

POLICY STATEMENT

Single sex sport and leisure provision

Introduction

The purpose of this information is to provide guidance and advice on the Sex Discrimination Act 1975 (SDA) and the provision of single sex sports sessions.

It applies to all those who provide sport, leisure and recreational facilities to the public including, local authorities, private management contractors running local authority owned facilities and commercial companies.

Background

As increasing numbers of public sports and leisure facilities were built in the 1970s and 1980s it became clear from the monitoring of their usage that there was significant under-representation of certain groups. In particular, women's participation was disproportionately low. Following consultation and research, one of the ways identified to improve women's participation was the introduction of women-only sports and activity sessions.

Following Sports Council recognition (in 1982) of women as a target group with relatively low participation in sporting activities, the English Sports Council, and then Sport England have promoted a number of campaigns and initiatives which have been enthusiastically followed by those organisations providing facilities. The creation of women-only sessions had been seen as particularly successful in promoting a range of sport/recreation activities among women who for reasons such as religion, culture, lack of confidence, had previously not been keen to participate. It is important, however, that women-only sessions are consistent with the provisions of the law so that all users understand the basis on which they have been introduced.

For a number of reasons, therefore, providers of sport, recreational and leisure facilities often provide services for one sex, usually women. In some cases such sessions have been challenged and this has led to consideration of single sex provision in relation to the requirements for equal treatment of men and women in the Sex Discrimination Act 1975 (SDA). The relevant legislation in Northern Ireland is the Sex Discrimination (Northern Ireland) Order 1976 (for

advice on its provisions contact the Equality Commission for Northern Ireland). As a result there has been uncertainty for both providers and users in deciding when and how it is possible to provide single sex services without falling foul of the law. This information has been produced to help to explain the current situation and to encourage providers to have a better knowledge of the law on sex discrimination.

The law

The underlying principle of the SDA is that men and women should have equal treatment. Section 29 of the SDA requires equality in the provision of goods, facilities and services to the public, or a section of the public, whether for payment or not. On the face of it, therefore, the provision of, for example, sauna sessions for women would be contrary to the SDA. In passing the SDA, however, Parliament decided that there should be exceptions to the general rule of equal treatment in certain special circumstances.

Of the exceptions which override the equality requirements of section 29 of the SDA, the most important and relevant for sport and leisure facilities is in section 35(1)(c).

This section allows facilities to be restricted to one sex if it can be demonstrated that:

- the facilities or services are such that users of one sex are likely to suffer serious embarrassment at the presence of the opposite sex

OR

- the facilities or services are such that a user is likely to be in a state of undress and might reasonably object to the presence of a user of the opposite sex.

Section 35(2) of the SDA also permits single sex provision if physical contact is likely between users of the opposite sex and there might be a reasonable objection to this.

In addition, section 34 permits voluntary groups of various kinds to cater for one sex only. Such organisations may restrict membership, benefits and facilities to one sex and may provide public services to one sex only. Where sport and leisure services are provided by a single sex voluntary

group committed to that purpose therefore, they would not normally be in breach of the general requirement of equality between the sexes.

What does the law allow?

This is a difficult area on which to provide specific advice because, unlike the employment requirements of the SDA, we do not have judgments from the courts which set out the circumstances in which single sex sports provision can, or cannot, be provided under the terms of the sex discrimination legislation. Without this specific guidance from the courts, providers are unsure about how to approach a demand for women-only sports provision; and users are not clear whether a refusal of access to a particular session because it is single sex is unlawful or permissible.

The rest of this policy statement sets out information which should be helpful in determining the right circumstances in which to offer single sex sports provision and the pitfalls to avoid. This will not, of course, prevent challenges to the arrangements where individual users of the opposite sex are prevented from accessing leisure services at times when it is convenient for them. It should, however, assist providers in setting up single sex leisure services where there is a substantial defence in law if the service is challenged by a potential user under the terms of the SDA.

If and when cases come before the courts which provide greater clarity in the application of equality law, further specific guidance will be available.

Why do you need women-only provision?

It is important at the start of the process that the correct questions are addressed and the requirements laid down in the SDA are fully considered. To allow any body/organisation to set up a single sex service without having to provide justification would be to weaken the general principle of equality approved by Parliament. Below are some key questions which should be helpful in making a decision which is consistent with anti-discrimination law.

What is the reason for the perceived need of women-only provision?

Do you have expressed preferences from users and are these linked to issues of embarrassment? Is the arrangement seen only as commercially viable? Have you simply noticed that sometimes there are more women than men attending and decided you can build on that? It is important to remember that the SDA exceptions relate to specific reasons; serious embarrassment; being in a state of undress; personal contact; or activities run by a single sex voluntary group. If these are not the reasons for the demand, then single sex provision is likely to be in conflict with the SDA.

What evidence do you have to support single sex provisions within the SDA?

Have you done any research/surveys which provide a picture of the views of users and potential users? For example, how many women have stated that they would not attend mixed sports sessions because they would be

embarrassed? Or how many women who are potential users have indicated that they would use the facilities in single sex sessions? Are there particular groups in the catchment area which have expressed a need for single sex provision for religious or cultural reasons? Having hard evidence that a significant number of (potential) users would not participate in mixed sex sports sessions should help to explain the decision to those who challenge the need for, or the legal basis of, single sex provision. Doing this sort of research is also likely to reveal other barriers to participation within the community which can then be addressed as well. For example, where and how to provide information about the facilities available.

How do you manage the single sex sports sessions?

Is staffing restricted to women during women-only sessions? Is there privacy for users? Do you, for example, ensure that there are no spectators, or that spectators are limited to members of the same sex?

This is not simply a precaution against the possibility of a challenge in the courts – to prove that a large number of the users would not participate in mixed sex sports sessions. Providing this level of privacy may give more reassurance and greater encouragement to women from ethnic minority communities who would otherwise be unable to contemplate participation.

Are all staff fully aware of why single sex sports sessions are provided? Are they confident they can fully explain the reasons if questions are raised by members of the public?

Encouraging participation

There is much else which can be done to increase the numbers of women involved in sporting activities apart from running single sex sessions.

Research carried out by the then English Sports Council summed up the approach in five key messages (the 5 Cs):

- Consultation
- Choice
- Convenience
- Confidence
- Comfort

Consultation and choice - identify local needs and constraints and use the findings from research and consultation to develop activity programmes and facilities. Women are not a homogenous group and some degree of market segmentation is required to tailor services to meet different needs. It is important that a breadth of experience and opportunities is offered with a sufficiently varied programme to allow a range of choices to be made.

Convenience - research has shown that women's leisure time generally is much more fragmented than men's; it helps if facilities are close to where women live and work, or if the timing of sessions fits into their schedules. This may partially explain why women are particularly attracted to swimming and using fitness suites because these are activities which are very flexible in terms of time and duration, as well as being widely available. It must be

taken into account when planning women's activities and programmes that they often have the same restrictions on their time imposed by work as men do, and it should not therefore be assumed that all women's activities can be put on during week day off peak times.

Confidence and comfort - were both extremely highly ranked by women as being necessary components in their decisions about what sports and leisure activities to take part in. This is perhaps where the popularity of women-only sessions can be highlighted. When surveyed many women have stated that they do not feel comfortable or confident in many mixed activities, fear of ridicule, abuse, and not wanting to look weak, silly or sweaty, may lead women to feel seriously embarrassed and it is these perceptions which have helped to make women-only sessions so enduringly popular over the past ten to fifteen years. The research highlighted that many women participants underestimated their levels of competency in sport and felt their lack of experience and expertise invalidated their right to participate in general open sessions. This was particularly the case in fitness gyms where women users tended to feel they were in the way of the "serious" male participants who resented their presence. The issues around security and personal safety are particularly critical when providing for women. The perception of vulnerability can impose severe limits on many women's potential participation, and aspects such as transport, car park lighting, access and opening hours are important to consider. Comfort cannot only be about feeling secure, but also about atmosphere and ambience. Friendly, welcoming facilities and staff were ranked very highly in the English Sports Council research, and made the difference between attending only once or becoming a regular participant in many instances.

Remember

- To consider the needs of other users. How can their needs be met when the restricted sessions are taking place? Are there similar facilities nearby? Provide clear information about the times of single sex sessions so that people do not turn up and are turned away.
- Women-only 'taster' days are subject to the requirements of equal treatment as well. Make sure that it is appropriate to limit access for such events.
- If a session does not comply with the law on sex discrimination, it is also unlawful to advertise it. Both the advertiser and the publisher can be liable under the SDA. Check before finalising publicity material.
- Local authorities cannot automatically specify in contract documents that facility management contractors should run single sex activities. The same legal requirements apply to the local authority and the contractor. Any restriction of equal treatment must fall within an exception in the SDA.
- Pricing policies must not discriminate between men and women. Women users cannot pay lower prices or be offered discounts which are not available to the same category of male users.

- Voluntary groups are in certain circumstances free to restrict services to one sex. Such services must be independent of the local authority.

Conclusion

Until the law is clarified it is not possible to provide specific advice on the criteria for deciding whether single sex sports sessions can be run.

The Equal Opportunities Commission supports women's greater participation in sport and has supported a number of claims which challenge women-only sessions in an attempt to obtain a clear judgement from the Courts. So far, however, the cases have settled before reaching a formal hearing. We will continue to make efforts to obtain a more detailed understanding of this area of the law.

Sport England does not want to see any developments which will hamper the objective of increasing women's participation in sporting activities. Women-only sessions have been an effective means of achieving this.

The Institute of Sport and Recreation Management is also seeking legal clarity to provide effective guidance to its membership. So long as the requirements of the law are uncertain, managers will not be able to plan facilities with complete confidence.

The Womens Sports Foundation also wants to avoid the situation where uncertainty about the law leads to a reduction in the provision of sporting opportunities for women.

These four organisations intend to continue to work closely together to ensure that there is fair and appropriate sport and leisure provision which continues to attract more users but at the same time does not undermine the principle of equality agreed by Parliament.

Further information

The contents of the fact sheet were correct at the time of going to press. Those seeking specific or further advice on the requirements of the SDA in the provision of public sport and leisure facilities and any related matters should contact one of the organisations listed overleaf.

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The Institute of Sport and Recreation Management (ISRM) is the leading national professional body for sport and recreation management and development in the UK.

Based at Loughborough University, one of the UK's sporting hubs, our mission statement is to 'lead, develop and promote professionalism in the management of sport and recreation'.

