

## Written submission from Fair Play For Women

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 believe in compassion and fairness for all. We support the rights of trans people to live in safety and to be treated fairly. We also support the rights of women and girls, and this is our focus. Protecting these rights in law requires that sex is not conflated with gender identity.

### Recommendation

It is essential that birth sex and self-identified gender are not conflated in data collection. It becomes impossible to rely on and act upon data regarding the specific issues affecting women and girls if those data are distorted by males self-identifying into them, and being permitted to do so. Biological sex remains a critical variable for a wide range of applications.

It is particularly harmful to the interests of women and girls when self-identified gender is recorded instead of sex, or as if it were sex. In many cases this is being done without any clear indication that it is so; this compounds the problem because data users are led to believe these are accurate records of sex.

It is also necessary to collect data enabling the *disaggregation* of data collected under the LGBT acronym. Sexual orientation and gender reassignment are two separate protected characteristics, and sex is a third one. They have different needs. Proper intersectional analysis is not possible unless birth sex is collected as a separate variable from gender identity, along with sexual orientation as an independent variable when appropriate. Truly inclusive data enable disaggregation, rather than combining characteristics into one heterogeneous variable such as LGBT.

*Are you currently able to access the data you need for your purposes? If you are not able to access all the data or evidence you need for your purposes, what data are you unable to access and what are the barriers to you accessing this data?*

No. Data from a range of sources cannot be relied on to accurately record male vs female representation.

One example is crime reporting, which is particularly an issue for sexual and violent crimes since these are overwhelmingly committed by men. A relatively small number of male perpetrators self-identifying as women, and being recorded as such by police forces and the CPS, and referred to as such in court, can distort the records of female patterns of crime. Reporting such crime in the media as being by women is already distorting the public understanding and giving the false impression that women are increasingly committing such crimes.

Another example is the recording of the sex of convicted prisoners in the UK's prisons. In advocating for the safety of women in prison, we have found that HMPPS does not know how many males are being held in women's prisons. We have documented both of these issues, and their impact, in our submission to the Home Office consultation on violence against women and girls, attached.

*Are there any issues with how the data or evidence that you currently rely on are presented? If so, please provide details.*

The problem of conflating sex and gender in data collection is compounded by the presentational issue. It is increasingly common to present data which is claimed to be data of one kind when the reality of what is being presented is something different. For example, see page 41 of the [Technical Guide to Women and the Criminal Justice System, 2019](#) .

*'Sex' can be considered to refer to whether someone is male or female based on their physiology, with 'gender' representing a social construct or sense of self that takes a wider range of forms. Throughout this report we refer to sex rather than gender, because the binary classification better reflects how individuals are generally reported or managed through the CJS. For example, prisons are either male or female institutions, with prisoners normally placed based on their legally recognised gender. **However, given the range of recording practises (see earlier in this guide for details) throughout the CJS, it is likely that most recording includes a mixture of physiological and personal identity.** (Similarly, we refer to females / males and women / men interchangeably in this report, as a reflection of the binary classification in use.)*

This reference is simultaneously clarifying the difference between sex and gender, claiming to report sex, and then adding that in fact the data may conflate the two variables. It's a mess.

*Thinking of all the issues you may have experienced with the data and evidence, which of the following improvements would you like to see? What change to the current data or evidence would you most like to see to be able to answer the questions that are most relevant to you?*

There is an urgent need to stop conflating sex and gender. The ONS may not control other data sets but it can and should set the standard and influence the norms.

This will become even more critical if the Census is in future replaced by consolidating or matching large administrative data sets. Action is needed now to ensure these data sets are accurately recording the variables they claim to be recording, using correct definitions of sex and gender.

Secondly, there is a need to revisit the appropriate data collection that will enable disaggregation by protected characteristics. The adoption of the popular acronym LGBT is obscuring adequate data collection. It is not possible to consider the needs of LGB and T as one homogenous group. Public Health England has recognised this, commissioning work on health impacts and inequalities for men who have sex with men as one group<sup>1</sup>, and women who have sex with women as another<sup>2</sup>. These therefore cover gay and bisexual men as one group, lesbians and bisexual women as another. In both cases, biological sex and not gender identity is the unifying factor.

## Summary

The conflation of sex and gender identity in data collection is a significant and increasing problem, affecting our understanding of the population overall, and our ability to identify inequalities experienced by minority groups including by sex, sexual orientation and gender identity. It is helpful to no one to conflate sex and gender identity in collecting and analysing information. Truly inclusive data enable disaggregation, rather than lumping characteristics together.

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<https://www.gov.uk/government/publications/promoting-the-health-and-wellbeing-of-gay-bisexual-and-other-men-who-have-sex-with-men>

<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/723557/improving\\_health\\_and\\_wellbeing\\_LBWSW.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723557/improving_health_and_wellbeing_LBWSW.pdf)

## **APPENDIX: Extract from our submission to the Home Office Violence Against Women and Girls consultation, February 2021**

### **1.0 Recommendation**

**We call on the Home Office to provide clear direction to police services, the CPS, the courts and HMPPS, and to insist on accurate data collection by birth sex,**

- **to ensure that male crimes and male criminals are correctly recorded as such;**
- **to protect women who are victims of male violence from having to refer in court to violent men as women;**
- **to keep women's prisons single sex in order to protect women in prison from males, no matter how those males identify.**

### **2.0 Accurate crime records by sex are being undermined**

- 2.1 The Home Office consultation on developing a new strategy to combat Violence against Women and Girls says: "The new Strategy will include work around perpetrators, and it is important we gather as much evidence as we can on both who commits these crimes and what works to help them stop."
- 2.2 The first step is to ensure accurate data is collected. It is through historical data collection that we know the extent to which VAWG is a problem, and that males are the main perpetrators. But that knowledge and understanding is being diluted and distorted because of the rise of gender identity being accepted as an alternative to biological sex.
- 2.3 Many police forces are allowing males to self-identify as women and recording them as such in their data, even in cases where they are accused and convicted of violence against women or girls, including sexual violence.
- 2.4 The same is true for the CPS and the Equal Treatment Bench Book which requires victims of an abusive male to refer to him as she in court if he so chooses. This has happened. A rapist has been referred to as "she" in more than one case<sup>3</sup>. This is an appalling prioritisation of the feelings of the perpetrator over those of the victim. This is nothing to do with the Gender Recognition Act; it is entirely on a self-identified basis.
- 2.5 Then when it comes to prison, many males are claiming a female identity, and getting access to women's prisons – and sometimes to the women in those prisons. Some of those male prisoners are not recorded as such because they have a GRC, even though they have an intact male body<sup>4</sup>. Thus it is not even known how many such people are in women's prisons.
- 2.6 The media reporting of police statements and court records which mis-sex these offenders leads to inaccurate reporting in the media<sup>5</sup>. There is now speculation that female sex offending is on the rise, but this is largely the result of mis-sexing of male offenders, since

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<sup>3</sup> <https://fairplayforwomen.com/prison-review/>

<sup>4</sup> [https://fairplayforwomen.com/trans\\_prison\\_stats\\_2018/](https://fairplayforwomen.com/trans_prison_stats_2018/)

<sup>5</sup> <https://fairplayforwomen.com/ipso/>

there are so few female offenders that the addition of just a small proportion of male offenders looks like a large increase<sup>6</sup>.

### **3.0 Violent male offenders are causing women further harm in court and in prison.**

- 3.1 Violence against women and girls is committed predominantly by males. There are very small numbers of female violent offenders and sex offenders, but this information, and the public's understanding of it, is being distorted by the recording as female of typically male crimes with male perpetrators.
- 3.2 Fair Play For Women has published research showing the extent to which trans-identifying males have a pattern of criminality broadly the same as that of the male population as a whole, and not remotely like that of the female population<sup>7</sup>.
- 3.3 Around two-thirds of women in prison have been victims of male violence outside prison. Being imprisoned with violent males is an inhumane punishment<sup>8</sup>. But trans policy development by HMPPS did not consult women, and has resulted in women being assaulted by male prisoners<sup>9</sup> in UK women's prisons. As a result, one female victim is now pursuing a judicial review on the policy<sup>10</sup>.
- 3.4 Current policies on the treatment of trans-identifying males such as that in the Equal Treatment Bench Book and HMPPS constitute further harms to women and girls who are already the victims of violence by men.

**4.0 Recommendation:** We call on the Home Office to provide clear direction to police services, the CPS, the courts and HMPPS, and to insist on accurate data collection by birth sex, to ensure that male crimes and male criminals are correctly recorded as such; to protect women who are victims of male violence from having to refer in court to violent men as women; and to keep women's prisons single sex in order to protect women in prison from males, no matter how those males identify.

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<sup>6</sup> [https://fairplayforwomen.com/sex\\_data\\_wrong/](https://fairplayforwomen.com/sex_data_wrong/)

<sup>7</sup> <https://fairplayforwomen.com/transgender-male-criminality-sex-offences/>

<sup>8</sup> <https://fairplayforwomen.com/insidetime/>

<sup>9</sup> <https://fairplayforwomen.com/sex-attacks-mps-must-investigate-risks-of-transgender-prisoners/>

<sup>10</sup> <https://fairplayforwomen.com/why-female-inmate-suing-government-transgender-prisoners/>