

## MOTION ON NOTICE

### MOTION IN SUPPORT OF LOCAL TRANS AND INTERSEX COMMUNITY IN RESPONSE TO THE SUPREME COURT JUDGEMENT ON THE DEFINITION OF 'SEX' IN EQUALITY LAW

Like trans and intersex people across the country, the local community is trying to make sense of the supreme court judgement and understand the implications in their daily lives. This is a period of upset, anxiety and uncertainty about the future that is impacting one of the most vulnerable groups in our society. As an employer, public service provider (particularly with facilities such as Salt Ayre Leisure Centre) and political organisation it is incumbent upon us to demonstrate our support for trans and intersex people in our district. Whilst we have no choice but to adhere to laws created in other places, we have the latitude to create and implement local policy founded in principles of equality, equity, dignity and compassion.

#### Council notes that:

- The Supreme Court ruling on the definition of 'sex' has prompted guidance from the Equality & Human Rights Commission that requires (in the language of the judgement):
  - Workplaces provide single-sex facilities for staff in addition to mixed-sex facilities
  - Public services can provide mixed sex facilities, but must also provide single-sex spaces.
  - Best practice is to provide mixed-sex facilities in addition to single-sex facilities, and indeed it is a requirement that suitable facilities are available for everyone.
  - A mixed-sex facility should have lockable 'rooms' rather than cubicles (i.e. have complete floor-to-ceiling sides and doors.)
  - Organisations which offer memberships to more than 25 people can do this on 'single-sex' basis.
- The Supreme Court ruling does not remove the protected characteristic status from trans individuals. **Under the Equalities act of 2010 trans people retain a legal right to a life free of discrimination and harassment.**
- Whilst possessing a gender recognition certificate (GRC) does not exempt a trans individual from the implications of this ruling, the Gender Recognition act of 2004 still applies. **The legal sex of a person possessing a GRC is that which they have acquired in line with their identity.**
- The council has operated family and unisex changing facilities at Salt Ayre, and unisex toilets in the Storey Institute, successfully for many years.
- Enforcement of a law is a matter for the Police and justice system.
- Further guidance is expected in June and the issue will go before Parliament in the summer months.
- People and Organisational Development Committee are considering a draft Equality, Diversity and Inclusion strategy along with reports from consultants on related matters. This is a workstream due for completion in July 2025.

### **Council's concerns related to this judgement:**

- The guidance from the EHRC suggests there is provision from excluding trans people from any single-sex space based on their appearance/presentation.
- Repeated instances of challenges and accusations against people attempting to use facilities that they are entitled to use are being reported, typically where these individuals do not conform to stereotypical appearance/presentation (hair-cuts, clothing, build, body-hair, medical conditions such as Polycystic ovary syndrome (PCOS) etc).
- Evidencing ones 'biological sex' when challenged is virtually impossible.
- Policing the use of all facilities is effectively impossible.
- Binary definitions of sex and gender are gross oversimplifications of the scientific biological reality and ignore cultural context and individual identity.
- This ruling leaves intersex individuals in a legal grey area and they are largely excluded.
- The Equality Act 2010 makes the non-voluntary disclosure of a persons status as trans to be a criminal offence. However under current guidelines individuals will be forced to 'out' themselves, either directly by responding to challenges or by accessing single sex facilities aligned to their sex as assigned at birth, or indirectly by conspicuously seeking to use limited mixed use facilities where single-sex spaces are otherwise readily available.
- There is no burden of proof for a complainant or accuser to demonstrate their own legal right to access a single-sex space when challenging that same right for others.
- Non-trans users of single-sex spaces will in practice be no safer than before this ruling, and may in fact be at greater risk due to false challenges and accusations.
- Trans users of single-sex spaces that match their sex as assigned at birth are self evidently less safe in being forced to do so.
- The default mixed-sex facilities that trans people will be expected to use will be disabled facilities, negatively impacting the availability of these facilities for their intended users.

### **Resolutions:**

- The base principle in dealing with the supreme court judgement and consequences, now or in the future, whilst acting within the law, will be to seek to create policy that maximises trans inclusivity at all times in our workplace and services.
- Council declares our unequivocal support for the trans and intersex communities at this difficult time, and reaffirms our long standing commitment to embrace diversity and inclusion and to continue to actively embody this as an organisation.
- The Council will actively welcome trans and intersex people and seek to provide additional inclusive events, services and facilities.

- That People and Organisational Development Committee will be tasked with determining further responses to guidance and mandatory requirements in future as these are published. That the specifics of any policy response determined by the committee will be in line with the spirit of this motion as per the first resolution.
- The Chief Executive will write to the Minister for Women and Equalities, Cat Smith MP and Lizzi Collinge MP to share our concerns.
- A response will be made to the EHRC consultation on behalf of the Council. In light of tight submission deadline (30<sup>th</sup> June), Council delegates the formulation and submission of this response to the Chief Officer for People Policy, in consultation with members of the People and OD Committee. Whilst Council will not dictate the exact content, the response will reflect our concerns and conform with the spirit of this motion as per the first resolution.
- Best practice to maximise inclusivity will be sought from / shared with, other authorities and trans-inclusive LGBT+ charities etc.

#### **PROPOSERS:**

Councillors Phillip Black, Jason Wood, Matthew Black, Joanne Ainscough, Catherine Armistead, Ruth Colbridge, Jean Parr, Jackson Stubbs, Louise Belcher and Claire Cozler.

#### **OFFICER BRIEFING NOTE**

Lancaster City Council is a co-operative, kind and responsible council that recognises the importance of equality, diversity and inclusion which plays an important part in everything that we do. Our equality policy sets out Lancaster City Council's commitment to advancing equality and celebrating the diversity across the district. It has been written so that everyone will know what we are committed to.

Furthermore, the Council has recently completed full and wide-ranging Equality, Diversity and Inclusion review, to support delivery of our vision which to create a council where inclusion is embedded in every decision, interaction, and service. By building on our foundations, we aim to empower every colleague to thrive and contribute to a workplace culture that values all roles and voices equally, from community based to office-based roles, for majority and non majority groups.

As both a large employer and provider of services we continuously review our policies to ensure that as a minimum they are consistent with what the law says. Policies then inform our operational approach. Our People and Policy team at the Council are reviewing relevant policies in light of the ruling, other appropriate legislation as well as the emerging guidance that accompanies it, and work closely with colleagues to ensure that our provision of facilities are legally compliant in line with the EHRC interim update, whilst awaiting further guidance in July 2025. This work, and delivery of the resolutions, can be delivered within existing resource in conjunction with the People and OD Committee.

Chief Officer – People and Policy

#### **SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

*"At this stage we await further guidance on the practical implications of this Supreme Court ruling. As stated in the officer briefing note we will ensure that we are complying with the law when providing facilities."*