



British Cycling Transgender & Non-Binary Participation Policy - External Consultation

Written submission by Fair Play For Women

1.0 Who are we

Fair Play For Women Ltd is a campaigning and consultancy organisation which raises awareness, provides evidence and analysis and works to protect the sex-based rights of women and girls in the UK. Founded in 2017, our work is focused on understanding when and how gender- and sex-based rights conflict in law and policy-making. Our aim is to ensure that everyone's needs are fairly balanced and that women and girls are not forgotten in good policy-making.

We are experienced stakeholder representatives acting on behalf of women and girls. To date we have been invited to share our expertise regarding the impact of transgender inclusion on women and girls in sport by IOC, World Athletics, World Rugby, DCMS, UK Sports Councils and various NGBs. Our views are frequently sought by print and broadcast media on this topic.

We believe everyone should have access to safe and fair sport. This is made possible by the use of sporting categories with clearly defined inclusion and exclusion criteria. For women and girls, a category should be reserved exclusively for members of the female sex in sports where male performance advantage exists. Our focus is on women and girls, so we will restrict our feedback on the draft Policy to its impact on females only.

A note on language: The material reality of an individual's sex matters in sport. Gender identity matters to individuals but is not the basis upon which protected sports categories are designed. We respect everyone's right to identify with any gender or none but we believe good policy-making in this area relies upon the accurate use of sex descriptors for all. As such we respectfully reserve the right to evaluate the draft policy in terms of an individual's sex only without reference to transgender status unless necessary.

2.0 Summary

Women's cycling is a sex category not a gender category. The difference between sex and gender identity is confused and conflated in terms of both the lawful basis of the Policy and record keeping.

The Policy is unclear how it will strike a fair balance between competing stakeholder needs. An Equality Impact Assessment is needed to accompany this Policy.

The Policy fails to deliver safe and fair competition for women and girls. Delivering safety and fairness through the regulation of testosterone is known to be ineffective and unworkable.

The Policy will mean some women and girls will not choose cycling as a recreational activity. This Policy excludes the group of women and girls whose needs its Breeze programme was designed to meet.

The Policy fails to provide a welcoming space for everyone. The Policy restricts members' ability to discuss sex when sex matters, and creates a hostile environment for women and girls. It fails to provide dignity and privacy for all.

The Policy fails all stakeholder groups; it neither assures safety and fairness nor does it maximise trans and non-binary inclusion. Inclusion, safety and fairness cannot all be maximised within one single category, but can be all delivered across a range of categories. An alternative solution (Open and Protected) maximises inclusion, safety and fairness by providing a range of choices to better suit all individual priorities.

3.0 Women's cycling is a sex category not a gender category.

The Policy fails to clearly acknowledge the reason why 'women's cycling' exists and is necessary in the first place. It is because substantial physiological, anatomical and performance differences exist between the two **sexes**. Suitability for women's cycling is therefore primarily based on someone's sex. Adherence to a feminine gender identity or feminine sex-stereotypes has never been a prerequisite for entry into women's cycling. As such women's cycling is clearly not a 'gender' category.

It is absolutely fundamental that sex can be discussed in an open and meaningful way. This is because, at its heart, this policy is considering if, when and how exceptions to the sex category should be permitted. More specifically, when might it be acceptable for a male-sexed person to be given dispensation to participate in a category normally restricted to females only. This policy needs to grapple with how these exceptional circumstances can be defined and enforced, and whether such exceptions are lawful or effective. The consequences of opening up the female sex category to some male-sexed people should be fully explored and evidenced. None of this can be done without the policy being clear and open about what sex people are and how sex differences matter.

The difference between sex and gender identity is confused and conflated regarding:

3.1 The lawful basis of the policy

It is clear that British Cycling understands competitive women's cycling to be a **sex** category because the policy references the Section 195 "Sport exception" of the Equality Act 2010¹.

"Section 5. Competition" describes how Section 195 applies to 'gender-affected sport' but fails to accurately explain what makes a sport 'gender-affected'. It also misquotes Section 195 of the Equality Act by replacing the word 'sex' with 'gender', as follows:

*"A sport is a gender-affected sport if the physical strength, stamina or physique of average persons of one **gender** would put them at a disadvantage to average persons of the other **gender**"*

According to the Policy definitions British Cycling uses the word 'gender' to mean "the social, and cultural construction of what it means to be a man or a woman, including roles, expectations and behaviour." Replacing the word 'sex' with 'gender' therefore renders the description of the lawful provision underpinning 'women's cycling' meaningless and misleading. The Equality Act actually says this:

195 Sport

- (1) A person does not contravene this Act, so far as relating to **sex**, only by doing anything in relation to the participation of another as a competitor in a gender-affected activity.
- (2) A person does not contravene section 29, 33, 34 or 35, so far as relating to gender reassignment, only by doing anything in relation to the participation of a transsexual person as a competitor in a gender-affected activity if it is necessary to do so to secure in relation to the activity—
 - (a) fair competition, or
 - (b) the safety of competitors.
- (3) A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one **sex** would put them at a disadvantage compared to average persons of the other **sex** as competitors in events involving the activity.

The Policy also misrepresents the scope of the Equality Act by misattributing a power from a different law. It states:

*'Equality Act 2010 makes specific provisions for sports organisations to prohibit or restrict a person whose **gender** has become the **acquired gender** under the **Act** from participating as competitors in an event or events involving a gender-affected sport'.*

The phrase "gender has become the acquired gender under the Act" is taken from the Gender Recognition Act 2004 (GRA2004)² and not the Equality Act. No one can acquire a new gender [legal sex status] under the Equality Act. For the purposes of applying sex discrimination exceptions everyone, including people who identify as transgender, are

¹ <https://www.legislation.gov.uk/ukpga/2010/15/section/195>

² <https://www.legislation.gov.uk/ukpga/2004/7/section/9>

recognised in law according to their sex registered at birth. This has been confirmed³ by the Equality and Human Rights Commission. The only exception is when someone has changed their legal sex status by acquiring a Gender Recognition Certificate. Under UK law this is NOT a self-declaration system. GRC acquisition is strictly regulated and rare. Fewer than 6000 people in the UK have a legal sex status that is NOT the same as their sex registered at birth.

British Cycling further obscures the proper meaning of sex as recognised by UK law by suggesting that some people have an “*indeterminate sex*”.

“Sex: a person’s biological and physical characteristics, defined usually as either ‘male’ or ‘female’ and including indeterminate Sex”.

Everyone, including people with differences of sexual development (DSD), have their sex registered at birth as either male or female. There is no third option for sex. Sex is binary and this is another important difference with ‘gender identity’. Gender identity is not restricted to the male and female sex binary.

By omitting sex and misquoting laws and definitions this Policy obscures the fact that **sex** matters in sport and that discrimination based on **sex** is lawful. This is likely to confuse readers, and raises serious doubts over British Cycling's understanding of sports law in this area.

3.2 Record keeping

It is unclear whether British Cycling records members’ ‘sex’ or ‘gender identity’. It is important to know which is recorded and when so the correct eligibility decisions can be made.

“Section 3. Membership” references members who ‘*would like to obtain British Cycling membership in a **gender other than that assigned at birth***’. This suggests that everyone has their gender identity recorded and this can either be their ‘birth gender’ or their ‘self-identified gender’. While gender identity is important to some individuals, and may be relevant in social situations, there is no reason this information should be used by British Cycling for decision-making about team eligibility. Information regarding someone’s sex is necessary for this but it is not made clear if sex is also required information when registering. Someone’s gender identity should never be used to assume information about an individual’s sex.

The Policy then goes on to contradict this by stating “*All Transgender and Non-Binary prospective British Cycling Members are required to inform the British Cycling Membership Team their membership shall be in their **Self-Identified Gender rather than the Sex assigned at birth.***”

This suggests that British Cycling does in fact require and record all members’ sex (as registered at birth) but that trans or non-binary members can request for the information

³ <https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>

recorded in the sex category to be replaced with their gender identity. It is unclear whether the registration system will note that this change has been made so officials can know that the information is NOT sex.

It is also misleading to suggest that individuals can have their “self-identified Gender” recorded because British Cycling only allows a choice of two gender identities; either ‘male’ or ‘female’. This fails to accommodate any trans or non-binary members whose gender identity is not ‘male’ or ‘female’. It is unclear why British Cycling has restricted the range of acceptable gender identities. Only sex is binary, gender identity is not.

Moreover, sometimes British Cycling prevents members from having their self-identified gender recorded unless a set period of time has elapsed. While sex is fixed, gender identity is not; it can and does change over time. Again, British Cycling appears to be inappropriately imposing ‘sex’ norms onto gender identity when they are clearly very different concepts.

“This [gender identity] declaration cannot be changed, for sporting purposes, for a minimum of four years”

The obvious solution is to collect both characteristics separately and record the information as two different categories: sex and gender identity (if someone has one). The appropriate pieces of information can then be used as and when needed by officials.

Conflating sex and gender identity is no longer considered best practice. This is best demonstrated by the approach taken by the ONS in the 2021 Census. The Census contained two questions “What is your sex” and “does the gender you identify with differ from your sex registered at birth”. The sex category is binary; male or female and the high court confirmed that sex cannot be self-identified^{4,5}. Transgender status is recorded in the gender identity question, with an open text box to accommodate an unlimited range of gender identities.

British Cycling should review and follow guidelines⁶ published by the Office for Statistics Regulation (OSR). In their guidance OSR makes clear that the reasons for collecting information should always be clear and justified and that sex and gender should never be conflated.

“Producers should be clear about definitions or terminology they use”. “The terms ‘sex’ and ‘gender’ should not be used interchangeably”.

⁴ <https://fairplayforwomen.com/wp-content/uploads/2021/03/C0007152021.pdf>

⁵ <https://fairplayforwomen.com/fair-play-for-women-wins-high-court-challenge-against-ons-census/>

⁶ <https://osr.statisticsauthority.gov.uk/publication/draft-guidance-collecting-and-reporting-data-about-sex-in-official-statistics/>

4.0 The Policy is unclear how it will strike a fair balance between competing stakeholder needs.

The Policy states:

*“the purpose of this Policy is to provide the requirements of **enabling participation** at every level.’*

*‘[British Cycling is] responsible for promoting the safety and equitable treatment of **all** taking part’.*

Taken together this means everyone should have access to a form of safe and fair cycling. As such, it is important that all BC policies, including this trans and non-binary inclusion policy, should work for **all** stakeholder groups and the impact on each group carefully assessed.

The purpose of this Policy is to promote inclusion of trans and non-binary members in cycling. The proposed solution is to enable participation of male-sexed people in the female sex category. However, this raises a clear and obvious policy conflict. The purpose of the female sex category is to promote the inclusion of women and girls in cycling and relies on the exclusion⁷ of people with male-performance advantage.

Opening up the female sex category to male-sexed people has the potential to reduce the inclusion, safety and fairness benefits delivered to female cyclists.

If British Cycling holds the position that females should not be adversely impacted it is necessary to evidence how the Policy successfully mitigates the conflict.

However, if British Cycling decides that some of the existing benefits for its female cyclists should be traded off to facilitate transgender inclusion it needs to be clear and open about this so women and girls (and their parents) can make informed decisions about whether cycling is the sport for them.

For this policy to be effective there must be a consistent and unambiguous statement of what British Cycling considers to be its priorities and why. At present, even though it acknowledges the issue of fairness and recognises its responsibilities with regard to the safety of all participants, the priority of the policy is primarily to facilitate inclusion of trans and non-binary cyclists in the female category.

A full Equality Impact Assessment should be conducted to accompany this Policy. This would give a balanced view of the impact of the proposed policy on women and girls rather than the current focus, which is primarily one of inclusion of transgender people.

⁷ Protected sport categories, by definition, must both include and exclude participants. It is the **exclusion** of those with male performance advantage that delivers the aim of safe and fair participation in women’s cycling, which are the conditions required for female **inclusion** in the sport.

5.0 The Policy fails to deliver safe and fair competition for women and girls.

“British Cycling recognises that there may be some concerns about fairness in the women’s competition”.

British Cycling acknowledges that its policy of opening up the female sex category to people with male-performance advantage leads to an uncompetitive environment for women and girls. It attempts to mitigate this adverse impact by requiring males who wish to compete in the female category to reduce their testosterone levels.

The policy states that the applicant shall be asked to submit ‘*an attestation from a Medical Professional that the member’s total testosterone level in serum has been below 5 nmol/L for at least 12 months prior to the member’s first competition*’.

However this approach is flawed in a number of ways. It is not sufficient to eliminate male-performance advantage nor can the regulations be adequately monitored or enforced.

5.1 Regulation of testosterone in males who wish to participate in female competition.

The concept of testosterone reduction to eliminate male performance advantage in sport was central to IOC criteria for transgender participation adopted in 2015 on the basis of scant evidence. The concept was then widely adopted across the sporting world at all levels. This position was not supported by any published, peer-reviewed evidence.

There have since been two academic reviews of all the available studies concerning the physiological changes that result when testosterone is suppressed in adult males. The emerging consensus is that male musculoskeletal advantage is retained.

“the biological advantage, most notably in terms of muscle mass and strength, conferred by male puberty and thus enjoyed by most transgender women is only minimally reduced when testosterone is suppressed as per current sporting guidelines for transgender athletes.” Hilton and Lundberg.⁸

“hormone therapy decreases strength, LBM and muscle area, yet values remain above that observed in cisgender women, even after 36 months.” Harper et al.⁹

There is currently no evidence that reducing serum testosterone to 5nmol/L for 12 months can eliminate the male-performance advantage relevant to cycling.

⁸ <https://link.springer.com/content/pdf/10.1007/s40279-020-01389-3.pdf> “Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage (2021)”

⁹ <https://bjsm.bmj.com/content/bjsports/early/2021/02/28/bjsports-2020-103106.full.pdf> “How does hormone transition in transgender women change body composition, muscle strength and haemoglobin. Systematic review with a focus on the implications for sport participation (2021)”

5.2 Rules for females who identify as trans or non-binary and wish to participate in female competition.

In addition to the Policy allowing male-sexed people to play in the female sex category with testosterone well above the normal female range (<1nmol/L), it also opens up this possibility for female-sexed people too.

“Any Transgender or Non-Binary member who seeks to compete in the female category”.

In many cases a female-sexed person who identifies as male will wish to play in the male category, and they will be excluded from the female category due to having testosterone above the 5nmol/L threshold. However, it is becoming common for non-binary people (and some transmen) to microdose with low levels of testosterone to achieve an androgenous appearance. As such, levels of testosterone may be well above the normal female range but below the threshold level. The performance advantage conferred by low-dose testosterone is likely to be significant and has not been acknowledged or addressed by the Policy.

This means safety and fairness for women and girls is compromised by testosterone-driven advantage in two ways; the retained advantage of testosterone-driven puberty in males and the additional advantage of low-dose testosterone in females.

5.3 Monitoring and compliance

“The athlete’s total testosterone level in serum must remain below 5 nmol/L throughout the period of desired eligibility to compete in the female category. This will be monitored by the Participant being required to submit an attestation from a Medical Professional that the member’s total testosterone level in serum is below 5nmol/L for a period of at least 12 consecutive months. This will be required annually”.

The onus is on the transgender member to comply with the rules but no proof of monitoring is required. Regular testosterone monitoring is not a normal part of gender-affirming care in the UK. As such, ‘compliance’ may be as little as a GP confirming that estrogen has been prescribed for 12 months. While standard estrogen treatment has the effect of suppressing testosterone production, studies¹⁰ show in many cases serum testosterone will not reach levels below 5nmol/L, and even if this can be achieved it may not remain consistently low.

Compliance ‘may be monitored’ and “British Cycling reserves the right to request further medical evidence from an individual Participant where it is deemed necessary” but no details are given on how this will be done. Testing endogenous levels of testosterone is expensive and only feasible at elite level. Detecting exogenous testosterone misuse is made extraordinarily difficult due to the technique of steroid ‘microdosing’¹¹ in sport. Modulation of endogenous testosterone will be equally open to easy abuse.

¹⁰ <https://fairplayforwomen.com/compliance/>

¹¹ <https://fairplayforwomen.com/compliance/>

“Where necessary to safeguard the fairness or integrity of competition, British Cycling may provisionally suspend the participation of any member pending resolution of the matter”.

Even if a breach is detected it is unlikely to result in any sanction because it will be impossible to prove it was not an accidental or an unavoidable part of someone’s normal medical treatment. As such, ‘monitoring’ provides no effective deterrent, meaning the eligibility rules are practically unenforceable.

5.4 The failure to eliminate male-performance advantage means women lose out.

There are already examples of male-born transgender cyclists setting women’s records. In October 2019 at the Masters Track Cycling World Championships in Manchester, US cyclist Rachel McKinnon set an age-category world record for 200m match sprints in a time of 11.649 seconds. Even a small number of trans-identifying male cyclists competing nationally could result in changes in qualifying times for women’s events. The inevitable consequence of this is that female cyclists will be excluded from competition and/or titles achieved by others benefitting from male-performance advantage.

Competitive cycling requires a combination of both physical ability and skill. Male performance advantage is due to greater physical ability. This power advantage can offset the need for experience and skill. Elite female cyclists have told us of their experiences in mixed-sex road racing where they often encounter male cyclists whose speed and power is similar but whose road-racing experience and skill is much lower. They feel these male riders are more likely to take risks or make mistakes and cause a crash, but that it is they as smaller, lighter females who will suffer greater injury in a collision as a result. Likewise, it is possible that physical ability can compensate for lack of skill and experience when males are allowed to compete in the female sex category. As such this Policy not only produces an unfair competition for women and girls, it also increases the risk of injury caused by collisions.

There are serious ethical considerations surrounding whether the safety of one group should ever be traded for the benefit of another group. Sports ethical arguments such as this are discussed in detail by Pike 2021¹² and should be addressed by British Cycling in their efforts to prioritise fairness, safety and inclusion.

Making competitive cycling less fair and more dangerous for women and girls will ultimately reduce participation levels. The sport will become less attractive for women and girls. Women and girls are already underrepresented in cycling and more needs to be done to increase participation of this group, not reduce it. This Policy aims to encourage participation by trans and non-binary people, but does so at the expense of discouraging another under-representated group. A much clearer understanding of the overall impact on inclusion is needed.

¹² <https://www.tandfonline.com/doi/pdf/10.1080/00948705.2020.1863814>

6.0 The Policy will mean some women and girls will not choose cycling as a recreational activity.

Recreational cycling is non-competitive so physiological sex differences and male-performance advantage are much less important. As such, most recreational cycling activities are mixed-sex. Anyone, of any gender identity or none, can participate in these mixed-sex recreational activities, making cycling a fully-inclusive recreational activity. It is right that everyone should be free to participate in mixed-sexed recreational activities in their self-identified gender without restriction.

“as there is no competitive element to Recreational Activities, Participants are able to take part in British Cycling sanctioned recreational activities in their Self-Identified Gender, without providing additional evidence”.

However, British Cycling, in common with other NGBs, aims to increase female participation in its sport, and has identified that female-only recreational events can assist with this. Research sponsored by Sport England¹³ shows that some women prefer a ‘male-free’ sporting environment, for a whole variety of reasons. These include: being self-conscious about their bodies; being embarrassed about how they look when exercising; anxiety about not being fit enough or fast enough; discomfort with the masculine behaviour and banter encountered in activities dominated by men; fear of unwanted sexual attention. There are also well-known specific cultural factors, such as some Muslim, Orthodox Jewish or other groups whose faith prevents them from mixing with unrelated males. And, of course, women who have been victims of male violence can find it hard to relax except in male-free spaces. For all these reasons, female-only activities are recognised as having benefits for women. It is lawful to exclude all males from such activities where the service would be negatively affected by making it mixed-sex¹⁴.

In establishing Breeze Rides, the legitimacy of, and benefits of, a female-only event are implicitly acknowledged. Breeze Rides, supported in part by public funding, were originally described as “female-only”. The funding from Sport England that was used to set up Breeze had a KPI which was “to increase the uptake of females in cycling”. Breeze is now described as “women-only bike rides”. Nevertheless, the phrase “women-only” will be understood by most people to still mean female-only. Nowhere within the promotional material for Breeze does British Cycling make it clear that “women-only” should not be understood to mean female-only. As such women turn up expecting “female-only”.

The trans and non-binary Policy now allows male-sexed people to participate in Breeze rides without restrictions. While this may provide some social benefits to those who

¹³ <https://www.womeninsport.org/wp-content/uploads/2017/10/Barriers-to-sports-participation-for-women-and-girls.pdf>

¹⁴ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3>

identify as women it means Breeze rides can no longer be considered a 'male-free' event. Breeze effectively becomes another mixed-sex activity, similar to that already offered by Let's Ride. It now fails to deliver on its original promise (and funding) of a female-only event without making it clear that this change in Policy has occurred or why.

Current and former Breeze Ride leaders have told us that women have been surprised, disappointed, and in some circumstances upset, when they have discovered male-sexed riders on these rides. Here is testimony from three different Breeze Champions, all of whom wish to remain anonymous.

Breeze Champion 1:

"As someone who's worked with victims of sexual abuse, I know it can trigger someone's trauma just to hear a male voice or see a male person suddenly near them. Women come on Breeze Rides so that won't happen. It's unfair on those women. That shouldn't happen to them and it's not fair. I know of women who said they couldn't come back because of it."

Breeze Champion 2:

"Many of our participants tell us they only attend Breeze rides because they knew it would be just for women. Some have tried mixed-sex clubs and found the atmosphere overwhelmingly male and intimidating. For some participants, there is a huge amount of anxiety about attending their first ride. They worry about being not fast enough, not fit enough. They don't choose a mixed-sex Guided Ride as they fear a mixed-sex environment will be not as supportive or understanding as a women-only one."

When women come to a women-only ride, they consent to being in that female space. They consent on the understanding that their vulnerabilities will be understood by fellow women who have similar barriers to participation. They do not consent to being placed in a mixed sex environment, certainly one placed on them by stealth. By doing so, the trust between participants and ride leader/British Cycling is broken.

Due to a lack of availability of female coaches we once brought in a male coach to help at a women only session. None of our Muslim participants joined in as their religious beliefs forbade them from sharing that space with males. They didn't return to our sessions after that as we had broken their trust that the space would be women only (despite never using a male coach again)."

Breeze Champion 3:

"Breeze rides are clearly promoted by British Cycling as 'women only' with 'female leaders' and to me and I think to our participants that is a biological definition. I went on Breeze rides as a participant before training as a champion and I chose Breeze rides because I

believed they were single-sex female-only rides. I chose to go on Breeze rides specifically because I did not want to ride with male people. It was never mentioned when I signed up to ride as a participant that rides were open to 'anyone who identifies as a woman', if I'd known that I might not have attended. I've also attended Sky rides in the past which were mixed sex and my decision to attend or not, as a lone female, was based on how many other participants there were likely to be and how many women. I never made that assessment for a Breeze ride as I didn't think it was necessary in what I believed to be a female-only environment. To me a mixed-sex ride and a single-sex female-only one require a different 'personal risk assessment' about if I go to the ride or not. The atmosphere on a female-only ride is different and more empowering, more relaxed and more safe feeling than on a mixed sex ride, irrespective of how anyone identifies."

It appears that British Cycling has forgotten about the group of women and girls whose needs the Breeze programme was designed to meet. This is the only group of women for whom Breeze is essential. Everyone else, including transgender and non-binary people, already have access to the full range of mixed-sex and non-gendered cycling events as an alternative.

The trans and non-binary Policy takes away the choice of a male-free option for women and girls. For some women and girls this won't matter, but for some it will prevent them from participating at all. Furthermore, it will be impossible to evaluate this deterrent effect because of the behavioural requirements set by British Cycling not to question and not to object (see section 7.3).

7.0 The Policy fails to provide a welcoming space for everyone.

Harassment is unlawful and it is right that British Cycling should have a clear and unambiguous Policy that all members should be treated with respect at all times. Bullying must never be tolerated.

Unfavourable treatment on the grounds of any of the nine protected characteristic is unlawful, except in certain circumstances when it comes to sex. The Equality Act makes special provision for lawful discrimination on the basis of sex when necessary.

Policy-making in relation to sex and gender identity therefore requires special care and attention. An organisation must be able to distinguish between unlawful and lawful discrimination. Unlawful discrimination must be prevented while encouraging open and effective discussion about lawful discrimination.

It is clear that British Cycling understands that discrimination will sometimes be necessary and appropriate. The Policy makes this clear by qualifying the type of discrimination that could result in disciplinary action as "*improper*".

"Where there has been stigmatisation or improper discrimination against a Participant on the grounds of Gender Identity"

However, the Policy then fails to make the difference between “improper” and “proper” discrimination clear to members. This confusion and uncertainty can create an uncomfortable environment for members and undermines British Cycling’s aim that *“Cycling is an activity that can be enjoyed by everyone”*.

7.1 The policy restricts members’ ability to discuss sex when sex matters.

“Section 7, 7. Your Roles and Responsibilities” sets out a series of obligations on everyone involved in cycling, including volunteers and, presumably, children. Some of these are both reasonable and realistic:

“Treat all Transgender and Non-Binary Participants with dignity and respect”

“Welcome all Transgender and Non-Binary Participants just as you would any other attendee or member;”

“Take your lead from the Participant, ask their name and use it”

But the list goes on to require of all those involved that they ignore their own senses regarding someone’s sex, and use prescribed language instead. This is difficult to adhere to, particularly for children or anyone with learning difficulties. In effect, everyone else is being told to set aside their own instincts, boundaries, needs and wishes. It means that no one can question the presence of anyone else, male or female in appearance, in any event or facility. This cannot be what is intended.

“Accept all Participants in the gender they present; verification of their identity should be no more than expected of any other person”

“Avoid making assumptions about the Participant, take your lead from the information they may, or may not, offer you”

“Be clear about what language you use, all Participants should be referred to as the gender that they inform you they are.”

The Policy fails to acknowledge there may be circumstances when another person’s sex does matter to someone else. There will be occasions when lawful discrimination needs to be raised and discussed. Sometimes a member will need to make assumptions or verify someone’s sex, and they will need to be able to use clear language about sex to discuss and report problems. As such, the above obligations are unrealistic and unnecessarily restrictive.

7.2 The policy fails to provide dignity and privacy for all.

Inter alia, British Cycling members are required to:

“Support the Transgender or Non-Binary Participant with their choice of changing facilities”

This policy neglects to consider the needs of anyone else. Many people, male and female, prefer single-sex changing facilities. It is important for safeguarding that changing rooms used by children can also be managed as single-sex. Single-sex changing rooms are lawful¹⁵ and in some cases the most appropriate solution depending on the other facilities on offer and the needs of the group of people using them.

Clubs are under no legal obligation to allow anyone a free choice as to which facility they use. The Equality Act 2010 clearly allows for clubs to provide separate-sex changing rooms:

*Schedule 3 Part 7 Para 27: A person does not contravene section 29, so far as relating to sex discrimination, by providing a service only to persons of one sex if: 6(a) the service is provided for, or is likely to be used by, two or more persons at the same time, and (b) **the circumstances are such that a person of one sex might reasonably object to the presence of a person of the opposite sex.***

This exception applies to all males irrespective of how they identify. The vast majority of transgender women remain legally and anatomically male. In the rare case of a trans person acquiring a Gender Recognition Certificate to legally change their sex status (there are fewer than 6000 such people in the UK) there is a second paragraph in the Act that allows them also to be excluded when reasonably justified. If most of your female members do not want to undress in front of someone born male this is a reasonable justification.

Para 28 "A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim".

It is perfectly acceptable, and lawful, for British Cycling to advise clubs to find solutions that do not force trans people into a changing room designated for their own sex but without that meaning others are then forced to share with members of the opposite sex. A unisex space can be offered and made available to anyone who needs or wants to use it. This also caters for people who identify as non-binary who may not wish to use any sex-specific space. Forcing women to share their changing room with any male who says they want to use it is not a fair or reasonable solution.

This rule combined with the obligation to "avoid making assumptions about the Participant" effectively creates mixed-sex facilities for all. It means under club rules no man can be challenged if he enters the women's changing room. This may cause concern amongst your members. This should not be seen as bigoted or discriminatory; most people are used to changing with members of the same sex and any discomfort will not be limited to women members. There is a sensitive balancing act between the needs and wants of trans and non-binary members and the needs and wants of your other members. One should not ideally trump the other. Clubs must be free to find the right balance for their set of circumstances.

¹⁵ https://fairplayforwomen.com/changing_rooms/

It is unlikely that a blanket rule imposed by British Cycling that requires clubs to always allow anyone their own free choice of changing facilities would be workable or lawful in all circumstances.

7.3 The Policy creates a hostile environment for women and girls.

In addition to the restrictions placed around discussing sex and gender identity, there is the threat of being reported and possible disciplinary action. This leaves women and girls in particular without a voice.

*“All Participants should be treated with respect at all times and if concerns are reported of individuals **not accepting Transgender and/or Non-Binary Participants in any activity**, the matter shall be referred to the British Cycling Integrity and Compliance Department to be considered under the British Cycling Disciplinary Regulations.”*

The risk of disciplinary action for “not accepting” participants “in any activity” means that members may not feel able to raise legitimate concerns regarding eligibility or behaviour. This is particularly problematic because in the absence of robust monitoring procedures British Cycling does have to rely on other members reporting possible breaches.

The Policy does not define what “not accepting” means, but the risk is that merely to question the eligibility of a male person in a female event could generate a complaint against them with all the possible consequences. The reputational damage caused to anyone falsely accused of ‘transphobia’ as a result of reporting concerns is well known and common-place, and documented¹⁶.

Signs of this hostile environment are already evident. We have heard numerous reports of members raising policy concerns with British Cycling through its official channels. Their perspective and experience of implementing the Policy has been dismissed, sometimes with implied accusations of transphobia. This approach to policy criticism is unacceptable and needs to change. Trusted and confidential contact mechanisms need to be in place and a cultural change within British Cycling such that women’s concerns about safety and fairness are valued.

The language of inclusion should necessitate that all members are treated with respect and dignity but some of the language in the Policy around ‘inappropriate’ language runs the risk of generating vexatious complaints where offence has been taken even if none was intended.

*“Report any incidents of **inappropriate** or offensive behaviour and language to the British Cycling Integrity and Compliance Department”*

A person’s sex is one of the most easily observed and most commonly noticed features of other people. Where declarations of pronouns or gender differ from our observations, it is effortful and counter-intuitive to use these preferred gender terms all the time. People will inevitably fall foul of this.

¹⁶ https://fairplayforwomen.com/commonsense_sport/

Taken together, these obligations along with the threat of sanction have a chilling effect that is most keenly felt by women and girls. British Cycling has got the balance wrong. In its attempt to create a more welcoming environment for trans and non-binary people a hostile environment has been created for others.

8.0 The Policy fails all stakeholder groups; it neither assures safety and fairness nor does it maximise trans and non-binary inclusion in cycling.

Recreational cycling is already very inclusive. Most recreational opportunities are mixed-sex meaning no-one is obliged to make any gendered choices at all. The 'Let's Ride' recreational offering is open to everyone regardless of sex or gender identity.

The Policy regarding competitive cycling is more restrictive. It sets out exceptions to the sex categories such that trans people can participate in the category that matches their gender identity rather than their sex. However, this solution is limited in scope and does not meet the needs of all trans or non-binary people.

- Non-binary people are not accommodated in this policy solution. There is no 'non-gendered' solution for them. They must simply choose between two sex categories with eligibility rules determined by their birth sex.
- Gender-fluid people are not accommodated by the policy solution. They are unable to change their gender identity marker to reflect changes to their identity. They must wait 4 years between updates. This also means detransitioners could be excluded from their own sex category.
- Some male people who identify as women will be excluded from women's cycling under this policy. This includes trans people who choose not to undergo hormone therapy, for preference or medical reasons. Their only option will be to cycle competitively against men which may feel stigmatising.

The problem facing trans and non-binary inclusion is the fact that competitive cycling is historically divided into **two** sexed categories, male and female. However, it is only the female sex categories that requires a restricted status. There is no reason why there needs to be a male sex category too.

At present elite women may opt to train with men to improve their times but it is not normal for them to compete against them in 'men's races'. However, men do not require a protected category of their own or access to a category restricted only to males. The presence of females in the male category does not disadvantage men. British Cycling already knows and accepts this because there are no medical, physiological or anatomical conditions, constraints or eligibility criteria in the Policy for admission for females into the male category.

British Cycling's desire to balance inclusion, safety and fairness is admirable, and welcomed by Fair Play For Women. The problem with the Policy is not the desire to make cycling more inclusive for transgender and non-binary people. It is that the proposed solution is not fit for purpose. Inclusion, safety and fairness CANNOT all be delivered within one category, but they can be delivered ACROSS a range of categories. An alternative solution (Open and Protected) maximises inclusion, safety and fairness by providing a range of choices that suit all individual priorities. Everyone has a team where they can belong with clear and transparent eligibility rules.

The solution is 'open' and 'protected' categories.

There is currently no option for cyclists who, for whatever reason, do not wish to participate in a team that is restricted to and associated with their sex at birth. The solution is to remove the sex eligibility requirements and branding for what is currently known as 'men's cycling'. Men's cycling can then become open access to all adults, of all gender identities and none. Its open status means that over time it will lose its gendered-association as being 'just for men'. This solution provides a welcoming and non-stigmatising space for all transgender and non-binary people as well as non-transgender people of either sex. It will also reflect the fluidity and changing nature of gender identities since there will be no need to declare a gender identity for eligibility reasons. No one gets excluded from this category. The priority for this sport category is **inclusion**.

Some people will wish to prioritise safety and fair competition in their cycling experience over and above inclusion. For these people there needs to be a "protected category" where safety and fairness is achieved through exclusion criteria. This "protected category" should exclude anyone with a testosterone-based performance advantage (endogenous or exogenous). This means it will be necessary to exclude anyone who was born male, anyone who has undergone a testosterone-driven puberty, and anyone who has taken testosterone for any reason (including gender-affirming care). The priority for this category is to **deliver safe and fair competition** for those who need it.

No solution will be easy or quick. Cultural changes required for the inclusion of under-represented groups never are. Cultural and structural change was necessary, and still ongoing, to open up competitive cycling to female participants. The same effort is now needed to be made to encourage more transgender and non-binary people into cycling.

Opportunities to include under-represented groups into sport should always be sought. But it should never be solved by including one underrepresented group at the expense of another under-represented group. Or by ignoring the performance differences between two different groups.