



The Lemkin Institute's demolition of the EHRC's anti-trans code was systematic

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'Trans rights are human rights' protest banner

As the *Canary* previously reported, on 20 June the Lemkin Institute – a major international genocide watchdog organisation – issued a condemnation of the [EHRC's anti-trans Code of Practice](#).

In our previous article, we covered *why* the institute was naming the anti-trans movement in the UK as genocidal. Here, we'll take a look at the lengthy statement's systematic demolition of key points from both the code itself and the assumptions behind it.

If you can't make it through the whole thing, don't worry. It boils down to [one simple point](#):

The EHRC was not required to make its guidance as trans exclusionary as possible, though that is what it did.

No definition of 'biological sex'

The Lemkin Institute started at the very foundation of the current onslaught on trans and intersex rights. That is, the Supreme Court's ruling that 'sex' in the Equality Act refers solely to 'biological sex', which in turn boils down to the sex an attending medical professional assigns a baby at birth.

This assignation is far from uncomplicated or sacrosanct – particularly for intersex individuals. As an example, we can look to the [Olympics reintroducing mandatory sex testing](#) for competition in the women's category. And, as the Lemkin Institute pointed out, [the Supreme Court's decision had:](#)

failed to provide any definition, let alone a cogent one, of 'biological sex'.

Likewise, the statement also highlighted the [Good Law Project's](#) recent court case against the first draft of the EHRC's guidance. Here, the High Court [ruled that the guidance:](#)

did not require services to provide single-sex bathrooms at the exclusion of trans people, and that excluding trans people from bathrooms might constitute discrimination on the basis of gender recognition, a different ground of discrimination than sex discrimination.

Unfortunately, the code presented to the House of Commons [undid the positives from this High Court decision](#):

It did this in spite of the High Court's finding that excluding trans people from such spaces could constitute discrimination and in spite of the guarantee in For Women Scotland that the decision would not strip trans people of any protection.

The implicit threat of trans existence

From there, it went on to [highlight the EHRC's](#) [bizarre notion](#) that spaces stop being single-sex if trans people are allowed to use them. It uses [an example of the EHRC's argument](#) that allowing trans women to use the women's bathroom while excluding cis men would amount to discrimination against men.

The statement's response held that:

It is unclear what disadvantage or unfavourable treatment cis men in this scenario would be facing, which are required components of discrimination according to the Code of Practice itself.

That utter lack of clarity on the actual nature of the threat or harm that trans people actually cause is a repeated theme here. In the same vein, the Lemkin Institute called out the EHRC's argument that:

the existence of trans women in a women's bathroom could also discriminate against the cis women using that bathroom, for reasons that are left entirely unclear.

However, it doesn't take long for the statement to hone in on the implicit assumption behind the Code of Practice. That assumption becomes explicit in the example of the code's assertion that trans and intersex men could be blocked from women's toilets, along with men's toilets.

The EHRC called this exclusion ["a proportionate means of achieving a legitimate aim."](#) For the Lemkin Institute, the code clearly interprets that ["legitimate aim"](#) as:

preventing the discomfort or distress of cis people, particularly cis women.

Third spaces for trans people aren't the answer

Worse still, [the code also forbids](#) an institution from making all toilets gender neutral, as a workaround. The EHRC calls this scenario a potential example of "direct or indirect sex discrimination" against women, which it says may "lead to unlawful harassment". Again, this argument falls flat:

Here, it is clear that "unlawful harassment" involves merely seeing a trans person or having to share a gender neutral toilet with lockable stalls with men.

Likewise, keeping male and female toilets but requiring trans and intersex people to use a third option would also amount to forcibly outing them. The statement gave the example of a workplace:

where a person is not known to be trans by their colleagues and suddenly begins exclusively using the gender-neutral toilet, they could be effectively outed and vulnerable to harassment. If they [continue to use the toilet that conforms to their identity](#), they would risk violating the [protections](#) created by the EHRC. The "third" (gender-neutral) toilet option is in no way harmless.

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Biology is not destiny

In particular, the statement underscored that the "gender critical" movement used the bogeyman of a trans predator in women's spaces as a wedge issue. In reply, the [Lemkin Institute stated that it:](#)

would like to remind everyone that this danger is invented and therefore does not require a state response that causes harm to trans and intersex people. The "danger" caused by the existence of the trans community is a common refrain of the genocidal gender critical movement and is in no way based in fact.

The scapegoating of a minority community for fictitious dangers and vague threats "now where have we heard that before? Oh yes, it's part of the [9th Pattern of Genocide](#)" the denial and prevention of identity.

We're going to leave off now with a [reiteration of a point](#) that the *Canary* has made [time and time again](#):

The Lemkin Institute is disgusted by the use of equality law and the cloak of "women's rights" to cause harm to the trans and intersex communities. The existence of trans and intersex people in no way threatens women's rights. Harming the trans and intersex communities is in fact counterproductive to the furtherance of the feminist cause, as it is rooted in the normative imposition of a strict gender and sex binary, with all of the bigoted, ignorant, and narrow-minded assumptions that come with both.

The UK's current attack on trans people is an attack on non-conformity writ large. It harms trans and intersex people, but it also damages cis people's rights to exist outside of a narrowly prescribed appearance or role.

The transphobic movement holds that biology is, in fact, destiny — that can never, will never be a feminist assumption.

Featured image via the Canary

By [Grace](#)

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