

# **Improving outcomes for women in the criminal justice system**

## **Submission from Fair Play For Women**

January 2022

### **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 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.

### **Summary and recommendations**

We welcome the Ministry of Justice's Female Offender Strategy and this review of its progress. The existence of this policy, backed up by the data cited in the NAO review, is recognition of the differences between male and female offending patterns, and of the need for a different approach in the criminal justice system for women.

Every human being is either male or female, regardless of how they may identify. Both the effective implementation of this Ministry of Justice policy and the Home Office's strategy in Violence Against Women and Girls rely on the simple categorisation of everyone in the criminal justice system by birth sex. Where legal sex has been changed, birth sex remains an important and differentiating factor in patterns of criminality, and should not be ignored.

Therefore we call upon the MoJ to work with all relevant parties in the criminal justice system to ensure that:

1. All prisoners and crimes are recorded according to their birth sex.
2. Women are not imprisoned with males.
3. Probation hostels are single-sex.

## **Rationale and evidence**

### **1. All prisoners and crimes should be recorded according to their birth sex.**

Birth sex is possibly the single most discriminating factor in patterns of criminal behaviour. Criminality among males and females is profoundly different, both in scale and in nature. It is essential that accurate information including birth sex is maintained, both at an aggregate level and at an individual level. Without that data, good policies cannot be enacted or maintained.

The most significant sex-based difference in offending is in violent and sexual crimes, which are committed predominantly by males. 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>i</sup>. 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.

The NAO report points out that “to date, the Ministry has used trends in existing data on women in the CJS to report on progress.” The report recommends improving data and management information, specifically to “identify gaps in available data which reduce its ability to monitor changes in women’s journeys through the system at key stages, and plan how to work with other bodies to develop better data.” This must include recording birth sex.

A gender identity, whether self-declared or confirmed via a Gender Recognition Certificate, should never replace birth sex in data collection or prisoner records. It will be necessary in some instances to record a gender identity in addition to birth sex, especially where a prisoner is seeking different treatment from that which is usual for their sex. Where a prisoner has a GRC, it is necessary and appropriate to record their birth sex and to take this into account in risk assessment.

### **2. Women should not be imprisoned with males.**

The NAO report says that the “Female Offender Strategy makes an evidence-based case for addressing the distinct needs of women in the justice system, who have worse outcomes than men.” It goes on to say that “women in contact with the CJS are more likely than men to: have specific vulnerabilities that drive their offending, including histories of trauma and abuse; commit less serious offences and pose less risk of serious harm to the public; be badly affected by prison, with a rate of self-harm in 2017 that was nearly five times as high in women’s prisons as in men’s prisons.”

This is why it is important for women not to be imprisoned with males. Such treatment is likely to cause them emotional distress, and unlikely to provide an environment in which they feel safe<sup>ii</sup>. Being in prison is the punishment; feeling unsafe in prison is not intended to be part of the punishment.

Allowing males to be recorded as females in the criminal justice system and to access the female prison estate risks undermining the good work being done to improve outcomes for women in the criminal justice system.

Appropriate and safe provision for males who hold a Gender Recognition Certificate making them legally female should be made. Likewise for those who claim a gender identity different from their birth sex. However this cannot be at the expense of vulnerable women in prison, whose own punishment may be made much worse if male prisoners are present, regardless of whether there is a physical threat, because of their own past experience and possible trauma.

### **3. Probation hostels should be single-sex.**

The policy refers to dedicated investment for services for female offenders, including for providing support to women on probation. But England's three probation hostels for women are no longer single sex. They are obliged by funding requirements – not by the law – to accept males who claim to be women. This changes the environment for females, making it feel less safe, particularly for women who have experienced male violence, as a majority will have done. The work being done in these hostels to assist with rehabilitation and re-entry is undermined by the presence, and sometimes the behaviour, of males.

Fair Play For Women has been told, in confidence, of how post-sentence rehabilitative group therapy with women whose self-esteem is generally very low becomes unworkable when a confident male is present. Whereas it is usual for the women to support and encourage one another, we were told by someone with experience that in her therapy groups, such a male displayed a different type of behaviour which was unhelpful and undermined the others present. Her experience was that the behaviour of such a person can trigger the women to withdraw and feel unable to participate. She also reported instances in the hostel but outside the group therapy setting where the male became aggressive, disruptive and violent when not accorded the attention he wanted, frightening the women present. This cannot help achieve better outcomes for those women.

### **Conclusions**

Successful implementation of the Ministry of Justice's Female Offender Strategy relies on knowing who is male and who is female in the system, and on being able to separate them so as to treat the females as directed by the strategy. Provision for the needs of prisoners protected under the characteristic of gender reassignment should not come at the expense of those born female, protected under the characteristic of sex. Data and treatment of prisoners with a trans identity should not come at the expense of females, nor should it collapse two protected characteristics, sex and gender identity, into one.

### **Therefore we recommend that:**

All prisoners and crimes should be recorded according to their birth sex.

Women should not be imprisoned with males.

Probation hostels should be single-sex.

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

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