

CONFIDENTIAL

Ofcom Standards Team
Email: OfcomStandardsTeam@ofcom.org.uk

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GB News Limited

By email only

Dear GB News,

We refer to your letter of 16 June 2025 about the recent Supreme Court Judgment in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 (“the Judgment”). You ask Ofcom to confirm several “*overarching principles*” regarding our approach to applying the Broadcasting Code (“the Code”) in light of the Judgment.

As paragraph 2 of your letter notes, the Judgment was concerned to establish the correct interpretation of the Equality Act 2010 (“the EA 2010”) and, in particular, the meaning of the terms “*sex*”, “*man*”, “*male*”, “*woman*” and “*female*” when they are used in the EA 2010 to define the parameters of sex-based discrimination and sex-based harassment for the purposes of that statute. In this context, the Supreme Court examined the effect, if any, of the Gender Recognition Act 2004 (“the GRA 2004”) on the interpretation of those terms in the EA 2010. The central question on appeal was whether the EA 2010 treats a trans woman with a Gender Recognition Certificate as a woman for its statutory purposes, or when the EA 2010 speaks of a “*woman*” and “*sex*” it is referring to a biological woman and biological sex [paragraph 8]. The Supreme Court concluded that it was only by adopting the latter approach that the provisions of the EA 2010 could be interpreted and applied in a coherent and workable manner [paragraph 264].

Given the focus of the Supreme Court’s analysis, we do not follow the wider premise of the second part of your letter, which appears to proceed on the assumption that the Judgment should also be understood to have effectively “settled” wider debate about the appropriate meaning, usage and effect of such terms in all contexts outside the scope of the EA 2010, including in broadcast programmes in which issues relating to sex and gender-based rights are discussed generally. The Judgment does not purport to do so, with the Supreme Court emphasising at the outset that “*it is not the role of the court to adjudicate on the arguments in the public domain on the meaning of gender or sex, nor is it to define the meaning of the word “woman” other than when it is used in the provisions of the EA 2010.*” [paragraph 2].

Plainly the Judgment constitutes a significant development in the continuing public and political debate over the appropriate political and societal approach to sex and gender-based rights. It is likely to inform aspects of that debate’s current and future course. However, beyond its articulation of the correct legal approach to sex-based discrimination for the purpose of the EA 2010, it does not appear to us that any useful “*overarching principles*” can properly be divined from the Judgment for the purposes of Ofcom’s assessment of broadcasters’ compliance with the Code, including for the purposes of programmes which potentially engage Section Two (Harm and Offence) and Section Five (Due Impartiality and Due Accuracy).

As your letter itself acknowledges, in relation to broadcast content and compliance with the Code, Ofcom's assessment of any particular programme is, and must always be, fact-sensitive and contingent on the particular circumstances of the case, including all relevant contextual factors. This is undoubtedly the case for our application of Section Five, when consideration is given to whether a programme has addressed "matters of political or industrial controversy and matters relating to current public policy" and, if so, whether the broadcaster has complied with the relevant due impartiality requirements. It is equally so when it comes to Section Two, a standard which involves analysing the interaction between any harm or offence which might be caused by a given programme on the one hand, alongside all relevant contextual factors including audience expectations in light of generally accepted standards on the other. These are all intrinsically fluid and fact-sensitive concepts which, as our Guidance Notes note, are conditioned by both a programme's context and by "*social mores and sensitivities [that] change both over time and in response to events*". To this end, we carry out a regular programme of audience research to underpin our understanding of generally accepted standards. Ofcom's standard practice is to update our research into public attitudes towards offensive language on television and radio every five years.

For these reasons, Ofcom does not consider that it is helpful or appropriate to endorse the dogmatic propositions which underpin the confirmations sought at paragraphs 12.1 and 12.2 of your letter. We assess each case on its facts as they arise. This is because such cases (which, as your letter itself notes, concern "*sensitive, important and contentious topics*") require nuanced decision-making; there is, and can be, no 'one size fits all' approach. Our assessment will of course also take account of all applicable Convention rights, including the broadcaster's and audience's rights to freedom of expression, as well as the latitude for editorial discretion which uncontroversially accompanies the exercise of those rights on issues of significant public interest.

Yours sincerely,

Ofcom Standards Team