

# Claim blackballed?

Charles Pigott on how the courts are applying the *For Women Scotland* ruling

## IN BRIEF

► A county court judge has applied *For Women Scotland* in a dispute over the membership rules of a sporting association.

► This is believed to be the first judicial consideration of the ruling at any level in the context of a discrimination claim.

The reserved judgment in *Haynes v Thomson on behalf of the English Blackball Pool Federation* [2025] EWCC 50 was published on 1 August. It involved a claim for direct gender reassignment discrimination, brought by Ms Haynes. She is a trans woman and is described as an expert player of English eight-ball pool. She has a gender recognition certificate (GRC) under the Gender Recognition Act 2004.

The federation is an unincorporated association which organises pool competitions in England. In August 2023, it announced a change in its rules so that only people born female would be permitted to play in its female competitions and teams. That meant that Ms Haynes could no longer play for the Kent women's county A team.

Ms Haynes brought proceedings for direct discrimination because of gender reassignment under Pt 3 of the Equality Act 2010 (services and public functions).

Five days after the trial concluded, the Supreme Court gave judgment in *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16. The parties were given extra time to file submissions on the ruling, which were considered in the final judgment.

## The ruling on direct discrimination

The county court judge agreed with the federation's submissions that the claim for direct gender-reassignment discrimination must fail in the light of *For Women Scotland*. In that case, the Supreme Court had ruled that biological sex at birth determined

the meaning of 'man' and 'woman' for the purposes of the Equality Act 2010 (EqA 2010), regardless of the possession of a GRC.

It followed that there had been no gender-reassignment discrimination in excluding the claimant from competing for the Kent women's team, since the federation was entitled to treat her as a man for these purposes. This was sex discrimination (subject to the defences discussed below), not gender-reassignment discrimination, since the appropriate comparator was a man without the protected characteristic of gender reassignment.

## The fall-back defence

There was no *prima facie* gender-reassignment discrimination, so it was not necessary to consider the federation's fall-back position. However, the judge went on to do so, since the matter had been given detailed consideration at trial, with two experts called for each side.

Two provisions of EqA 2010 were in play. This first was the sports exemption in s 195, and the second the general exemption applying to the provision of services in para 28 of Sch 3.

Section 195 creates two different exemptions (one for sex discrimination and one for gender-reassignment discrimination) where a particular sport is a 'gender-affected activity'. That is defined as an activity where 'the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity'.

In relation to sex discrimination, a general exemption applies for 'doing anything in relation to the participation of another as a competitor in a gender-affected activity' (s 195(1)). The same exemption applies to gender-reassignment

discrimination, but only where what is done is necessary to secure fair competition or the safety of competitors (s 195 (2)).

For a number of technical reasons regarding the physical attributes needed to play English eight-ball pool at a high level (including reach and strength), the judge decided that it was a gender-affected activity. That would have given the federation protection against sex discrimination claims based on the exclusion of trans women.

In addition, since there was no reasonable alternative way of achieving fair competition short of exclusion, there was also a defence under s 195 against claims for gender-reassignment discrimination. That meant that even if Ms Haynes had been able to establish *prima facie* gender-reassignment discrimination, her claim would have failed at that stage.

The judge also dealt briefly with para 28 of Sch 3, which permits the exclusion of trans people from single-sex services where it is a proportionate means of achieving a legitimate aim. In the light of the evidence deployed in relation to s 195, the judge thought that the federation would have also been able to rely on this exemption in excluding Ms Haynes.

## Conclusions

The county court judge understood that Ms Haynes' legal team was suggesting that 'treating the present discrimination as sex discrimination and thus dismissing this claim would render the protected characteristic of gender reassignment worthless'. The judge did not agree with that point, saying the dismissal of this claim would have no bearing on 'most types of gender-reassignment discrimination claim'.

That may be so, but what this decision does illustrate is why the possession of a GRC is worthless as far as EqA 2010 is concerned.

There are also wider issues that arise from the Supreme Court's approach to the definition of sex and comparators, and the adverse consequences that has for trans people in a wide range of contexts, including competitive sport. The reader is referred to the article by Professor Graham Zellick KC ('Sovereignty & "sex"', *NLJ*, 13 June 2025, pp7-8) for an assessment of the broader societal impact, based on a legal analysis of *For Women Scotland* that has now been endorsed by the county court. **NLJ**

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