

PRESS RELEASE**SEXUAL ASSAULT VICTIM CHALLENGE TO TRANSGENDER PRISONERS POLICY**

A female prisoner who was sexually assaulted by a trans woman prisoner with convictions for serious sexual offences will have her case heard in the High Court this week challenging the prison service policy in relation to the allocation of high risk trans women prisoners.

The judicial review concerns the two prison service policies: “The Care and Management of Individuals who are Transgender” and the “HMP Downview E Wing Policy”. The ‘Care Policy’ deals with the treatment and allocation of trans prisoners in the prison estate. It includes the presumption that trans women prisoners with gender recognition certificates will be allocated to a woman’s prison regardless of their offending history. The ‘E Wing Policy’ concerns a separate unit at women’s prison HMP Downview which was re-rolled to accommodate trans women prisoners who have a Gender Recognition Certificate and are assessed to pose such a high risk of harm to female prisoners that their risk cannot be managed in the main prison estate. E wing had previously been intended to accommodate female prisoners who were eligible for release on temporary licence. The decision to establish this separate unit in a women’s prison, rather than in a male prison, has diverted resources within HMP Downview, resulting in an adverse impact on female prisoners.

The Claimant will argue that the prison service policies indirectly discriminate against female prisoners and have failed to have proper regard to the single sex exemptions in the Equality Act, which permit separate services for men and women in particular limited circumstances. This case is believed to be the first time the Court will consider the single sex exemptions in the Equality Act 2010.

The claim relies on evidence which shows that there are around 3,600 women prisoners compared to 80,000 male prisoners¹ which results in women “being constantly marginalised; and [shoe-horned] ... into a system designed for men”² and “the women’s estate has long been treated as an afterthought”³

The case relies on statistics which show:

- A majority of female prisoners are victims of domestic violence (57%) and emotional, physical or sexual abuse during childhood (53%)⁴, (the figures are probably a lot higher but for under-reporting);
- In the year ending March 2017, victims of those convicted of rape or assault by penetration reported that 99% of offenders were male, and 1% were female;⁵
- Of the 125 transgender prisoners in prison in 2017, 60 (48%) had convictions for sexual offences. Of those, 27 (45%) had been convicted of rape.⁶

Evidence given to parliament by both gender identity experts and the British Psychology Society includes caution raised of the risk of some men convicted of sex crimes feigning gender dysphoria to be allocated to the female estate.

Tara Mulcair of Birnberg Peirce, solicitor for the Claimant, said:

“This case is about the proper balancing of the rights of two vulnerable groups. It does not seek to exclude all trans women from female prisons. We say that the prison service, in seeking to have due regard to the rights of transgender prisoners, has disregarded the impact of these policies on female prisoners, many of who have suffered male violence.”

¹ <https://www.gov.uk/government/statistics/prison-population-figures-2018>

² Baroness Corston report, ‘A Review of Women with Particular Vulnerabilities in the Criminal Justice System’, paragraph 2.22
<https://webarchive.nationalarchives.gov.uk/20180207155341/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

³ Statement of Elizabeth Hogarth, relied upon by the Claimant

⁴ Prison Reform Trust: ‘There’s a reason we’re in trouble: Domestic abuse as a driver to women’s offending’
http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf

⁵ Office of National Statistics: ‘Sexual offences in England and Wales: year ending March 2017’

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017> (Table 13)

⁶ BBC Reality Check: ‘How Many Transgender Inmates are there?’ <https://www.bbc.co.uk/news/uk-42221629>

If comment is required from a campaigning or advocacy group on this issue please contact Nicola Williams at Fair Play for Women on nicolawilliams@fairplayforwomen.com and Richard Garside at the Centre for Crime and Justice Studies on richard.garside@crimeandjustice.org.uk.

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