contains multiple analytical contradictions. For example, consider how they can cite the Equality Act stating that trans people do change "physiological sex", and then claim that sex in law is "physical sex observed and recorded at birth".

...the avoidance of clearly this article seeks to explore the degree to which current policy understandings and practice accord (or not) with the Equality Act (2010), a cornerstone of equalities legislation. This requires interpretation, and careful use, of some key terms. Section 11 of the Act notes that the protected characteristic 'sex' concerns 'reference to a man or to a woman'. Section 212 (1) defines men and women as 'male' and 'female', e.g. "woman" means a female of any age'. Section 7 defines 'Gender Reassignment' as a protected characteristic separate from 'sex'. This offers protection for 'transsexual persons', that is those who are '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'.

Taken together, therefore, we read the Equality Act as defining 'women' as 'female', and 'female' being defined in terms which include physiological attributes. For consistency of usage this paper uses 'sex' to mean physical sex as observed and recorded as birth; 'legal sex' to bring within the definition of sex those with a Gender Recognition Certificate (GRC) who have changed their sex in law. The paper uses 'women' to mean people who are both biologically and legally female: other terms currently in use for this group are natal women, biological women and 'cisgender' women.<sup>1</sup> We use 'gender self-identification' to mean the situation where a person seeks to be recognised as a woman (or man), although their biological sex is male (or female).

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 **Harry Josephine / Drone at #EdFringe** [redacted] 7h

The "sex" / "legal sex" distinction that the authors attempt to make has no foundation in law. It is a tendentious reading of the acts, and has never been argued in court.



Sex and the Scottish Census  
If I can't be counted then I don't count for anything. I am a nonbinary person in Scotland—someone who's neither male nor female—and I...  
[medium.com](#)

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 **Harry Josephine / Drone at #EdFringe** [redacted] 7h


Finally, note that the Gender Recognition Act demonstrates that sex and gender are co-identified in law, and that trans people with a GRC have their sex for "all purposes". It's not "policy capture". It's just the law.

**General**

(1) 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).

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 **Harry Josephine / Drone at #EdFringe** [redacted] 7h

What you have published is a poorly-sourced conspiracy theory masquerading as an academic case study. Was it peer-reviewed by anyone with expertise in gender law? Or by anyone with a background in trans studies? Did you check the citations? Why am I doing this for you?

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 **Harry Josephine / Drone at #EdFringe** [redacted] 7h

No doubt you were pleased to publish a hot button piece on a hot button debate. Your service to academia, however, demands better review practices than that.

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