

The FWS Ruling: Legal Simplicity or Sport Complexity?

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Introduction

In a landmark decision, the UK Supreme Court recently ruled that the legal definition of sex under the Equality Act 2010 (EA) refers to biological sex, not acquired or certificated sex through a Gender Recognition Certificate (GRC). Whilst the *For Women Scotland v The Scottish Ministers* case (FWS) was narrow in scope and sought to provide statutory clarity, its practical ramifications are far-reaching, particularly in sport, where the concepts of sex, gender, advantage, fairness and safety collide.

Legal Context and Supreme Court Ruling

The Supreme Court's reasoning centred on statutory interpretation, examining the legislative language and historical context of equality law, including the Sex Discrimination Act 1975 (SDA) and the Gender Recognition Act 2004 (GRA). While the GRA allows individuals to be legally recognised in their acquired gender, the Supreme Court held that this recognition does not alter the meaning of sex within the EA, which is based upon biological attributes. This interpretation was deemed essential for the EA to remain consistent and workable in areas relating to pregnancy, maternity, and single-sex services.

The Supreme Court was clear that its role was not to settle public policy or cultural debates on sex and gender identity, but rather to interpret statute law in a legally coherent manner. Nonetheless, by reaffirming that 'woman' means a person born female for the purposes of the EA, the decision has inevitably exacerbated the debate about [gender eligibility in sport](#) and the boundaries of legal protection, in a potentially regressive way.

Gender Eligibility in Sport

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Gender eligibility in sport has long been a contested space, particularly since the Cold War when sex testing was introduced to police the female category and exclude suspicious women. Recent high-profile cases such as those involving Laurel Hubbard, and Lia Thomas, frame the debate around fairness, safety, and the perceived biological advantages of trans-female athletes. Many sports governing bodies, including [World Rugby](#), [World Athletics](#) and World Aquatics have responded with exclusionary policies, citing scientific evidence of retained male physical advantage post-transition. Difference of Sex Development (DSD) athletes also challenge the binary categories of sport, owing to testosterone related advantages.

While the Supreme Court's ruling did not directly address sport, it is already being used to justify trans female bans from the female category. For example, the England Football Association reversed earlier inclusive policies in favour of more restrictive rules. There is a clear regulatory tension between the autonomous nature of sports regulation and compliance with equality and non-discrimination laws. If the Supreme Court ruling is applied broadly to sport, there is a risk that the autonomy of sport bodies is prioritised over fundamental rights of trans female athletes.

The Sporting Exception

Section 195 EA permits sex-based exclusion in 'gender-affected' activities, which are those where average physical differences between males and females may impact competition. This exemption permits lawful differential treatment where it is necessary to uphold fairness or ensure safety. The Supreme Court's acknowledgment of the provision was limited to determining its consistency with a biological definition of sex, rather than engaging with its application or adequacy in contemporary sport. I have argued [elsewhere](#) that this exemption is rooted in outdated assumptions about sex and gender and requires major revision. Its origins in the SDA 1975 framed women as inherently physically disadvantaged and has since evolved but remains vague and inconsistent, often used to justify both inclusive and exclusionary policies by sporting bodies.

Application of the Ruling in Sport

The FWS ruling and this exemption provision has already been followed in the case of [Haynes v English Blackball Pool Federation \(EBPF\)](#) where a trans female pool player was unsuccessful in her discrimination claim against EBPF. In August 2025, the County Court ruled that the FWS ruling justifies the EBPF's 'female at birth' rule and the claim therefore failed. Moreover, relying

on selected biological evidence, it held that pool constitutes a ‘gender-affected activity’ for the purpose of s. 195 EA and the exclusion of trans females was a proportionate means of achieving the legitimate aim of preserving fairness in competition. The application of the FWS ruling to sport in the UK has been premature and overly simplistic, neglecting the nuanced considerations of gender eligibility in a sporting context. This is to some extent reflected in a [contrasting legal decision](#) of the Belgian courts, which ruled that the exclusion of a trans female cyclist from the female category by the International Cycling Union (UCI) was discriminatory, disproportionate, lacking scientific evidence and unrealistic. This divergence demonstrates the potential misalignment with other jurisdictions and hints at the broader political tensions that might be driving this divide.

Political Tensions

Until now, the UK Government has taken a cautious approach to gender eligibility in sport, deferring responsibility to individual governing bodies. Some isolated political opinions, such as ministerial calls for the exclusion of trans-females from female sports, have lacked a foundation in robust evidence and risked politicising a sensitive and complex issue. The situation in the USA, with the Trump administration restricting rights for trans people, might have forced a more vocal response to the gender debate in sport.

It was not the role of the UK Supreme Court to explore sporting implications, but the absence of any further guidance is leaving trans people in a vulnerable position. The Equality and Human Rights Commission (EHRC) is undertaking a systematic review following public consultation. Its interim update emphasises the need for clarity and fairness in implementing the ruling across various sectors, including sport. However, much depends on the EHRC’s forthcoming Code of Practice and the UK Government’s willingness to lead informed, evidence-based policy that balances legal obligations with inclusion.

DSD Athletes and Human Rights

The implications of the FWS ruling on DSD athletes remain uncertain at this stage and it is unclear how the definition of sex will apply to those who experience sex variations. Often they are conflated with trans athletes and require distinct consideration. South African Olympian Caster Semenya’s legal challenge at the European Court of Human Rights (ECtHR) exemplifies the

growing intersection between sport regulation and human rights in the context of DSD athletes. The Grand Chamber of the ECtHR held that Semenya was denied a fair trial under Article 6 §1 of the European Convention on Human Rights (ECHR). The judgment represents a milestone in sport governance and highlights how complex compulsory arbitration systems in sport can contravene human rights protections. Although the judgment might have gone further to [secure substantive rights](#), it does raise concerns over restrictive and intrusive gender eligibility policies in sport. If the UK's interpretation of 'sex' is adopted in a blanket manner by sports bodies, it could undermine the country's longstanding domestic, regional and international commitments to equality and [non-discrimination](#).

Conclusion

The Supreme Court ruling offers legal certainty on the definition of sex under the EA but leaves unresolved the practical and ethical complexities of gender eligibility in sport, at a politically tense time. By anchoring sex in biology, the ruling simplifies statutory interpretation but may complicate application to sport where multiple factors alongside biology require examination. There is an opportunity for the UK Government to encourage collaborative conversations around gender diversity in sport and develop robust and research-informed guidance and policies that specifically focus on the nuances of sex, gender and sport. It is important to move away from simplistic and blanket approaches when it comes to fundamental rights in sport.