



RFU TRANSGENDER POLICY PROPOSAL - EXTERNAL CONSULTATION

Written submission by Fair Play For Women

1.0 WHO WE ARE

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 competitive 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 women and girls 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 rugby is a sex category not a gender category. The word ‘sex’ is rarely used in the draft policy despite its intended purpose being to set out when, if and how exceptions to the female sex category should be permitted. By failing to frame the issues in terms of sex the needs of women and girls have not been adequately described nor accommodated.

The policy priorities are confused and contradictory. The policy speaks of safety, fairness and inclusion but is unclear and inconsistent about how these policy objectives are prioritised or ‘balanced’. As such, the policy gives an unrealistic impression of what it can deliver.

The policy lacks essential detail on which basis decisions regarding inclusion and exclusion will be made. The policy does not provide players or officials with defined eligibility criteria and lacks guidance on the practical application of the policy. In reality, decisions regarding player safety are to be made behind closed doors by three members of RFU staff. If the value of this policy is to be properly evaluated the decision-making process should be readily describable and fully transparent. If this process cannot be clearly defined then it is unlikely to be reproducible or reliable, and is not fit for purpose.

The policy fails to evidence safe and fair access to contact rugby for women and girls. RFU gives no account of how or why its domestic policy differs from that enacted by its International Federation. World Rugby rejected these proposed policy solutions because “*safety and fairness cannot presently be assured*”¹. It is unclear how RFU has reached a different conclusion for the community game, and upon what basis. The draft policy attempts to mitigate the known risks to female players associated with mixed-sex contact rugby, but fails to evidence how or if safety and fairness can be assured.

Alternative options have been rejected without expert input or player feedback. While the opportunity to provide critical feedback on the draft policy is welcomed, the consultation process has been limited.

The policy fails all stakeholder groups; it neither assures safety and fairness nor does it maximise trans and non-binary inclusion in contact rugby. RFU’s desire to make rugby more inclusive for transgender and non-binary people and its attempt to fairly balance competing needs is admirable and welcomed. However, rather than trying to balance all these objectives within a single category, balance can more effectively be achieved across the range of categories on offer. An

¹<https://www.world.rugby/news/591776/world-rugby-approves-updated-transgender-participation-guidelines>

'Open' category can prioritise inclusion while a 'Protected' category can prioritise fairness and safety. This solution means everyone has access to a category where they can belong and maximises inclusion, fairness and safety overall.

3.0 POLICY IMPROVEMENTS

Three significant changes in the RFU position are evident in the draft revised policy. This is a welcome acknowledgement that the original policy is not fit for purpose and that concerns regarding its adverse impact on female players were appropriate and valid.

It is also clear from these changes that RFU accepts that, during mixed-sex play, the risks are carried by female players, and not equally between the sexes.

- Female players who identify as transgender or non-binary must now sign a waiver confirming they are *“aware of, understand and accept the associated risks”* of playing in the male category. No such waiver is considered necessary for male players wishing to play in the female category.
- While not mentioning it explicitly in the policy document, the RFU does openly acknowledge in its accompanying video that the concept of reducing testosterone in male players may not be sufficient to eliminate male performance advantage.

“Research has suggested that even after hormone therapy there may still be differences between transgender women and cis women in strength and speed [video].

- The addition of new weight and height thresholds to trigger a 'coach assessment' for male players wishing to play women's rugby confirms that reducing testosterone in males is no longer considered compatible with safe and fair rugby.

Despite this clear shift in position it is disappointing, and somewhat confusing, that RFU chose to cast doubt on the validity of safety and fairness concerns by referring to 'misconceptions' about transgender participants in the video that accompanies the Policy.

“We understand there are several misconceptions about transgender participants in rugby as well as in wider society” [Video]

No examples of 'misconceptions' were given, so they cannot be challenged or evidenced during the consultation process. Unless this claim can be substantiated it should be removed to avoid this throw-away statement confusing an otherwise clear position.

4.0 POLICY CRITICISMS

While it is clear that policy change is considered necessary there is less clarity about what the problems are and why they exist. This in turn results in policy solutions that are ineffective and unworkable.

4.1 Women's rugby is a sex category not a gender category.

The policy fails to clearly acknowledge the reason why women's contact rugby exists and is necessary in the first place. It is because substantial physiological and performance differences exist between the two **sexes**. Suitability for women's contact rugby is therefore primarily based on someone's sex. Adherence to a feminine gender identity has never been a prerequisite for entry into women's rugby. Women's rugby is clearly not a 'gender' category.

A glossary is helpfully provided at the back of the policy to "*ensure the policy is clear to everyone who reads it*". It defines the meaning of the word 'gender' in the policy. It is clear from the description that 'gender' is being used to mean someone's 'gender identity' and is not being used as a synonym for 'sex'.

Despite this, the policy describes contact rugby as a '**gender-affected sport**' and refers to women's rugby as a '**gender category**'. The policy also uses phrases such as "*In the event that the **gender** of a player is questioned*". In each of these occasions the policy is clearly referring to sex but fails to use the word. This confuses the reader and unnecessarily obscures the purpose of the policy.

It is clear that RFU understands women's rugby to be a **sex** category because the policy relies upon Section 195 "Sport exception" of the Equality Act 2010. The policy quotes directly from this legislation to justify why sex and gender reassignment discrimination are considered lawful and as the reason why "*there are separate men's and women's eligibility categories*".

With reference to English Law the policy describes contact rugby as a sport where:

*"the physical strength, stamina or physique of an average person of one **gender** could put them at an advantage or a disadvantage to an average person of the other **gender**"*

However, the policy has unnecessarily, and confusingly, replaced the word **sex** for **gender** here. The legislation specifically uses the word sex (and also uses the word gender as a synonym for sex when referring to gender-affected sport).

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- (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.

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. 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.

Recommendation: Do not use the word ‘gender’ when the policy is referring to sex. This policy is necessarily concerned with both the sex-based rights and needs of women and girls and gender-based rights and needs of people who identify as transgender. It must be possible to use clear language about everyone’s sex openly and accurately, otherwise the issues facing women and girls will not be adequately framed nor understood.

4.2 The policy priorities are confused and contradictory.

The policy, and the accompanying video, highlights safety and fair play as priorities for rugby, with player welfare considered ‘*paramount*’. As a contact sport, player welfare can reasonably be understood to primarily mean physical safety in this context.

*“As a contact sport, **player welfare is paramount** and the RFU seeks to ensure that participation in rugby union is safe and fair for all those who wish to take part.”*

*“desire to enable participation in rugby, as far as is possible, in a **safe and fair way**”*

*“As the national governing body for rugby union in England, it is the responsibility of the RFU to regulate participation in rugby in England in order to promote the **safety and equitable treatment of all taking part.**”*

However, this is directly contradicted by the stated aims of the policy being “*to **strike a balance** between fairness, inclusion and safe participation*”.

'Inclusion' in this context means inclusion of male-sexed players into the female sex category. RFU acknowledges this type of 'inclusion' poses a risk to safety and fairness for female players. As such, the use of the term 'balance' is misleading. The policy attempts to trade off some safety and fairness for one group (female-sexed players) for the purposes of inclusion for a different group (male-sexed players). When stated plainly in this way the ethical issues relating to the policy are clearer to see.

The limits put on safety due to this trade-off for 'inclusion' is further evidenced by use of phrases such as *"mitigate **as far as reasonably possible** against any risks to the player(s)"*.

However, no attempt is made to explain what is considered '*reasonable*' and why, and by whom. Concepts of 'balancing' risk and 'reasonable' risk both require the ability to quantify risk and define a maximum tolerable risk. No such limits are discussed.

The primary purpose of the female sex category (to provide a safe and fair version of contact rugby suitable for women and girls) is then further undermined by this statement made in the accompanying video suggesting 'inclusion' is the top priority:

"At the heart of our game is inclusion. It's important to consider the individuals involved and the sense of community and acceptance that our transgender players tell us rugby provides for them".

While women's rugby undoubtedly provides all players with social benefits and a sense of community it is not the primary purpose of, nor lawful justification for, the female sex category.

Protected sport categories, by definition, must both include and exclude players. It is the **exclusion** of male performance advantage that delivers the aim of safe and fair play in women's contact rugby, which are the conditions required for female **inclusion** into the sport.

As such, while inclusion can be *"at the heart of our game"* it is disingenuous to suggest this principle can apply at the level of each sports category with reference to just one group of people.

Likewise it is often said that *"Rugby is for all shapes and sizes"*. This is only made possible by well-defined categories and player positions. It does not mean all shapes and sizes have unrestricted access to all aspects of the game. While all '*shapes and sizes*' can play rugby, that only applies within each sex category.

Rugby as a whole should make sure everyone has a fair opportunity to play the sport, but each individual sports category cannot *"provide a fair opportunity for all those who wish to take part"*. It can only do this for those people for whom the category is designed.

For this policy to be effective there must be a consistent and unambiguous statement of what RFU considers to be its priorities and in what order. Contradictions give the false impression that the policy can deliver an impossible ideal; safety, fairness and inclusion within the same category.

While admirable, this is an unrealistic objective, currently lacking the evidence base required to deliver it. In reality there are ethical trade-offs to be made which means a value and priority must be assigned to each deliverable. This responsibility must not be dodged by a national governing body.

If RFU decides that some safety and fairness of its female players should be traded off to facilitate transgender inclusion it needs to be clear and open about this. It must define how much safety and fairness will be traded off so women and girls (and their parents) can make informed decisions about whether contact rugby is the sport for them. Contact rugby is a dangerous sport. Informed consent to risk serious injury must always be present. There are also serious ethical considerations surrounding whether the safety of one group should ever be traded for the benefit of another group, whether they consent or not. Sports ethical arguments such as this are discussed in detail by [Pike 2021](#) and should be addressed by RFU.

Alternatively, like World Rugby, the decision may be that there should be a clear hierarchy of deliverables such that inclusion is only possible when safety and fairness are known not to be compromised. If this is the case then the criteria for exclusion need to be evidence-based and clearly defined.

Recommendations: The RFU priorities must be clear and unambiguous. The RFU should not hide from the complexity or controversy of this important issue facing sport. Does the proposed policy solution make contact rugby less safe for women and girls or not? If yes, by how much and what would be considered too much? If the answers to these questions are unknown this must also be clearly stated.

4.3 The policy lacks essential detail on which basis decisions regarding inclusion and exclusion will be made.

In all cases the policy requires males who wish to play in the female sex category to submit an application to be approved by 'The Panel'. Applicants must make a written declaration that their gender identity is 'woman or girl', maintain their testosterone below a defined level, and undergo a 'coach assessment' if their weight and/or height is above a threshold.

The detail of how the Panel makes its final decision is missing from the policy. The Panel is given '*absolute discretion*' regarding the criteria and determines whether the criteria "*have been met*".

As such, it is unclear to transgender players and to other players and officials which male people will be approved to play and which will not, and on what basis. Examples are discussed below.

4.3.1 Testosterone levels:

The player must: (a) demonstrate that the concentration of testosterone in their serum has been less than 5 nmol/L continuously for a period of at least 12 months immediately prior to application.

No further details are given on how this should be '*demonstrated*' and what '*continuously*' means. Would a doctor's note confirming the applicant's medication regime be sufficient or should daily monitoring of endogenous testosterone levels be performed? What practical standards can be adhered to such that all players and officials can be confident the testosterone levels have indeed been continuously below the threshold? If testosterone reduction is considered an essential and meaningful requirement there must be some expectation that it will be enforceable and workable in a community rugby setting.

4.3.2 Field assessment:

This is used to identify whether a player may have a '*material performance advantage*' and/or there may be a '*safety risk*' that is '*above*' what's normal in the women's game. No details are provided on which tests should be performed, and what steps will be taken to ensure results are reliable and reproducible.

Neither is any indication given about how the results of a field test will be meaningfully interpreted. Instead the Panel is once again given discretion to decide for itself. How much of a safety risk can be tolerated? How much performance advantage is too much? Both remain undefined.

"Such assessment must be completed to the satisfaction of the Panel"

If the value of this policy is to be properly evaluated the decision-making process should be readily describable and fully transparent. If this process cannot be clearly defined then it is unlikely to be reproducible or reliable, and not fit for purpose.

4.3.3 Children:

There are no defined eligibility criteria for males under the age of 18. Instead the Panel is given '*absolute discretion*' regarding which males can play Age Grade contact rugby. The Panel must only be '*mindful*' of the criteria used for adults when assessing children.

This flexible and discretionary approach to mixed-sex play for children is at odds with a very strictly defined approach to this issue elsewhere in RFU Regulations. Safeguarding

of children is necessarily paramount and the process of male puberty is clearly understood and accommodated within clear rules.

By age 12 Regulation 15 states that *“mixed rugby is no longer permitted”* meaning that male children may no longer play with female children under any circumstances. This is necessary because of *“development changes brought about by puberty”*. No exceptions are made to this rule for any reason. (e.g. for example small boys are never permitted to play with girls).

Different rules apply to male and female children over the age of 12. Male children over 14 must only play contact rugby with other male children of the same age. This reflects the rapid and continuous developmental changes occurring specifically in male children during puberty. A male child is rarely allowed to ‘play down’ with younger male children and only if it would otherwise be dangerous for them to play with male children of their own age (15.4).

This policy under review therefore provides special dispensation for some male children over the age of 12 to play contact rugby with female children, for reasons other than player safety, without providing any details for how this will be done. It is reasonable to expect more detail to be provided regarding circumstances that may put female children at risk, not less as compared to adults.

4.3.4 Compliance:

The transgender player: The onus is on the transgender player to comply with the rules and is based on trust. This is problematic because any breach of the conditions approved by the Panel may put other players at increased risk of injury. As such female players should expect that compliance is actively monitored and easily verified. This is not the case.

Male players should *“keep their serum testosterone concentration below 5 nmol/L for so long as they continue to compete in girl’s and women’s contact rugby”*

*“If a player’s circumstances change from those on which their approval was based then **they** must contact the RFU”.*

The Panel: There is no regular or obligatory monitoring process by the Panel. This is particularly concerning regarding Age Grade contact rugby where changes due to puberty are rapid and large.

“The RFU may monitor a player’s ongoing compliance with the criteria as determined on a case by case basis”.

Some *“monitoring (of) ongoing compliance”* may occur but no details are given on how this will be done. Testing endogenous levels of testosterone is expensive and only feasible at elite level. Problems associated with microdosing and the variability of

testosterone when on estrogen treatment are discussed in detail [here](#). Even if a breach is detected it is unlikely to result in any sanction because it will be all but impossible to prove it was not an accidental or unavoidable part of someone's normal medical treatment. As such, 'monitoring' provides no effective deterrent meaning the eligibility rules are practically unenforceable.

Verification by officials: In children's competitions team managers are obliged to produce proof of eligibility based on age if requested by match officials. No such obligation is evident to confirm eligibility for the female sex category.

15.1.6 Constituent Bodies and/or event organisers may require Registration cards and copies of any special dispensations issued [based on age] to be taken to each match or festival. Team managers must produce these documents for inspection by the opposition or Match Officials if requested.

Reporting non compliance: RFU should not rely on members reporting breaches of the policy. The reputational damage caused to anyone falsely accused of 'transphobia' as a result of reporting concerns is well known and common-place, and documented [here](#). Trusted and confidential contact mechanisms would need to be in place and a cultural change within RFU such that women's concerns about safety and fairness are valued. Many players have private concerns, but few choose to voice those concerns.

"Should any individual wish to report any concerns or allegations pertaining to breaches of this Policy, please contact....."

4.3.5 Appeals

Eligibility rules are only fit for purpose if they can be enforced and used to exclude ineligible players when necessary. This means the decision process must be robust enough to withstand an internal appeals process.

It is likely that any rejected application will result in an appeal where the Appeal Panel has absolute discretion to approve the application. The criteria upon which the Appeal Panel makes its decision are not defined.

"The player may challenge the decision of the RFU by way of appeal in accordance with RFU Regulation 19.14"

*Regulation 19.14.3 says an Appeals Panel may "vary the decision appealed against in such manner **as it shall think fit**"*

There is no route to appeal for other players to challenge and reverse the approval of a male player to participate in a women's team. This is despite the fact that decisions made

by the Panel and Appeals Panel may adversely affect them. Instead, all female players must consent to playing against the approved male player otherwise they forfeit their own place in their team or the team forfeits the match. In the absence of sanction-free or risk-free alternatives it is unclear how the RFU can be sure that consent has been freely given.

4.3.6 Testosterone use in women's rugby

The policy provides details on how RFU proposes to ensure male people who identify as transgender can play women's contact rugby fairly and safely but lacks detail on how this works for females who identify as transgender and who also wish to play women's rugby.

In both scenarios, the safety and fairness of the women's game is potentially at risk from players who have benefitted from the performance enhancing effects of testosterone, as a result of either puberty or hormone therapy.

The policy leaves the possibility open that a female player taking testosterone now or in the past could be permitted by the Panel to play women's rugby. This opportunity is only available for females who identify as transgender. It would constitute a doping violation for females who do not identify as transgender. As such clear details on how and when this could be permitted should be included in the policy for scrutiny.

*"In respect of a transgender man/boy who has commenced testosterone or gender re-assignment treatment, the player may no longer be permitted to play women's or girl's contact rugby. In such situations, the player must submit an application to the RFU in accordance with this Policy and the Panel will determine what level of assessment is required in order **to determine if the player is permitted to continue playing women's contact rugby**".*

*"In respect of a transgender man/boy who commenced testosterone or gender reassignment treatment but has since stopped such treatment and wishes to participate in women's or girl's contact rugby, the player must submit an application to the RFU in accordance with this Policy and the Panel will determine what level of assessment is required in order **to determine if the player is permitted to play women's or girl's contact rugby**".*

Recommendation: The policy does not provide players or officials with defined eligibility criteria and lacks guidance on the practical application of the policy. Instead eligibility is decided behind closed doors by three members of RFU staff with no expectation of transparency or accountability. If the RFU wishes to engage and benefit from a process of meaningful external consultation its decision-making process must be presented and open to scrutiny.

4.4 The policy fails to ensure safe and fair access to contact rugby for women and girls

Following comprehensive consultation and analysis World Rugby concluded that opening up the female sex category to male-sexed players is not a viable solution for transgender inclusion in elite contact rugby.

“Given the best available evidence for the effects of testosterone reduction on these physical attributes for transgender women [...] safety and fairness cannot presently be assured for women competing against transwomen in contact rugby.”²

RFU concludes, with little explanation, that the opposite is true for the community game. However, the premise that safety, fairness and inclusion can be fairly ‘balanced’ within a single sports category is flawed.

This policy attempts to mitigate the known risks to female players associated with mixed-sex contact rugby, but fails to achieve this. This is because there is currently no known method by which male performance advantage can be eliminated. Nor are there reliable tests by which to identify males that pose an unacceptable safety and fairness risk and those who may not.

4.4.1 Testosterone regulation:

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 is how RFU arrived at its own transgender participation policy published May 2019. 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.³

²<https://www.world.rugby/news/591776/world-rugby-approves-updated-transgender-participation-guidelines>

³ <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)”

“hormone therapy decreases strength, LBM and muscle area, yet values remain above that observed in cisgender women, even after 36 months.” Harper et al.⁴

While it is true that these observations have not been confirmed specifically in a rugby-playing cohort there is no credible reason to expect meaningfully different results. The fact remains there is still no evidence to support the hypothesis that requiring adult male players to reduce testosterone will eliminate performance advantage in contact rugby. As such its value in the decision-making process remains unclear at best, and irrelevant at worst.

Recommendation: The policy should clearly state that testosterone reduction is now known not to be sufficient to ensure safety and fairness in women’s contact rugby so all players and officials understand why the original policy is no longer fit for purpose.

4.4.2 The introduction of weight and height thresholds to trigger a field assessment:

“Including a height and weight marker for transgender women applicants provides an initial indication of any physical potential advantage”

Height and weight are not useful indicators of performance advantage **between** the sexes. If they were then sex categories could be replaced by size categories. Size categories are used only *within* sex categories (e.g. boxing, weight-lifting) but never within a mixed-sex scenario. This is because females are not simply shorter, lighter versions of males. Muscle to fat ratios are different between male and females. A male of equivalent weight and height to a female will have more muscle, and therefore still be faster and stronger. Matching for size between sexes does not match for strength.

“The figures have been set at the 90th percentile measurements for the general cisgender women UK population and therefore it is reasonable to assume that an individual whose height/weight is under these measurements would be comparable with the height/weight norms of cisgender women players”

Height: The use of a relatively low height threshold of 170 cm (5’7”) means that most males submitting an application to play in the female sex category will be required to undergo a coach assessment. The average adult male in the UK is 5’11”. The use of a height threshold means that some males will not undergo field testing based on the fact that their short stature puts them within the ‘normal’ size range for females. This assumption is flawed because size does not correlate with strength equally for both sexes. A male within the ‘normal female range’ for size is likely to exceed the ‘normal female range’ for strength. This means that even this relatively low threshold of 170 cm is set too low to reliably catch all males that are stronger than every female on the pitch.

⁴ <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)”

Weight: The weight threshold of 90kg (14St 2lb) is set relatively high for males. The average UK male weighs just 84kg (13St 3lb)⁵. The average weight of a UK male below 170cm tall is just 72kg (11St 5lb). So despite the threshold being claimed as equivalent to the 90th percentile for adult females the majority of males players may fall below it (and therefore within the RFU-defined ‘female range’).

The field assessment is triggered by exceeding either the height or weight threshold so defining such a high weight threshold serves little additional purpose here. Its only purpose appears to be to ensure short males of above average weight undergo a field assessment.

Unlike height which remains fairly stable upon reaching adulthood, weight does not and varies according to age, fitness and body composition. As such it’s difficult to accurately define a ‘normal range’ that is meaningful and relevant to community rugby. Weight is an unreliable indicator for muscle volume, making it a poor proxy for strength even when comparing between individuals of the same sex, and worse when used to compare between the two sexes.

Nevertheless by choosing to incorporate a weight threshold into the policy RFU is giving it some apparent value as a useful predictor of speed and strength. This may cause problems in the decision-making process because in the absence of other variables to measure it may be hard to justify why any male within the ‘normal’ weight range for females would ever be excluded.

Recommendation: In the video accompanying the policy we are told that “*the low number of transgender women applications means a case-by-case approach can be implemented*”. As such there is no good reason to justify limiting the number of coach assessments, when no good indicators of performance or injury risk are available to use. The ‘weight and height’ criteria give false reassurance that risk is being effectively monitored in some way. This new addition to the policy is nothing more than policy padding that adds nothing of real value, so should be removed.

4.4.3 Field assessment:

The problem facing RFU is that variables such as testosterone, height, weight, speed and strength cannot be used to set a fixed range of eligibility criteria to determine which males could safely and fairly play women’s contact rugby. RFU acknowledges this in the video that accompanies the Policy.

*“While **strength and speed** have been identified as a potential performance advantage for transgender women over cisgender women - testing and the comparison of data is especially challenging in the community game” [Video]*

⁵ <https://www.onaverage.co.uk/body-averages/average-weight-of-a-man>

*“Height and weight criteria provide easily measurable and comparable markers.....up to this point research does not suggest that **size** has an effect on injury risk”. [Video]*

*“Research has suggested that even after **hormone therapy** there may still be differences between transgender women and cis women in strength and speed”. [Video]*

Therefore, RFU now proposes case-by-case assessment of individual male applicants to inform decision making by the Panel.

World Rugby explored and rejected this type of case-by-case assessment of individuals. The reasons include (as described in the World Rugby transgender guideline FAQs⁶):

- There is no validated combination of field tests that a coach can use to accurately determine the injury risk posed by a male player in a mixed-sex setting. Injury risk is a complex mix of strength, power and speed of the male player combined with injury susceptibility of females (e.g. thinner skulls, ACL injury).
- Coach assessment will require maximal performance by the individual being tested. The validity of the tests are undermined by the inability to ensure effort when the incentive to underperform in the test exists. (Note: this is unlike standard coach assessments where the incentive is for maximal performance to enable team selection.)
- Risk will vary depending on the level of competition and an individual's response to training. This would necessitate regular repeat testing. This has not been proposed.
- How much is too much? The stated aim of the policy is to ‘balance’ safety, fairness and inclusion. This requires the Panel to have an understanding of how much safety can be traded for the good of inclusion, and to know when that threshold has been reached. This requires injury risk to be measurable and quantifiable. It is not.
- Ultimately, the policy must be robust enough to withstand legal assessment in court. This requires evidence-based and consistent decision-making to justify why an individual was included or excluded. This evidence base simply does not yet exist.

RFU has provided no counter-arguments for why these issues are only prohibitive in the elite setting but do not apply equally in the community game. Instead, it appears to believe that the known failings of the ‘case-by-case assessment’ method can be more easily tolerated at community level.

⁶ <https://playerwelfare.worldrugby.org/gender>

In the absence of validated field tests to reliably compare and quantify male advantage a coach assessment is likely to be a subjective opinion. This is problematic because it will be relied upon by the Panel in its decision-making. Ultimately this decision-making must be defensible in court should a discrimination or injury claim be made.

Recommendation: RFU should only use field assessments if it can first explain how it can be used to reliably and lawfully exclude from a category. Otherwise field assessment gives the impression of ensuring fairness and safety for women and girls when in fact it is simply another permissive step leading only to inclusion.

4.5 Alternative options to this policy approach have been rejected without expert input or player feedback.

While the opportunity to provide critical feedback on the chosen draft policy is welcomed, the consultation process so far has been limited. Alternative options have been rejected without expert input or player feedback.

“The RFU has considered alternatives as part of its review (including both more and less restrictive measures) but having considered such alternatives, the RFU believes that the criteria adopted by this Policy are the most appropriate for domestic rugby union in England at this time”

This is very different from the approach taken by World Rugby during its policy development in this area. World Rugby undertook a comprehensive and transparent consultation inviting experts from a range of disciplines and advocacy on behalf of different stakeholder groups. It produced a detailed report on its findings and fully justified its conclusions. It also surveyed its elite female players, the results of which are publicly available⁷.

The most serious failing has been RFU’s apparent failure to canvas the opinion of its female players before deciding its approach should be to *“strike a balance between inclusion, fairness and safe participation”*.

This approach seems to reflect arguments that less stringent eligibility rules are appropriate at lower levels compared to elite levels. This appears to be because more value should be placed on the social benefits of inclusion in the community game and less value placed on fair competition (i.e. it’s just for fun and fitness).

But who thinks this? Is it RFU, special interest groups, or women themselves? Does this reflect the fact that competitive rugby for women at community level isn’t sufficiently valued by RFU compared to the PR benefits of being seen to be ‘inclusive’? Or is it true

⁷<https://playerwelfare.worldrugby.org/?subsection=84>

that women who play at community level really do value the competitive element of the game less than elite players? If so, what evidence does RFU have to support this?

Fair Play For Women has been speaking publicly on this topic for over two years. As such, we are regularly approached by many female players who are privately concerned but fearful of reputational damage if they speak publicly. Senior staff at RFU have been informed of these problems and are aware that what they hear publicly will be distorted and may be unrepresentative of the majority view. This is documented in detail [here](#). Despite this, female players and officials tell us no wide-ranging, independent and confidential consultation of female views has been facilitated prior to publication of the draft policy.

While some may argue that competitive fairness should be sacrificed for the social benefits of trans inclusion, these arguments should not prevail when it comes to player safety, even if most players agree. Safe play is no less important at community level; indeed the risk of injury may be greater at amateur level due to mistakes by inexperienced players and officials. Rules that increase the risk of injury should be carefully controlled.

Recommendation: RFU should commit to canvassing the views of female players to understand what they value most in the community game. This would need to be performed by independent experts using a robust methodological design such that participants are fully informed of the issues, views can be freely expressed, and the data gathered is representative of the female membership as a whole. The number and type of responses received during the current external consultation will not be a reliable or unbiased indicator of female opinion.

4.6 The policy fails all stakeholder groups; it neither assures safety and fairness nor does it maximise trans and non-binary inclusion in contact rugby.

The policy sets out possible exceptions to the female sex category such that trans people can play in the team that matches their gender identity. However, this solution does not maximise transgender inclusion in rugby.

- 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.
- Some male people who identify as women will be excluded from women's rugby under this policy. Their only option will be to play 'men's rugby' which may feel stigmatising.

The problem facing transgender inclusion is the fact that adult rugby is historically divided into **two** sexed categories; male and female. This division is unnecessary, and a

hangover from when only men played rugby and the women's game was introduced later. However, men do not require a protected category restricted to the male sex. Only female players require this protected status.

The solution is 'open' and 'protected' categories. There is currently no option for players who, for whatever reason, do not wish to play 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 rugby'. Men's rugby 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 space for all transgender and non-binary people as well as non-transgender people of either sex. The priority for this sport category is **inclusion**. Many other sports already have an 'Open' category and a 'Women's category', although 'Open' events tend to be incorrectly referred to as 'Men's events' simply because men currently comprise the overwhelming majority of, if not all, participants.

For safety reasons, anyone born female will need to sign a waiver to play in 'Open' contact rugby, irrespective of the gender they may or may not identify with. This is currently restricted to trans-identifying female players in the draft policy but could be extended to any female who wishes to access the 'Open' category. However, they must also have access to a 'protected' team should their individual choice be to prioritise fair competition and safety.

To achieve the aim of prioritising **safe and fair competition** this 'protected' category must 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 testosterone-driven puberty, and anyone who has taken testosterone for any reason (including gender-affirming care).

The RFU'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 rugby more inclusive for transgender and non-binary people. It is that the proposed solution is not fit for purpose. Inclusion, safety and fairness CANNOT be 'balanced' within one category, but it can be balanced ACROSS categories. This alternative solution (Open and Protected) maximises inclusion, safety and fairness by providing choices that suit all individual priorities. Everyone has a team where they can confidently belong with clear and transparent eligibility rules.

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 to successfully open up the game to female players, something that is relatively new and ongoing. The same effort is now needed to be made to welcome trans and non-binary people into rugby.

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

Recommendation: RFU should undertake a serious commitment to demonstrate the claim that “*at the heart of our game is inclusion*”. This requires RFU to facilitate the necessary cultural and structural transformation of the ‘men’s game’ into a fully inclusive ‘open’ category for all genders and none.

5.0 Summary of recommendations

Do not use the word ‘gender’ when the policy is referring to sex. This policy is necessarily concerned with both the sex-based rights and needs of women and girls and gender-based rights and needs of people who identify as transgender. It must be possible to use clear language about everyone’s sex openly and accurately, otherwise the issues facing women and girls will not be adequately framed nor understood.

The RFU priorities must be clear and unambiguous. The RFU should not hide from the complexity or controversy of this important issue facing sport. Does the proposed policy solution make contact rugby less safe for women and girls or not? If yes, by how much and what would be considered too much? If the answers to these questions are unknown this must also be clearly stated.

The policy does not provide players or officials with defined eligibility criteria and lacks guidance on the practical application of the policy. Instead eligibility is decided behind closed doors by three members of RFU staff with no expectation of transparency or accountability. If the RFU wishes to engage and benefit from a process of meaningful external consultation its decision-making process must be presented and open to scrutiny.

The policy should clearly state that testosterone reduction is now known not to be sufficient to ensure safety and fairness in women’s contact rugby so all players and officials understand why the original policy is no longer fit for purpose.

In the video accompanying the policy we are told that “*the low number of transgender women applications means a case-by-case approach can be implemented*”. As such there is no good reason to justify limiting the number of coach assessments, when no good indicators of performance or injury risk are available to use. The ‘weight and height’ criteria gives false reassurance that risk is being effectively monitored in some way. This new addition to the policy is nothing more than policy padding that adds nothing of real value, so should be removed.

RFU should only use field assessments if it can first explain how it can be used to reliably and lawfully exclude from a category. Otherwise field assessment gives the impression

of ensuring fairness and safety for women and girls when in fact it is simply another permissive step leading only to inclusion.

RFU should commit to canvassing the views of female players to understand what they value most in the community game. This would need to be performed by independent experts using a robust methodological design such that participants are fully informed of the issues, views can be freely expressed, and the data gathered is representative of the female membership as a whole. The number and type of responses received during the current external consultation will not be a reliable or unbiased indicator of female opinion.

RFU should undertake a serious commitment to demonstrate the claim that “*at the heart of our game is inclusion*”. This requires RFU to facilitate the necessary cultural and structural transformation of the ‘men’s game’ into a fully inclusive ‘open’ category for all genders and none.