



**Report on the Implementation of the Council of Europe
Convention on Preventing and Combating Violence
Against Women and Domestic Violence
(Istanbul Convention)**

**Shadow Report
Women's Declaration International - UK**

**THE APPROACH TO SEX AND 'GENDER IDENTITY' IN CRIMINAL
JUSTICE INSTITUTIONS WITHIN THE UK**

December 2023

INTRODUCTION

Women's Declaration International-UK (WDI-UK) is a non-governmental organisation which promotes the [Declaration on Women's Sex-Based Rights](#). The Declaration reaffirms that the rights of women and girls which are set out in the Convention on the Elimination of all Forms of Discrimination against Women (the CEDAW) are sex-based; and challenges the discrimination and harms women and girls experience when the category of sex is replaced with the category of 'gender identity' in law, policy and practice.

The Declaration has 37,251 individual signatories from 160 countries, and has 518 organisational signatories.

We use the term 'sex' to refer to "the physical and biological characteristics that distinguish males from females." (Gender Equality Glossary, UN Women).

We understand the terms 'gender' to refer to "the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women... These attributes, opportunities and relationships are socially constructed and are learned through socialization processes." (Gender Equality Glossary, UN Women).

We see sex as immutable, and 'gender' and 'gender identity' as socially constructed. We are concerned that replacing the category of sex, which is biological, with the category of 'gender', which refers to socially constructed sex roles, in law and policy undermines the protection of women's human rights.



Our submission focusses on the ways in which the adoption by criminal justice institutions in the UK of policies and practices which prioritise 'gender identity' over sex is damaging both to the interests of individual women and girls who have been subjected to physical and sexual violence, and to the criminal justice system's ability to identify and effectively challenge sex-based patterns of violence against women and girls. We focus particularly on the two jurisdictions of England and Wales and of Scotland, where policies and practices based on the concept of 'gender identity' are most developed. Our submission reflects the fact that there is more available data relating to these policies and practices in England and Wales, which is the largest jurisdiction in the UK.

We are raising these issues with Grevio because they are frequently overlooked or dismissed in discussions about the role of criminal justice institutions in combating violence against women and domestic violence.

The law relating to recognition of 'gender reassignment' in the UK

The Gender Recognition Act 2004 makes provisions enabling individuals to obtain a Gender Recognition Certificate (GRC) which changes their 'gender' in law for most, but not all, purposes provided that they meet certain criteria specified in the Act. This new legal status is referred to in the Act as the 'acquired gender'. The Gender Recognition Act is UK-wide legislation.

Self-declaration of 'gender identity' has not been incorporated into law in the UK. A proposal that it should be adopted in England and Wales was explicitly rejected by the Westminster government in 2020.

In December 2022 the Scottish government passed a Bill which, if enacted, would introduce self-declaration of 'gender identity' in Scotland. The Secretary of State for Scotland has invoked section 35 of the Scotland Act 1998 to prevent this Bill in its current form from being submitted for Royal Assent, on the basis that the Bill applies to matters reserved to the UK Parliament and would have an adverse effect on the operation of the law as it applies to those reserved matters. The Scottish government challenged this decision in court by means of judicial review. They did not succeed.

***De facto* recognition of 'gender identity' in policy and practice**

Despite the fact that self-declaration of 'gender identity' is not incorporated into law anywhere in the UK, in recent years it has largely been adopted as policy by all of the key criminal justice institutions in England and Wales, and in Scotland. This includes the police services, the courts, public prosecuting bodies, and the prison services. These institutions now effectively subscribe to the ideological belief that individuals' subjective sense of 'gender identity' should generally take precedence over their sex. The adoption by criminal justice institutions of this belief, and the policies and practices which flow from it, have developed without public consultation or scrutiny.

This approach by criminal justice institutions is damaging to the interests of women and girls (and all children), and particularly those who have been subjected to physical and sexual violence.

Categorising suspects and offenders on the basis of their claimed 'gender identity' rather than their sex, and the adoption of practices which prioritise the 'gender identity' of police and prison officers over their sex, have detrimental effects on the fair operation of the criminal justice system for women and girls reporting alleged violent offences to the police, those who give evidence as



complainants at criminal trials, those who are detained by the police, and women who are imprisoned with trans-identifying male offenders. It also leads to inaccurate recording of criminal justice data, which has a detrimental effect on a state's ability to identify patterns of violence against women and girls and develop effective strategies for responding to and deterring such violence.

Our colleagues at the human rights organisation Sex Matters, together with other groups, have made a submission to GREVIO which focuses on the operation of the legal framework on sex discrimination and positive action for women in the UK. Noting that the ordinary meaning of the term 'sex' relates to biology and sexual reproduction, their submission provides evidence that:

- 1) the current interpretation of the definition of sex in the Equality Act, which no longer clearly reflects the ordinary meaning, undermines the whole purpose of the law in relation to women's rights and leaves the UK in breach of the Convention.
- 2) this is exacerbated by widespread adoption of policies which are not aligned to the law at all, but to gender self-identification.

Sex Matters cross-reference their concerns to the Articles contained in the Istanbul Convention. The concerns they identify which relate particularly to the operation of criminal justice institutions include the following:

Article 4 – Fundamental rights, equality and non-discrimination

The protected characteristic of "sex" in the Equality Act no longer aligns with the two sexes.

Article 5 – State obligations and due diligence

Within the police services males with a GRC (and in some cases without) are allowed to search and/or intimately examine women in situations where those women have not consented to be examined by a man.

This could constitute sexual assault and sex-based harassment by state agents, and breaches Articles 3 and 8 of the European Convention on Human Rights.

Article 7 – Comprehensive and coordinated policies

Lack of certainty and coherence about sex in the law (and adoption of "gender identity" instead of sex in policies) undermines comprehensive and coordinated policies.

Article 11 – Data collection and research

Data is not collected on sex in many areas of administrative data and official statistics: it has been replaced and confused with gender identity.

Article 15 – Training of professionals

Professionals are trained to ignore sex as a risk factor and a material reality. This undermines safeguarding.

Article 25 – Support for victims of sexual violence

Female-only support should be available for victims of rape. The law currently makes this difficult.

(Please see our discussion below about trauma-informed approaches in women's prisons.)



Article 40 – Sexual harassment

Although the UK has laws which prohibit conduct of a sexual nature with the purpose or effect of violating the dignity of a person”, if the law, the judiciary and police do not recognise that a man who identifies as a woman is not actually a woman, they will continue to expose women to sexual harassment.

Article 49 – Investigation, prosecution, procedural law and protective measures - General obligations

The obligation that the rights of the victim are taken into consideration at all stages of criminal proceedings is not met where the suspect has a trans identity and the victim is forced to refer to them as the sex they identify as – for instance, a victim of rape or child sexual abuse having to refer to, and hear police, lawyers and judges refer to, their rapist as “she”.

The significance of sex in the area of criminal justice

Accurate information about the sex of suspects and offenders is crucial to the development of law and policy aimed at reducing and seeking to prevent sexual and violent crime at a societal level, and to the identification, investigation and prosecution of sexual and violent crime at the individual level. The acknowledgement of the significance of sex is also crucial to the safety, dignity and privacy of female detainees and prisoners. In relation to the searching of detainees and prisoners, it is also crucial to the dignity and privacy of female police officers and prison officers.

As Professor of Criminology Jo Phoenix has noted,¹

Sex is the single strongest predictor of criminality and criminalisation. Since criminal statistics were first collected (in the mid 1850's) males make up around 80% of those arrested, prosecuted and convicted of crime. Violent crime is mostly committed by males... This remains the case regardless of stated gender identity.

This overrepresentation of males in offending behaviour is particularly pronounced in relation to sexual offending and offences involving violence. The Ministry of Justice for England and Wales published data in 2020² showing that 98% of those prosecuted for sexual offences in 2019 were male. Research indicates that this pattern holds for sexual offences against both adults and children. For example, an analysis of Ministry of Justice data which was published in 2019³ found that 98% of those convicted of sexual offences against children in 2017 were males.

A significant majority of those prosecuted for non-sexual forms of violence against the person are also men. Data published by the Office for National Statistics in 2023 for the three-year period

¹ Jo Phoenix, 'What Do we Stand For? Criminology, Politically Induced Ignorance and Gender Identity Politics' (Sex Matters in Criminal Justice) 1 January 2022 <https://jophoenix.substack.com/p/what-do-we-stand-for>

² Ministry of Justice, Statistics on Women and the Criminal Justice System 2019, A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991, 26 November 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938360/statistics-on-women-and-the-criminal-justice-system-2019.pdf

³ Sherrelle Parke and Kairika Karsna, Measuring the scale and changing nature of child sexual abuse Analysis of 2017/18 official and agency data, Centre of Expertise on Child Sexual Abuse, July 2019 <https://www.csacentre.org.uk/app/uploads/2023/09/Scale-and-nature-update-2019.pdf>



ending in March 2022⁴ showed that 93% of those convicted of homicide in England and Wales were male.

The majority of those who are sexually assaulted are female. For the year ending March 2022, the Crime Survey for England and Wales (CSEW)⁵ estimated that 798,000 women and 275,000 men aged 16 years and over had experienced sexual assault (including attempts) in the last year. This is a prevalence rate of approximately 3 in 100 women and 1 in 100 men. Women were significantly more likely than men to be victims of any form of sexual assault.

In relation to sexual offences experienced in childhood the CSEW estimated that women were around three times as likely as men to have experienced sexual abuse before the age of 16 years (11.5% compared with 3.5%).

The evidence suggests that biological males who identify as transgender often retain male patterns of criminality. Information about the prison population, for example, indicates that the proportion of trans-identifying males who have been convicted of sexual offences is higher than the proportion of convicted sex offenders in the general male prison population. Figures presented by the Ministry of Justice for England and Wales in the case of *R (on the application of FDJ v Secretary of State for Justice*⁶ suggested that data collected across the prison estate in March/April 2019 indicated that 49.69% of trans-identifying prisoners had convictions for sexual offences; while data for 2020 indicated that fewer than 20% of male prisoners in the general prison population, and 5% of the female prison population were serving sentences for sexual offences.

Men make up the overwhelming majority of convicted offenders. In 2022 the House of Commons Justice Committee⁷ noted that women constituted less than 5% of the prison population in England and Wales. This proportion had remained stable for several years.

The main areas of criminal justice policy and practice we examine

Our submission focuses on the areas in which criminal justice policy and practices which prioritise 'gender identity' over sex most negatively affects women in general, and particularly women who have experienced sexual or physical violence from trans-identifying males. These are:

- 1) Data recording about suspects and offenders which is based on 'gender identity' rather than sex;
- 2) The compelled use of the preferred pronouns of trans-identifying suspects and offenders;
- 3) Searching policies which are based on 'gender identity' rather than sex;
- 4) The placement of trans-identifying males in women's prisons.

⁴ Office for National Statistics, 'Homicide in England and Wales: year ending March 2022' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/march2022>

⁵ Office for National Statistics, 'Sexual offences prevalence and trends, England and Wales: year ending March 2022' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesprevalenceandtrendsenglandandwales/yearendingmarch2022>

⁶ *R (on the application of FDJ v Secretary of State for Justice* [2021] EWHC 174 6 (Admin) <https://www.bailii.org/ew/cases/EWHC/Admin/2021/1746.html>

⁷ UK Parliament, 'Women in Prison First Report of Session 2022–23', 26 July 2022 <https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/265/report.html>



We examine below the practices of four criminal justice institutions in relation to these areas. They are police services, public prosecuting bodies, the courts and prison services.

Some of these aspects of policy and practice are relevant to all of the four criminal justice institutions we examine. Others are relevant only to some of them.

THE POLICE SERVICES

In **England and Wales** there are forty-three regional police services of varying size. There are also some specialist national services and other local services. Individual police services have considerable operational independence, and so their polices are not uniform.

Recording of suspects' and offenders' sex and 'gender identity'

The approach to the recording of the sex of suspects varies across forces. The most recent research in this area was published in November 2023 by Keep Prisons Single Sex (KPSS),⁸ who sent Freedom of Information Requests to all police services. Thirty-two services responded, and the research found that:

- No force records sex registered at birth as standard, in all circumstances.
- 20 forces record legally recognised acquired gender, not sex registered at birth, where the suspect has been issued with a gender recognition certificate.
- 13 forces record a suspect's self-declared gender/gender identity.
- 22 forces answered questions on how rape suspects' sex is recorded: 20 forces record legally recognised acquired gender, where the suspect has been issued with a GRC; only 1 force record sex registered at birth for a suspect with a GRC; 13 forces record self-declared gender/gender identity.
- 11 forces will record the sex of a suspect who identifies as non-binary as indeterminate, unspecified, or other.

KPSS found that In **Scotland** the police record trans-identifying suspects according to their self-declaration, or according to the way they present themselves.

In both jurisdictions those suspected of rape may be recorded as female. The definition of rape in UK law⁹ states that it involves penile penetration. It can therefore only be committed by a male.

Alice Sullivan, a professor of Sociology and data specialist, stated in her submission to the Scottish Parliament's Citizen Participation and Public Petitions Committee in 2021,

"Quantitative social scientists, including criminologists, have made clear that accurate data on sex remains fundamentally important. The quantitative social science community have made this case in an open letter to the census authorities, signed by 80 UK quantitative social scientists, and in a submission to Roger Halliday's consultation on draft guidance issued on the collection of data on sex and gender in Scotland, signed by 91 UK quantitative social scientists. The signatories to these letters include some of the most eminent scholars

⁸ Keep Prisons Single Sex, 'How Police Forces in the UK Record Suspects' Sex: 2023 Update', November 2023 <https://kpssinfo.org/how-police-forces-in-the-uk-record-suspects-sex-2023-update/>

⁹ Section 1 Sexual Offences Act 2003. <https://www.legislation.gov.uk/ukpga/2003/42/section/1>



in their fields, including leaders of major studies... While sex is an important predictor of outcomes across the board, crime represents a particularly extreme example. The overwhelming majority of individuals convicted of violent crime are male, and females represent a tiny minority of those convicted of sexual assault of any kind.”

Professor Sullivan also refuted the argument that, since the number of people who identify as transgender is small, any data error generated by recording ‘gender identity’ rather than sex for this group will also be small. She noted that small numbers of misallocated cases can have a large effect on research findings in any sub-group analysis where one sex is dominant, and suggested that crime statistics generally, and sexual crime statistics provide a particularly clear example of this.

Conflating sex and ‘gender identity’ in crime statistics relating to violence against women is contrary to Article 11 of the Istanbul Convention, which requires Parties to:

- a. collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;
- b. support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.

Police searches of suspects and detainees

United Nations rules about the treatment of women prisoners, known as the ‘Bangkok Rules’,¹⁰ apply to detainees at a police station. Rule 19 states:

“Effective measures shall be taken to ensure that women prisoners’ dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.”

The types of searches which police may carry out include the searching of outer garments only, strip searches, which involve the removal of more than outer clothing, and intimate searches, which involve the physical examination of a person's body orifices other than the mouth. Intimate searches are only carried out by police officers when this is authorised by a senior officer.

Searching by trans-identifying police officers

A new policy from the National Police Chiefs’ Council (NPCC)¹¹ in **England and Wales** about the searching of detainees by trans-identifying police officers, was introduced in December 2021. This policy relates to all forms of searches, including strip searches and intimate searches. It states,

“Chief Officers are advised to recognise the status of Transgender colleagues from the moment they transition, considered to be, the point at which they present in the gender

¹⁰ United Nations Office of Drugs and Crime, ‘The Bangkok Rules United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary’ 21 December 2010 https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

¹¹ National Police Chiefs’ Council, Chief Constables’ Council, ‘Title: Searching by Transgender Officers and Staff’, Agenda Item: Session 1, 09 December 2021 https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/disclosure-logs/dei-coordination-committee/2023/268-2023-searching-by-transgender-officers-and-staff_cover-paper_redacted.pdf



with which they identify. Thus, once a Transgender colleague has transitioned, they will search persons of the same gender as their own lived gender.

If the person being searched objects to being searched by any colleague, it may be advisable for them to be replaced by another team member to search that person. This is regularly done in practice, regardless of the reasons for objection, to de-escalate any potential conflict. If such a decision must be made, it is essential to support the affected colleague and consider the adverse impact on other colleagues.”

It is unclear how many police services in England and Wales have adopted this policy.

The NPCC policy includes no consideration of the potentially traumatic effects on a female detainee of being strip searched or intimately searched by a male police officer. No mention is made of the rights to safety, privacy or dignity of the detainees involved.

The extent to which someone detained by the police could give valid consent to this kind of search is questionable. Where a person who is not authorised to carry out a search on a suspect does so, this amounts to battery¹² in law. Where the search is a strip search or intimate search, it can amount to a sexual assault. The NPCC guidance amounts to the police instituting a practice which would normally constitute sexual assault. This practice could constitute inhuman or degrading treatment contrary to Article 3 of the European Convention on Human Rights, as well as a violation of detainees’ right to respect for their private life under Article 8.

Police policy in **Scotland** allows trans-identifying police officers to search detainees of the opposite sex, but places more emphasis on consideration of the dignity and feelings of detainees. It states:

“The primary consideration when conducting any search is to respect the dignity of the person being searched and to understand that a member of the public may feel more vulnerable when being subjected to a strip/intimate search.

When considering a transgender team member’s support plan, supervisors should discuss expectations with the transgender member of staff of their mutual expectations in relation to conducting a standard search and a strip/intimate search.

If a transgender team member’s presence causes upset to the person being searched it may be advisable for the team member to be replaced by another team member to search that person. (This is regularly done in practice regardless if a person is transgender to de-escalate any potential conflict)”¹³

The fact that this policy states that the ‘primary consideration’ should be respecting the dignity of the person being searched is very welcome. However, the Scottish policy will nevertheless result in police detainees being put in a position where they may be searched by someone of the opposite sex unless they expressly object to this. Detainees are often vulnerable and may be apprehensive about

¹² In English and Welsh law a battery is the infliction of unlawful force on another person (*Collins v Wilcock* [1984] 3 All ER 374 QBD). Force includes any form of physical contact for which there is no consent or lawful excuse.

¹³ Scottish Police Authority, Police Scotland, ‘Transitioning at Work’, 06.09.2019.
<https://www.scotland.police.uk/spa-media/ltzd2c/jy/transitioning-at-work-redacted.pdf>



objecting to a police practice. This raises questions about how valid their apparent consent to being searched by someone of the opposite sex is.

The searching of trans-identifying detainees

In **England and Wales** police policy is that detainees should normally be searched by police officers of the same 'gender'. Police guidance¹⁴ states,

"Once a decision has been made about which sex a trans detainee is to be treated as, the officer or staff member who will carry out the search should be advised of that decision, and the reasons supporting it, prior to carrying out the search. This is important in order to maintain the dignity of the officer or staff member concerned."

In **Scotland**, police guidance¹⁵ states that prisoners should be searched according to the "gender they present and live their lives as" and should be searched by "staff of that gender". The guidance states that staff who are not comfortable with this can inform the Custody Supervisor, but it is silent on what action would then be taken.

In neither jurisdiction does police guidance say that officers have a choice about whether or not they carry out strip searches of detainees who are not the same sex as themselves. Many officers may find carrying out such a search demeaning. For female police officers, being required to carry out a strip search of a male prisoner may be experienced in a similar way to being sexually assaulted, particularly where that prisoner is a known or suspected sex offender, retains male genitalia, or is aroused by the search.

Requiring a female police officer to strip search a biological male can constitute inhuman or degrading treatment under Article 3 of the European Convention and could amount to a violation of her right to privacy under Article 8 of the Convention.

Where the trans-identifying male detainee involved does not have a GRC and is therefore legally male, it is difficult to see what foundation there is in law for requiring female officers to carry out these searches. Where a trans-identifying male detainee does hold a GRC, a search by a male police officer could arguably give rise to a potential claim under Article 3 and/or Article 8 of the European Convention on the part of the detainee. This is an area in which there are clear potential conflicts between the rights of female officers to safety, privacy and dignity and the rights conferred on those holding a GRC to be treated according to their 'acquired gender'.

¹⁴ College of Policing Authorised Professional Practice, 'Detention and Custody Equality and individual needs' First published: 23 October 2013 Last modified: 18 January 2022
<https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/equality-and-individual-needs/>

¹⁵ Police Scotland, 'Police Scotland's Care and Welfare of Persons in Police Custody Standard Operating Procedure', 20.12.19.
<https://www.scotland.police.uk/spa-media/0mfjn3pa/care-and-welfare-of-persons-in-police-custody-sop.pdf>



PUBLIC PROSECUTING BODIES

In **England and Wales** the Crown Prosecution Service (CPS) conducts criminal prosecutions on behalf of the state. It has a national policy¹⁶ of recording suspects on the basis of their 'gender identity' and referring to them using their preferred pronouns in court.

This applies even in relation to defendants charged with rape.

CPS data relating to the sex of those prosecuted for rape was published by the Office for National Statistics in 2018.¹⁷ It shows that 436 of those who were prosecuted for rape between 2012 and 2018 were recorded as women. The proportion of rape defendants classified as women during this seven-year period varied between 1.2 per cent and 1.8 per cent each year. Data published by the CPS in 2020¹⁸ showed that, of 2,102 defendants prosecuted for rape in 2019-20, the CPS had recorded 2,064 defendants as male (98.2%), and 27 as female (1.3%). The CPS report stated that "Gender was not recorded for eleven defendants."

Some of those defendants who were recorded as female may have been women charged as accessories to rapes committed by men, but in view of CPS recording policy it seems likely that some would have been trans-identifying males.

In **Scotland** public prosecutions are conducted on behalf of the state by the Crown Office and Procurator Fiscal Service (COPFS). Its 'Guidance for prosecutors in relation to transgender accused'¹⁹ states,

"Transgender people should not be dealt with in a manner that is inconsistent with their self-defined gender identity. Therefore, prosecutors should ensure that the language used to or about transgender people, should reflect how they identify and self-describe. This applies to the title and first and other names as well as the personal pronoun used to refer to them."

This guidance also states that, "Even in many cases in which a transgender individual is accused of a sexual offence, their gender history will not be relevant to proof of the offence. (e.g. cases of indecent communications)."

Prosecuting institutions recording defendants according to their 'gender identity' rather than their sex is detrimental both because it leads to inaccurate data recording, and because of its potential impact on those who report alleged offences.

Particularly for female and child complainants who are alleging that sexual and violent offences have been committed against them, it will be confusing and distressing if prosecution lawyers refer

¹⁶ Crown Prosecution Service, 'Trans Equality Statement', July 2019

<https://www.cps.gov.uk/publication/trans-equality-statement>

¹⁷ Office for National Statistics, 'Sexual offending; Crown Prosecution Service appendix tables', 13 December 2018

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/sexualoffendingcrownprosecutionserviceappendixtables>

¹⁸ Crown Prosecution Service, 'Key facts about how the CPS prosecutes allegations of rape', 19 October 2020

<https://www.cps.gov.uk/publication/key-facts-about-how-CPS-prosecutes-allegations-rape>

¹⁹ Crown Office and Procurator Fiscal Service, 'Guidance for prosecutors in relation to transgender accused', 22 September 2014 <https://www.copfs.gov.uk/publications/transgender-accused-policy/html/>



to alleged perpetrators who are trans-identifying males using female pronouns when the complainant perceives them in terms of their sex.

THE COURTS

In **England and Wales** guidance for judges about the treatment at court of witnesses who identify as transgender is contained in the *Equal Treatment Bench Book* (the ETBB)²⁰ published by the Judicial College. The ETBB's stated purpose is to guide judges in treating all participants in court proceedings fairly.

The ETBB states,

"It is important to respect a person's gender identity by using appropriate terms of address, names and pronouns. Everyone is entitled to respect for their gender identity, private life and personal dignity."

Before December 2021, the ETBB said nothing about how this guidance should be implemented in practice in relation to witnesses other than those who identify as transgender, or about how judges should treat witnesses who perceive defendants in terms of their sex rather than their 'gender identity'.

Before the 2021 version of the ETBB, some judges interpreted the guidance as requiring them to compel all witnesses to use the preferred pronouns of defendants and other parties to proceedings who identify as transgender. This had particularly serious implications for witnesses who were giving evidence about traumatic events, such as being subjected to physical and sexual violence. Previous versions of the ETBB did not address the impact on these witnesses of being required to describe a defendant in criminal proceedings, or an alleged perpetrator of domestic abuse in family proceedings, in ways which amount to a denial of their own perceptions of reality.

In trials for sexual offences, the majority of complainants are women and children, and the overwhelming majority of defendants are male. The logic of the earlier ETBB guidance was that a complainant in a trial for rape or other sexual offences could be required to call a trans-identifying defendant 'she'. It could also have required her to use female possessive pronouns to refer to the defendant's body parts, to which she would have to refer when giving her evidence. This could also have applied to child witnesses and vulnerable adult witnesses, who are likely to be particularly confused and distressed by an instruction from an authority figure like a judge to refer to a male as 'she'.

This type of compelled speech undermines access to justice, particularly for women and children. The right to accurately describe the sex of those who have assaulted them sexually or in other ways is crucially important to the ability of women and children to report violence and give evidence against their abusers.

In December 2021 a new interim version of the ETBB was published which included amendments which took account of some of the criticisms of earlier versions made by advocates for sex-based rights. The revised version states,

²⁰ Judicial College, 'Equal Treatment Bench Book February 2021 Edition, April 2023 revisions'
<https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>



“There may be situations where the rights of a witness to refer to a trans person by pronouns matching their gender assigned at birth, or to otherwise reveal a person's trans status, clash with the trans person's right to privacy. It is important to identify such potential difficulties in advance, preferably at a case management stage, but otherwise at the outset of the hearing. A decision would then have to be made regarding how to proceed, bearing in mind factors such as:

... Why the witness is unwilling or unable to give evidence in a way which maintains the trans person's privacy. For example, a victim of domestic abuse or sexual violence at the hands of a trans person may understandably describe the alleged perpetrator and use pronouns consistent with their gender assigned at birth because that is in accordance with the victim's experience and perception of the events. Artificial steps such as requiring a victim to modify his/her language to disguise this risks interfering with his/her ability to give evidence of a traumatic event.

There will be occasions when, after these and other relevant factors have been considered, the interests of justice require that a witness or party may refer to the trans person using their former pronouns or name.”

This revision should mean that complainants giving evidence in trials for sexual offences, or other forms of violence, will not be required to call male defendants ‘she’; and that women giving evidence in family proceedings about their experiences of domestic abuse will not be required to refer to their current or former male partners as though they were women.

While this is an important step forward, many of the problems raised by the ETBB's general guidance about the use of preferred pronouns are not addressed in the new version. While the revised ETBB makes exceptions to the requirement to use preferred pronouns in relation to witnesses giving evidence about alleged assaults committed against them, it retains this requirement for other witnesses and for lawyers in court proceedings. In practice witnesses' ability to exercise their right to use pronouns which align with the sex of trans-identifying parties to proceedings will be limited by the fact that the ETBB is likely to be interpreted to mean that the judge, the lawyers representing all parties, and perhaps other witnesses, should use preferred pronouns based on self-declared ‘gender identity’.

The ETBB does not discuss the implications for a witness of calling a trans-identifying male ‘he’ while everyone else who speaks in the court room calls that person ‘she’. Where this happens it is likely to confuse and unnerve witnesses, who may feel pressurised to use the preferred pronouns themselves. The stress this is likely to cause can have a detrimental effect on witnesses' ability to recall events clearly and give their evidence in a coherent way. This is particularly the case during cross-examination. In adversarial legal systems such as those in the UK, the central purpose of cross-examination is to undermine the witness' testimony. This is an extremely distressing process for most witnesses, who are likely to be caused further distress when the lawyer cross-examining them calls a male who has subjected them to violence ‘she’.

These difficulties are likely to be exacerbated in relation to witnesses who are children, children or adults who are not giving evidence in their first language, or children or adults who have learning disabilities.



In **Scotland**, the Judicial Institute for Scotland's *Equal Treatment Bench Book*²¹ states,

"As a basic principle, language used to or about LGBT people should reflect how they themselves wish to be addressed or referred to. This applies particularly to the title (e.g. Mr, Ms, etc.) and first and other names of transgender people, as well as the personal pronoun used to refer to them."

No specific guidance is given in relation to complainants and other witnesses in cases involving allegations of sexual or physical violence.

THE PRISON SERVICES

The placement of males in women's prisons

Rule 11(a) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules,²² states:

"Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate."

Despite this rule, males who say they have a female 'gender identity' are housed in women's prisons in England and Wales and in Scotland.

In September 2017 Karen White,²³ a trans-identifying male formerly known as Stephen Wood and as David Thompson, was placed in New Hall women's prison in **England** while on remand on charges of grievous bodily harm, burglary, rape, and other sexual offences against women. White did not have a GRC and was placed in New Hall on the basis of self-declaration. White already had convictions for indecent assault and gross indecency with a young child. While at New Hall, White sexually assaulted two female prisoners. In September 2018 White pleaded guilty to these assaults and to the other charges and is serving a life sentence.

White is now held in a men's prison, and prison policy in **England and Wales** has been amended. The most recent amendment was in February 2023,²⁴ when the Ministry of Justice announced a new policy that trans-identifying males who retain male genitalia or who have been convicted of sexual or

²¹ Judicial Institute for Scotland, 'Equal Treatment Bench Book', Last modified 21 August 2019
https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/equal-treatment-bench-book.pdf?sfvrsn=3aa746ad_4

²² United Nations Office on Drugs and Crime, 'The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)'
https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

²³ Nazia Parveen, 'Karen White: how 'manipulative' transgender inmate attacked again', *The Guardian*, 11 October 2018
<https://www.theguardian.com/society/2018/oct/11/karen-white-how-manipulative-and-controlling-offender-attacked-again-transgender-prison>

²⁴ Ministry of Justice, HM Prison and Probation Service, and The Rt Hon Dominic Raab MP, 'Press release New transgender prisoner policy comes into force', 27 February 2023
<https://www.gov.uk/government/news/new-transgender-prisoner-policy-comes-into-force>



violent offences will not be placed in the general women's prison estate. This applies whether or not they hold a GRC. The policy allows for exemptions to be considered by Ministers on a case-by-case basis.

Other trans-identifying males may be placed in the women's estate, if they are assessed as "low risk".

In **Scotland**, between 2014 and 2023, the Scottish Prison Service (SPS) operated a policy of placing prisoners on the basis of self-declared gender identity. In late 2019, SPS made a commitment to review that policy in response to concerns raised, especially around potential implications for the safety and wellbeing of prisoners.²⁵

While that review was ongoing, the Scottish Prison Service undertook a 'lessons learned review'²⁶ following public controversy in February 2023 about the placement in a women's prison of Adam Graham/Isla Bryson,²⁷ who had claimed a female 'gender identity' after being charged with two rapes for which he was later convicted. This 'lessons learned review' influenced the wider review, which led to a new policy which was published in December 2023.

The new policy²⁸ bases its approach on 'gender' self-declaration. It says that trans-identifying individuals will generally be admitted to a prison which aligns with their 'affirmed gender', but that trans-identifying males who have been convicted of, or are awaiting trial for, a range of serious sexual and other violent offences against women will not be placed in a women's prison unless "the Risk Management Team, and subsequently the Executive Panel, are satisfied there is compelling evidence that they do not present an unacceptable risk of harm to those in the women's prison".

The 'Equality and Human Rights Impact Assessment'²⁹ which accompanies the new policy allows for trans-identifying males who are deemed to be too great a risk to women prisoners to be placed in a women's prison to participate in some of the activities of women prisoners so that their 'gender identity' may be supported. It states:

"While it may be necessary to accommodate transgender individuals in a prison which does not align with their affirmed gender, there may be other ways of supporting their gender identity, for example through access to work parties, activities, or even programmes with others of their gender identity. This approach would be in line with CPT's recommendation on the accommodation and management of transgender individuals: "If accommodated in a separate section, they should be offered activities and association time with the other prisoners of the gender with which they self-identify."

²⁵ Scottish Prison Service, 'News, SPS review of Gender Identity and Gender Reassignment Policy (2014)' <http://www.sps.gov.uk/Corporate/News/News-8125.aspx>

²⁶ Keith Brown MSP, Letter to Audrey Nicoll MSP, Convener, Criminal Justice Committee, 09 February 2023 <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2023/transgender-prisoners-correspondence-from-the-scottish-government-and-scottish-prison-service-9-febr.pdf>

²⁷ BBC, 'Isla Bryson: Transgender rapist jailed for eight years' 28 February 2023 <https://www.bbc.co.uk/news/uk-scotland-64796926>

²⁸ Scottish Prison Service, 'SPS Policy for the Management of Transgender People in Custody', December 2023 <http://www.sps.gov.uk/Corporate/Information/TransgenderPeopleInCustody.aspx>

²⁹ Scottish Prison Service, 'Equality and Human Rights Impact Assessment (EHRIA)', December 2023 <http://www.sps.gov.uk/Corporate/Information/TransgenderPeopleInCustody.aspx>



The Equality and Human Rights Impact Assessment does not discuss consulting with women prisoners about how they view being required to associate with trans-identifying male prisoners who have been assessed as constituting a potential risk of violence to them. This policy prioritises the 'validation' of trans-identifying males' feelings over the safety of women prisoners. Even if no violence takes place, the risk of violence against women which this policy creates is likely to result in feelings of anxiety and fear among female prisoners, the majority of whom have already experienced male violence.

The new policies in both jurisdictions are likely to have the effect of reducing the numbers of trans-identifying males in women's prisons and thereby decreasing the risk of female prisoners being subjected to sexual and physical violence from males, particularly in England and Wales.

However, these policies will not eliminate the risk of sexual or physical violence against women prisoners by males. Both revised policies still allow for the placement in women's prisons of trans-identifying males who have committed sexual or other violent offences against women. Placing any males in women's prisons creates a potential risk of violence against women, and therefore potentially infringes women's rights to protection from inhuman and degrading treatment under Article 3 of the European Convention. Degrading treatment includes treatment which 'humiliates or debases the individual' and arouses feelings of fear. For many women, being incarcerated with males can cause such feelings, however those males identify.

Placing males in women's prisons is also an interference with women's rights to privacy under Article 8. Women's rights to privacy and dignity, as well as their right to safety, are infringed when they are incarcerated with males.

The placement of male offenders in women's prisons is likely to result in more male prisoner officers being allocated to the women's estate, given that male prisoners are more likely to have a violent pattern of offending behaviour than women. Rule 81 of the Mandela Rules, states that "women prisoners shall be attended and supervised only by women staff members". This rule calls into question any policy which is likely to increase the need to place male staff in women's prisons.

One harmful effect of the presence of male prisoners in women's prisons is that it undermines attempts by prison services to provide a trauma-informed approach to women prisoners. This approach is based on a set of principles developed by Stephanie Covington and Barbara Bloom,³⁰ which include creating a women-only environment based on safety, respect, and dignity.

The impact of placing trans-identifying males in women's prisons needs to be understood in the context of the high levels of physical and sexual violence which women in prison have experienced from men.

The Ministry of Justice's strategy for working with female offenders³¹ acknowledges that,

"Female offenders can be amongst the most vulnerable of all, in both the prevalence and complexity of their needs. Many experience chaotic lifestyles involving substance misuse,

³⁰ Stephanie Covington and Barbara Bloom, 'Gender Responsive Treatment and Services in Correctional Settings' (2007) *Women and Therapy*, Vol. 29, Issue 3-4, pages 12-14

³¹ Ministry of Justice, Female Offender Strategy, June 2018, CM9642, page 5, para 2
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf



mental health problems, homelessness, and offending behaviour – these are often the product of a life of abuse and trauma.”

In a report published in 2015,³² the National Offender Management Service in England noted that almost 60% of female offenders supervised in the community or in custody, who had had an assessment, had experienced domestic abuse. A longitudinal study of prisoners published in 2012³³ found that 36% of women prisoners has been sexually abused as children.

The Ministry of Justice's female offender strategy states that it is committed to developing a trauma-informed approach to working with women in prison. The presence of males in women's prisons runs counter to the aim of creating this kind of women-only environment, however these males identify. This remains the case in relation to trans-identifying male prisoners who may not pose a risk of committing sexual or physical violence.

Prison policy on compelled use of preferred pronouns

On 27 September 2021 Justice Minister for **England** Lord Wolfson of Tredegar stated in response to a written question³⁴ in the House of Lords that prisoners could be disciplined for using 'incorrect pronouns' for another prisoner, whether or not the prisoner they referred to has a GRC.

Lord Wolfson stated that,

“Incidents where a prisoner uses incorrect pronouns for another prisoner will be considered on a case-by-case basis, in line with the Prisoner Discipline Procedures policy and the Prison Rules... if an officer deems it appropriate to place a prisoner on report, the rule against 'using threatening, abusive or insulting words or behaviour' (PR 51 (20)) may apply. The adjudicator will weigh each incident on its own merits. The policy stipulates that an offence motivated by another person's protected characteristic(s) under the Equality Act 2010 is an aggravating factor and may merit referral to an Independent Adjudicator.”

Cases brought against prisoners are normally adjudicated on by the prisoner governor, who in this context is referred to as an adjudicator. It is generally only in cases where the adjudicator considers the allegation to be so serious that a punishment of additional days in prison would be appropriate if the prisoner is found guilty that the case is referred to an Independent Adjudicator.

This policy amounts to the imposition of criminal penalties for 'misgendering', which is not in itself a criminal offence. This is compelled speech in its most authoritarian form in the jurisdiction. It is arguably an infringement of prisoners' rights to freedom of thought, conscience and religion, and freedom of expression, under Articles 9 and 10 of the European Convention on Human Rights respectively.

³² National Offender Management Service, 'Achieving Better Outcomes for Women Offenders Evidence-based commissioning principles for women offenders', 2 September 2015 Last updated 21 September 2015 <https://www.gov.uk/government/publications/achieving-better-outcomes-for-women-offenders>

³³ Williams, Kim, Vea Papadopoulou, and Natalie Booth, 'Prisoners' Childhood and Family Backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) Longitudinal Cohort Study of Prisoners' (2012) Ministry of Justice Research Series 4/12

https://www.researchgate.net/publication/296701221_Prisoners%27_Childhood_and_Family_Backgrounds

³⁴ UK Parliament Written questions, answers and statements, Prisoners: Females, UIN HL2647, tabled on 13 September 2021 <https://questions-statements.parliament.uk/written-questions/detail/2021-09-13/HL2647>



As with the compelled use of preferred pronouns in court proceedings, its imposition in prisons can have the effect of hindering women's ability to describe assaults because it robs them of the language with which to do so. Dr Kate Coleman recounts the following from a former female prisoner who told her about the prison service's policy of punishing 'misgendering'.

"... [she] told me that female offenders generally don't complain because there's simply no point. If a woman did make a complaint about the actions of a male prisoner, she would have to use female pronouns... But it wasn't a woman who was aggressive to her, or threatened her, or assaulted her, or showed her his penis. It just wasn't... The language she is compelled to use means she is forced to describe an incident that involved a woman. She is forced to agree that this prisoner is a woman, is female."³⁵

Intimate searches of prisoners

Prison Service guidance in **England and Wales**³⁶ about the full (intimate) searching of prisoners states that prisoners with a GRC should be searched in accordance with their acquired gender, regardless of their bodily characteristics. This means that males with a GRC, some of whom retain male genitalia, must be searched by female members of staff; and females with a GRC must be searched by males, unless the prisoner enters into a voluntary agreement with the Prison Service which would permit searches to be carried out by staff who are the same sex as the prisoner.

The policy relating to the searching of trans-identifying prisoners who do not hold a GRC is based on voluntary agreement between the prisoner and the Prison Service.

In **Scotland** the policy on the searching of trans-identifying prisoners is ambiguously worded, but appears to be that prisoners should be given a choice about the 'gender' of the prison officer who searches them. The 'Equality and Human Rights Impact Assessment'³⁷ states:

"International best practice suggests that transgender individuals should be given a choice regarding the gender of the officer conducting the search. Many jurisdictions make use of searching agreements where a transgender, or gender diverse, individual can voluntarily state the gender of officer they wish to be searched by. These make searching provisions more transparent, protecting both 'the individual being searched and the officer conducting the search.

The rights and safety of staff in conducting searching needs to be considered in searching protocols, especially as there is a need to respect religious beliefs of staff conducting searching as well as those with trauma or experiences that might trigger trauma.

³⁵ Kate Colman, "If we don't we get a punishment:" No freedom of speech for women in prison says Dr Kate Colman Director of Keep Prisons Single Sex', Lesbian and Gay News, October 12 2021 <https://staging.lesbianandgaynews.com/2021/10/if-we-dont-we-get-a-punishment-no-freedom-of-speech-for-women-in-prison-says-dr-kate-coleman-director-of-keep-prisons-single-sex/>

³⁶ Ministry of Justice, HM Prisons and Probation Service, 'Searching Policy Framework', November 2022, Implementation Date: 03 January 2023 <https://assets.publishing.service.gov.uk/media/655b6be4544aea0019fb3099/searching-pf.pdf>

³⁷ Scottish Prison Service, 'Equality and Human Rights Impact Assessment (EHRIA)', December 2023 <http://www.sps.gov.uk/Corporate/Information/TransgenderPeopleInCustody.aspx>



There is a need to establish expectations about searching during foundational officer training at the college.”

Requiring prison officers to search prisoners of the opposite sex raises the same concerns as those discussed above in relation to police officers. A significant proportion of trans-identifying male prisoners are convicted sex offenders, as discussed above. Many retain male genitalia. Requiring female prison officers to carry out intimate searches of trans-identifying male prisoners could amount to a violation of their rights to privacy under Article 8 of the European Convention on Human Rights, and a potential breach of their Article 3 rights. Many female officers will experience searching males as degrading. The fact that the prisoner involved has a GRC is unlikely to make a difference to the ways in which a female prison officer experiences the search.

Policy relating to searches by trans-identifying prison officers

At present, trans-identifying prison officers are not permitted to search prisoners of the opposite sex. This includes officers who hold a GRC. However, the Prison Service in **England and Wales** has been re-considering this approach. In March 2021, in response to a question in the House of Lords about whether the government planned to introduce new policy relating to searching by trans-identifying prison officers, the Justice Minister Lord Wolfson of Tredegar stated that the policy on the searching of the person was under review, and that,

“The updated policy will include direction on transgender staff conducting searches. This will account for staff with or without a Gender Recognition Certificate (GRC).”³⁸

The updated policy, which was published in November 2022, does not discuss searching by trans-identifying prison officers.³⁹ In January 2023 the human rights organisation Sex Matters wrote to the Minister of Justice asking for clarification of whether ‘female staff’ and ‘male staff’ were defined by the Prison Service on the basis of biology or on the basis of sex as modified by a GRC, and whether a male member of staff with a GRC stating sex as female would be recorded as male or female for the purposes of searching other staff, visitors and prisoners.⁴⁰ The response was that the Prison and Probation Service were still considering the question, and that the policy would be updated again and would include “ directions on transgender staff with and without Gender Recognition Certificates, conducting searches”.⁴¹ No timeframe was given for this update.

One of the reasons for this delay is likely to be the confusion about the definition of sex in UK law, which is discussed at length in Sex Matters’ submission to Grevio. One result of this confusion is

³⁸ UK Parliament, ‘Written questions, answers and statements Prisons: Body Searches, Question for Ministry of Justice’, UIN HL13968, tabled on 8 March 2021

<https://questions-statements.parliament.uk/written-questions/detail/2021-03-08/hl13968>

³⁹ Ministry of Justice, HM Prison and Probation Service, ‘Searching Policy Framework’, 20 November 2022, Implementation Date: 03 January 2023

<https://assets.publishing.service.gov.uk/media/655b6be4544aea0019fb3099/searching-pf.pdf>

⁴⁰ Maya Forstater, Sex Matters, Letter to Dominic Raab, Minister for Justice, 15 January 2023

<https://sex-matters.org/wp-content/uploads/2023/02/DOC-20230118-WA0007..pdf>

⁴¹ Sue Roberts, HM Prisons and Probation Service, Letter to Maya Forstater, Sex Matters, 14 February 2023, Cited in Sex Matters, ‘Searching for a simple answer’, 22 February 2023

<https://sex-matters.org/posts/prisons/searching-for-a-simple-answer/>



uncertainty within public institutions about the potential risks of litigation arising from policies relating to sex and 'gender identity'.

An aspect of this within the Prison Service is the concern that a trans-identifying male prison officer might claim that being prevented from searching female prisoners is direct or indirect discrimination on grounds of sex or gender reassignment, contrary to the Equality Act 2010. Such a claim would be unlikely to succeed, as the officer concerned would need to establish a 'detriment' to establish discrimination.

On the other hand, there is the potential for claims under Articles 3 and 8 of the European Convention on Human Rights being made by women prisoners who are forced to undergo searches carried out by trans-identifying male prison officers.

If the Ministry of Justice changes its policy to allow trans-identifying prison officers to carry out strip searches and intimate searches of prisoners of the opposite sex, the Ministry would effectively not only be condoning, but in some cases mandating, a practice which would normally constitute sexual assault. Its effects on women prisoners in particular, many of whom are already traumatised by their experiences of sexual and physical violence, could be devastating.

As discussed above in relation to the NPCC guidance in **England and Wales** relating to police searches, such a practice could constitute inhuman or degrading treatment contrary to Article 3 of the European Convention on Human Rights, as well as a violation of prisoners' rights to respect for their privacy under Article 8. If any amended policy required a trans-identifying prison officer to hold a GRC in order to search prisoners of the opposite sex, this would not change the nature of this experience for the prisoners who were being searched.

RECOMMENDATIONS

In order to rectify the detrimental effects on women and girls created by criminal justice institutions prioritising 'gender identity' over sex, WDI-UK recommends the adoption of the following policies.

Recording criminal justice data on the basis of sex

The police, the prosecuting services, the courts, and the prison services should record all suspects, defendants and offenders on the basis of their sex rather than their 'gender identity'.

Where an individual holds a GRC, they should record this fact separately.

Referring to suspects and defendants on the basis of their sex

The police, prosecutors, judges and lawyers in court proceedings should generally refer to suspects and defendants using language which aligns with their sex. Exceptions could be made where a complainant perceives a suspect or defendant in terms of 'gender identity', which may happen in some cases. However, this situation should not involve compelling other witnesses to use preferred pronouns or other language based on 'gender identity'.

Ending the compelled use of language based on 'gender identity' within the criminal justice system

The rights of everyone involved in the criminal justice process not to be compelled to use forms of speech which are based on 'gender identity' rather than sex should be respected.



When interviewing complainants/victims of crime and other witnesses, police officers and prosecutors should acknowledge their right to use the pronouns and forms of address which are appropriate to the sex of suspects, defendants and others involved in the criminal justice process.

The *Equal Treatment Bench Book* in England and Wales and in Scotland should be amended to explicitly state that all witnesses in both criminal and civil proceedings have the right to refer to others in a way which aligns with those persons' sex.

For as long as trans-identifying males continue to be placed in the women's prison estate, the practices of compelling women prisoners to use pronouns and forms of address based on 'gender identity', and of punishing them for using pronouns and forms of address which are aligned with a person's sex, should be ended.

Conducting intimate searches and strip searches of detainees and prisoners on the basis of sex and not 'gender identity'

No detainee or prisoner should be required or pressurised to accept being searched by a trans-identifying police or prison officer of the opposite sex.

The practice of requiring police and prison officers to conduct strip searches or intimate searches of trans-identifying detainees and prisoners of the opposite sex should be ended, and provisions made for exempting officers who object to carrying out such searches from having to do so.

Where trans-identifying detainees or prisoners do not have a GRC and are therefore legally of their sex as registered at birth, policies which require that they should only be searched by police or prison officers of the same sex as themselves could be developed without any changes to existing statutory provisions.

Where trans-identifying detainees or prisoners hold a GRC, the situation is more complex. Trans-identifying males who hold a GRC may have claims on the basis of their deemed legal sex that their rights under Articles 3 and/or 8 of the European Convention would be breached if they were strip searched or searched intimately by male police or prison officers. This is a fundamental tension within existing law which needs to be addressed.

Making all prisons single-sex

The practice of placing trans-identifying males in women's prisons should be ended as soon as possible.

All prisoners should be housed in the prison estate on the basis of sex and not 'gender identity'.

All trans-identifying male prisoners should be housed within the men's prison estate. If the general men's estate is considered unsafe for them, they should be housed in a separate unit in the men's estate.



Trans-identifying females are already normally housed in women's prisons because of the risks of sexual and physical violence which being housed in the men's prison estate would pose to them. This policy would enable that practice to continue.

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