

Kiri Tunks, Judith Green, Ruth
Serwotka
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By email only

Wednesday 16 December 2020

Dear Ms Tunks, Ms Green, and Ms Serwotka,

Collecting data on sex and gender

Thank you for your letter of 7 December, relating to a submission from the Commission to the Scottish Government's sex and gender data working group.

Firstly I would entirely support your view that the collection of robust high quality data is very important, particularly where it can assist in remedying discrimination based on any of the protected characteristics in the Equality Act 2010.

It may be helpful to explain the circumstances in which the note referred to was made. A Commission representative was a member of the Chief Statistician's working group considering the collection of information on sex and gender. Members of the working group were invited at its first meeting to share any information held about the issues in sex and gender data. Unfortunately, the Commission representative was not able to attend the meeting but we contributed the submission you refer to. The statement is not, and was not intended to be, a detailed explanation of the law in this area and is not legal

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advice.

I read the extract of Mr O'Neill's advice with interest. You will note that the paragraph of the submission paper that you quote in your letter does not state that the gathering of information on sex assigned at birth will in all cases be unlawful. Rather it says [emphasis added]:

*“There are important human rights considerations **that need to be considered** when asking employees or service users to state their sex Forcing trans employees or service users to disclose their sex as assigned at birth would be a **potential** violation of their human rights **In some instances**, forcing people to ‘out’ themselves will also breach the Equality Act 2010 “*

It is also important to read the paragraph you have quoted in context. In particular the following paragraph is important to note [again emphasis added]:

*“**The vital question that public bodies need to address is what they will be using the information they are collecting for and whether allowing respondents to self-identify their sex will affect that.** The number of trans people is not big enough to skew data that is collected on sex and it is therefore deemed generally unnecessary, from a data collection view point, to merely focus on legal sex.”*

I believe that the text is therefore clear that collecting information on sex assigned at birth can be, but will not always be, an interference with a trans persons right to a private life. Mr O'Neill's advice would appear to accord with this view.

You have asked that the Commission withdraw the statement that we have

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made and contact other organisations to whom we have provided similar advice to tell them it is under review. However given that the statement is clearly not providing legal advice and is not intended to be an in-depth review of the law in this area, and given that it is appropriately measured in the way that it presents the issues to be considered when deciding how to gather data, I do not believe that there is any basis for withdrawing it.

If it would be helpful to discuss the issue of data gathering in more detail, please do come back to me and I will arrange a meeting with my relevant staff.

Yours sincerely,

Rebecca Hilsenrath



Chief Executive Officer

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