

HEAL

1 Do you have any comments on the proposal that applicants must live in their acquired gender for at least 3 months before applying for a GRC?

Yes

If yes, please outline these comments.:

The case for reform

We agree that if there are concerns about the current Gender Recognition process, these should be considered and where possible and necessary rectified. We do not agree however, that the Scottish Government has made its case for reform. Section 2.13 of the consultation paper makes clear that “there is no ECHR obligation on Scotland to introduce a system for obtaining gender recognition based on an applicant’s statutory declaration”.

As only a minority of countries currently allow transgender persons to legally change sex, it is unclear whether one can talk of best international practice in this regard. Especially since a number of those countries where this is legally possible continue to require applicants to have surgically transitioned. However, insofar as there can be said to be best international practice in the question of legal gender recognition, that is what the Gender Recognition Act 2004 represents. From the outset, this Act was written to require only a medical diagnosis and not a medical transition as the UK Government of the time expected that the latter requirement would in future be deemed to violate the human rights of transgender persons.

Correctly so, as the 2017 judgement in the European Court of Rights case of A.P., Garçon and Nicot v France (1) indeed ruled the requirement of a medical transition to be a violation of a transgender person’s human rights. However, it also ruled that requiring a transgender person to provide evidence of a medical diagnosis of gender dysphoria does not violate their human rights.

It is therefore reasonable to ask an applicant to provide evidence of a psychological need to gain legal recognition.

The Scottish Government has also not adequately explained in which way the current process is “onerous” (2), “demeaning, intrusive, distressing and stressful” (3). Apart from a medical diagnosis confirmed in writing by two healthcare professionals, applicants are required to provide only documentary evidence of having

adopted a name typically associated with the other sex. This is what is meant by providing evidence of having lived in the acquired gender for two years.

The Gender Recognition Panel does not sit in judgement over applicants, who are not asked to appear in person. It only seeks to ascertain that documentary evidence as well as proof of a diagnosis of gender dysphoria have been provided. Where this is the case – and in the absence of a prior marriage – the GRC is then granted immediately. If an applicant is married, an interim certificate is granted, which is converted into a full certificate as soon as the applicant informs the panel that the marriage has either been annulled or divorced, or the spouse has consented to the change in marriage contract that a legal sex change represents. Unlike any other applicants for any other matter in which citizens are required to apply to the state, such as disability allowance, income benefit, passports, driving licences, citizenship, adoption or visa, those applying for a GRC in the UK can also rely on support from an administrative assistant to the Gender Recognition Panel if needed.

The fee is means-tested and as one transgender person stated publicly (while praising how easy, fast and efficient the process was), the second medical report for their successful application was “a tick box exercise” at the GP’s office at the cost of £28. (4)

With the latest figures (stand December 2019) available showing that only 4.5% of applications have been refused (5), the numbers belie the claim that the current process is not fit for purpose. The GRA 2004 was created to allow transgender persons with a medical diagnosis of gender dysphoria to gain legal recognition in their acquired gender; this is precisely what it has done.

The question of definitions

The Equality Act 2010, enacted after the Gender Recognition Act 2004, defines a woman as a female of any age, and a man as a male of any age.

The Scottish Government has not defined vital terms it uses in its GRA Reform proposal. A key requirement of its proposal is that applicants must prove that they have “lived in the acquired gender” for a period of three months prior to applying.

Neither “gender” nor “acquired gender” nor what “living in the acquired gender” means is defined anywhere in these proposals. There is also no explanation anywhere in the 290-page consultation paper.

Gender is typically understood to be the socially constructed sex stereotypes and sex role stereotypes that societies expect and frequently seek to impose on members of the male or female sex class. These stereotypes vary across time and space – with each era and each society imposing different, and sometime opposing stereotypes.

They are also imposed as a binary in a hierarchical structure placing traits associated with the male sex firmly above those associated with the female sex.

Gender is therefore not perceived as a benign concept, but one that has been employed to oppress and disadvantage females of any age for thousands of years.

In the absence of any clear definition, the conclusion that the Scottish Government is seeking to enshrine the concept of gender, and thereby stereotypes which are harmful to women, in law is exceptionally worrying. Especially since the UK, and thus Scotland, is a signatory to the UN’s Convention for the Elimination of All Discrimination Against Women. Article 5(a) in particular obliges states to work towards “the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. (6)

Will the Scottish Government define these terms? Will it explain in which way “living in the acquired gender” is not a concept based on sex stereotypes and sex role stereotypes? Or is this requirement mere window dressing, as the current GRA already considers this requirement to be fulfilled if an applicant merely provides proof of a name change, and the reform proposal does not in fact require any proof of an applicant having “lived in the acquired gender” at all.

Footnotes:

1) Case of A.P., Garçon and Nicot v. France

[https://hudoc.echr.coe.int/eng#{"itemid":\["001-172913"\]}](https://hudoc.echr.coe.int/eng#{)

2) Section 3.19 of the consultation paper

3) Section 3.20 ibd.

4)

https://www.reddit.com/r/transgenderUK/comments/94313k/grc_application_update_success/

5) Tribunal Statistics Quarterly, October to December 2019, Main Tables

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871934/Main_Tables_Q3_2019_20.ods

6) Convention on the Elimination of All Discrimination Against Women. P.6

https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf

2 Do you have any comments on the proposal that applicants must go through a period of reflection for at least 3 months before obtaining a GRC?

Yes

If yes, please outline these comments.:

As the Scottish Government states in section 3.30 of the consultation, it seeks to allow applicants to self-determine their legal sex via a statutory declaration, because of “problems created when an individual’s personal documents are inconsistent, or do not match the gender presented, meaning that they are forced to reveal their status when they would not otherwise choose to do so.”

We question the rationale behind this reasoning. The GRA Reform proposals do not require applicants to make any changes whatsoever to their appearance, mannerisms or behaviour, let alone their bodies.

That is, an applicant who is indistinguishable from any other male Scot can under these proposals legally change sex without making any such changes. This person will then also be in possession of documents which are “inconsistent, or do not match the gender presented”. How can the Scottish Government use a justification for reform based on the needs of those who have changed their appearance to introduce a law which seeks to protect those who do not change their appearance? By legally changing sex without making any changes, such individuals would create the very problem that the Scottish Government cites as a reason to reform the law.

Furthermore, a diagnosis of gender dysphoria often also goes hand in hand with a social and sometimes a medical transition. To date, most GRC holders have indeed socially and medically transitioned. Post-operative transsexuals in particular, whose status was often not known until they had to show their original birth certificates, can therefore protect their privacy and dignity through a Gender Recognition Certificate. The privacy protections in the original Gender Recognition Act are written for this express purpose – to prevent anyone from revealing the trans status of someone who has acquired a GRC and whose trans status would not otherwise be known.

Widening the applicant pool to those who neither suffer from gender dysphoria nor seek to transition in any way will result not only in creating a group that is magnitudes larger than the original group protected via the GRA 2004, but also in one that is completely different. The practical implications alone throw doubt on the way the Scottish Government has sought to maintain the original Act’s privacy provisions. How can they prevent an obvious male person from being revealed as a male person? Will members of the public be penalised for commenting on a person being obviously male or female? Will women who object to the presence of an obvious male person in an open changing room be liable to civil or criminal procedures?(7) Will the fines stipulated in the original Act apply in this situation?

Footnotes:

7) As happened in Norway where a three-year legal battle ensued after a woman objected to a male person with a GRC showering naked in the women’s

changing facilities. By a majority view she was eventually found not guilty in the Court of Appeal on the charges of discrimination and harassment. Judgement translated into English here: <http://womenwhosayno.blogspot.com/2018/10/norway-woman-is-accused-of-harassment.html?m=1>

3 Should the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16?

No

If you wish, please give reasons for your view.:

We oppose this proposal for the following reasons:

1. Affirmation has been shown to lead to greater medicalisation of children and young people. Results published by the Tavistock's Gender Identity Disorder Service for children and young people has shown that where children are supported without medical intervention, in a Watchful Waiting approach over 90% eventually reconcile with their sex. On the Affirmation Approach however, which puts them on a medical pathway, near 100% continue to treatments that cause irreversible changes to their bodies, including sterility, loss of future sexual function, arrested brain development and long-term health issues. Being able to legally change sex at 16 is the ultimate act of affirmation and enshrining this option in law will inevitably lead to more children and young people being medicalised.
2. Children and young people who identify as trans have been documented to have a great number of co-morbid mental health issues, they are more likely to be neuro-diverse, to be homosexual or bisexual, and to have suffered trauma, bereavement and personal hardships. Sexual violence is one of the most common reasons for natal girls to want to identify out of their sex. Removing the requirement for a medical diagnosis increases the likelihood that these children and young people will not access and therefore not receive the support they need.
3. The Scottish Sentencing Council recently published research showing "that the younger brain is less well-equipped to enable good life choices", that "brain development may be delayed" by the factors we mention in point 2, and that "the adolescent brain continues to develop into adulthood and does not reach full maturity until approximately 25-30 years of age." (8) Consequently, the Council has now launched a public consultation with a view to changing sentencing guidelines for young people that take these findings into account.
4. It is therefore incomprehensible to us that the Scottish Government's position is that 16-year-olds can make a statutory declaration that "they intend to live permanently in their acquired gender". This is particularly concerning because the government has not taken the rising number of detransitioners into account, many of whom were even older than 16 when they medically transitioned. The government has not only failed to provide a mechanism whereby a legal sex change can be revoked, in section 4.02 it has decreed that it "will be a criminal offence to make a false statutory declaration in relation to gender recognition and to make a false application for gender recognition". If a young person later detransitions and no longer wishes to "live permanently in their acquired gender", does this mean their statutory declaration was false? Will they be punished? Will the state force them to file a second, and this time undeniably false statutory declaration promising to "live permanently in their acquired gender" when they simply seek to return to their birth sex, and not an "acquired gender"? Given the research mentioned above as well as the rising number of detransitioners, it is concerning that the consultation paper gives no indication that the

Scottish Government is even aware of these issues. Moreover, the exponential rise in girls presenting with gender dysphoria at the Sandyford Clinic has given the UK Government so much cause for concern that they have announced an inquiry into the causes of this phenomenon. In forging ahead with this reform plan without ever investigating these, the Scottish Government risks enacting legislation that will be harmful to children and young people. This is completely irresponsible.

Footnotes:

8) Brain not fully developed until age 25, research revealed. Published 21 February 2020

<https://www.lawscot.org.uk/news-and-events/legal-news/brain-not-fully-developed-until-age-25-research-reveals/>

4 Do you have any other comments on the provisions of the draft Bill?

Yes

If yes, please outline these comments.:

The effect of GRA reform on the Equality Act 2010

The Scottish Government has not engaged at all with the argument made by opponents of this reform, that changing the eligibility criteria as well as the application process for changing one's legal sex will have a detrimental impact on the rights of women and girls under the Equality Act 2010.

Declaring there to be no problem and claiming that there will not be an effect is not engagement. Given the number of legal opinions published by trans rights campaigners such as Professor Sharpe, who categorically state that no male with a GRC can be excluded from single-sex provisions, it is surprising that the Scottish Government continues to insist that increasing the number of GRC-holders by several magnitudes will not have any effect whatsoever on the single-sex provisions made possible under the Equality Act 2010.

When the Gender Recognition Act 2004 was enacted, the Sex Discrimination Act 1975 was amended through Schedule 6 in order to disapply the Genuine Occupational Qualification exemption from GRC-holders. Thus, no male with a GRC could be excluded either from any legal set asides created for the safety, dignity or privacy of females or from those created to redress any inequalities suffered by females on the basis of their sex.

Thereafter no mechanism existed by which a male person with a GRC could legally be excluded from providing intimate care to female persons or to stop such a person from accessing a single-sex hospital ward.

This complete disregard for the rights and needs of women and girls was only rectified with the enactment of the Equality Act 2010, which separated sex and gender reassignment into two different protected characteristics and introduced a total of six different sex-based exemptions whereby persons with the protected characteristic of gender reassignment could be excluded from legal set asides created for persons who shared the protected characteristic of sex.

However, the Equality and Human Rights Commission (EHRC) produced statutory codes which conflict with the provisions of the Equality Act 2010. Some of the codes advised businesses and organisations that GRC-holders could not be excluded from opposite-sex spaces, while also advising them that those with the protected characteristic of gender reassignment should not be excluded. After being advised of their error, the EHRC issued a correction in 2018, stating when

deciding whether the sex-based exemption could be applied to a person with the protected characteristic of gender reassignment depended first of all on whether they were in possession of a GRC or not.

They clarified that a male person who identifies as trans but who remains legally male has no more right to access a female-only legal set aside than any other male. However, in direct contradiction to the Equality Act 2010, which contains no such condition, the EHRC continues to stipulate that a male who is legally female can be excluded from female-only legal set asides only in exceptional circumstances, an opinion echoed by Professor Sharpe.

Although publicly they confidently defend this view, internal correspondence revealed through a Freedom of Information request lodged by Fair Play for Women showed that “as recently as July 2018 the EHRC had not reached its own internal agreement about whether transwomen with a GRC are entitled to access or may be excluded from women’s single sex services, and had no clear process for developing it.”

A number of legal opinions have also been published which disagree with the EHRC interpretation of the Equality Act and with legal opinions like Professor Sharpe’s, a transgender person and trans rights advocate. See for instance, Julian Norman, Rebecca Bull and Julius Komorowski.

Whether the EHRC interpretation of the sex-based exemptions in the Equality Act is correct or not, the House of Commons Women and Equality Committee noted in its Tenth Report of Session 2017-19 titled Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission, that there was so much legal uncertainty around applying the sex-based exemptions that it issued the following recommendations:

“While the apparent failure of significant numbers of public sector commissioners to properly apply the public sector equality duty to their decision making is a problem of understanding and not of the law itself, it is a clear example of what is going wrong because of the current system of equality law enforcement. This cannot be left to affected organisations to fix. As Women’s Aid made clear, they do not have the resources to do so. (Paragraph 167)”

“We recommend that the Government Equalities Office issue a clear statement of the law on single-sex services to all Departments, including the requirement under the public sector equality duty for commissioners of services to actively consider commissioning specialist and single-sex services to meet particular needs. (Paragraph 168)”

“We do not believe that non-statutory guidance will be sufficient to bring the clarity needed in what is clearly a contentious area. We recommend that, in the absence of case law the EHRC develop, and the Secretary of State lay before Parliament, a dedicated Code of Practice, with case studies drawn from organisations providing services to survivors of domestic and sexual abuse. This Code must set out clearly, with worked examples and guidance, (a) how the Act allows separate services for men and women, or provision of services to only men or only women in certain circumstances, and (b) how and under what circumstances it allows those providing such services to choose how and if to provide them to a person who has the protected characteristic of gender reassignment. (Paragraph 190)”

Please note in particular the shift in emphasis on applying the sex-based exemptions, which we would like to see echoed in the funding requirements set out by

the Scottish Government: that businesses and organisations must justify when they wish to include a person who has the protected characteristic of gender reassignment in a single-sex setting provided for the opposite sex, and not – as is currently the case – when they wish to exclude such a person.

Given the widely diverging legal opinions as well as the EHRC code (which while conflicting with the Equality Act 2010 provisions is nonetheless statutory) and this report highlighting how complicated and difficult in practice the interplay between the original Gender Recognition Act 2004 and the Equality Act 2010 is, it is incomprehensible to us that the Scottish Government brushes off all concerns with the comment that the Equality Act 2010 will not be amended.

As noted above, the Equality Act 2010 allowed the creation of spaces for the benefit of all those who shared a specific protected characteristic. Those spaces were locked to all those who did not share that characteristic. In the case of the protected characteristic of sex, those who have legally changed sex must – in the opinion of the EHRC and various legal experts – be granted a key.

Under the current provisions, there is at least a safeguard – that of requiring a medical diagnosis of gender dysphoria and a gatekeeper – the Gender Recognition Panel. The fact that every applicant must first seek a medical diagnosis from a medical professional can and does provide a much-needed safeguard. This can be seen in an assessment of persons seeking gender reassignment in Oxford, which noted that amongst motivations to seek gender reassignment, “Paedophilia was a rare but concerning finding.” The individuals in question were consequently refused a referral by the health care professionals involved.

Thus far then, the individuals granted such a key to female-only spaces in Scotland are limited to less than 400 in number who all had to satisfy both the safeguarding and gatekeeping requirements of the GRA. Should these individuals seek to access female-only provisions, this is a not insignificant, but manageable number, especially if providers are reminded that they can be lawfully excluded where that is necessary.

However, the Scottish Government is now proposing to hand out GRCs via a statutory declaration of sex, with all safeguarding and gatekeeping measures removed. Claiming that this is no cause for concern because GRA Reform does not seek to remove the locks to single-sex spaces and services provided under the Equality Act 2010, while in reality handing out keys to anyone who fills in a form is deeply irresponsible. It is also offensive to the legal experts who have painstakingly set out the unintended consequences of these proposals and disrespectful to the women’s rights campaigners who have highlighted the harm this will do to women and girls.

And contrary to the oft repeated claim that the purpose of the GRA is to allow a transgender person to change their birth certificate and the purpose of GRA Reform is to make this an easier process, this is of course not the stated purpose of the Gender Recognition Act 2004.

The stated purpose of the Gender Recognition Act 2004 is legal recognition in the “acquired gender” for all purposes, including the right to marry, but most of all to obtain the rights, freedoms and responsibilities of members of the other sex. Birth certificates are one small aspect of that recognition; mere proof of that change of legal status, not its purpose. The purpose and effect of a GRC has always been the acquisition of the rights granted to the other sex. And therefore the purpose of enshrining self-id in law is not to make getting a birth certificate in your “acquired gender” easier, but to make the acquisition of the rights granted to

the other sex easier.

Without thoroughly, objectively and fairly considering how this will affect those with the protected characteristic of sex, there can be no justification for pursuing such a course of action. We have yet to see the Scottish Government do this. As long as the publicly stated intent behind this consultation is to “to convince those who have concerns about the issue that there is not a tension and inevitable conflict between women’s rights and trans rights” , without any evidence of a willingness to fully engage with women’s rights campaigners and others opposed to the reform, this is not a consultation in good faith but a token gesture.

Footnotes:

9) Sharpe, A. (2020), Will Gender SelfnDeclaration Undermine Women's Rights and Lead to an Increase in Harms? The Modern Law Review

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

11) <https://fairplayforwomen.com/single-sex/>

Freedom of Information request (submitted October 2018)

<https://docs.google.com/document/d/1BJ8R1HMTvSKHOJDfHlnKomKwvFiWzG2LvA50Ql6QBdo/edit>

12) <https://filia.org.uk/news/2018/8/23/has-everyone-really-got-it-wrong>

13) Bull, R. (2020) Briefing Note: Impact of Gender Recognition Reform on Sex Based Rights

<https://mbmpolicy.files.wordpress.com/2020/02/impact-of-gender-recognition-on-sex-based-rights.-r-bull-11-feb-2020.pdf>

14) Komorowski, J. (13 January 2020) Sex and the Equality Act. Journal of the Law Society of Scotland.

16)

<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/147002.htm>

17) Saunders, K. and Bass, C. (2011) Gender reassignment: 5 years of referrals in Oxfordshire. The Psychiatrist 35: 325-327.

18) Nicola Sturgeon in the Scottish Parliament on 16 January 2020

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12459&mode=pdf>

5 Do you have any comments on the draft Impact Assessments?

Yes

If yes, please outline these comments.:

The draft EQIA assessing the possible impacts on women is a particularly striking example of the Scottish Government’s lack of honest engagement. It misrepresents our concerns, it misrepresents the one paper that addresses the harm done to female survivors of male violence when they are denied a female-only therapeutic environment and it includes wholly offensive and inaccurate papers to support its claims.

We are a group of female survivors and parents of female survivors of male sexual violence who were and/or currently are forced to self-exclude from Rape Crisis Scotland services because of their refusal to guarantee female survivors a female-only therapeutic environment. This is a direct result of policy changes which put into practice trans inclusion policies based on self-id ahead of GRA reform as well as funding requirements that stipulated that all single-sex services must provide evidence of their trans inclusion policies without requiring any evidence of how providers will seek to implement those without harming the female

survivors who make up the vast majority of their clientele.

Neither Scottish Women's Aid nor Rape Crisis Scotland undertook an EQIA exploring the impact of adopting these new policies on female survivors. Neither umbrella organisation sought the views of frontline workers or the women and children they support before implementing these changes. No assessment sought to ascertain the impact that the inclusion of males who identify as trans has had on female survivors over the last eight years. No assessment attempted to ascertain how many female survivors have been or are now self-excluding.

These umbrella organisations have not only shown a callous disregard for the female survivors they are funded to support, to date neither service has informed female survivors of these policy changes and what they mean in practice. Rape Crisis Scotland in particular has also not informed female survivors seeking to use its service, that its minimum standard for including a male who identifies as trans in the female-only therapeutic environment is a verbal statement of identity.

No changes whatsoever are required, not even to names or pronouns. It has not informed female survivors that if they ask for a female counsellor, they may find themselves confronted with a male who identifies as trans because it is Rape Crisis Policy that such a male is in fact female, regardless of whether this is an obvious male and regardless of whether they have legally changed sex.

We have met and communicated with many frontline workers who are unable to raise concerns within the umbrella organisations for fear of losing their jobs if their local management fully adheres to these policies. A considerable number of them are now co-founders, leaders or members of the many new grassroots women's rights organisations that have sprung up across Scotland in defence of women's sex-based rights and female-only services. Some of them attended a meeting in the Scottish Parliament on 22 May 2019, where they noted their concerns about the harm done to female survivors by these trans inclusion policies and commented that 99% of their service users had a fear of males, regardless of identity.

Traumatised female survivors, including members of our group, frequently suffer from hypervigilance, which means they read males as male regardless of presentation (even when others do not). This is neither a rejection of any male's trans identity nor transphobia, prejudice, hatred or bigotry but a survival skill developed by female survivors of male violence out of necessity. For this reason, the presence of males, regardless of identity, prevents us from reaching a psychological state in which recovery is possible.

The best practice model in the Violence Against Women and Girls sector is a female-only therapeutic environment for female survivors. This is based on over four decades worth of research into the needs and trauma responses of female survivors of male violence. That the Scottish Government was unable to find a single one of the quarter of a million papers written on the subject is proof positive that there is no desire to fairly investigate the impact of its planned reforms on vulnerable women and girls.

Instead, it has misrepresented our concerns as based on the trans identity of males included in female-only services and undertook a literature search based entirely on those limited parameters. Instead of seeking evidence of why female survivors needed a female-only therapeutic environment, the search focused solely on evidence why excluding males who identify as trans from female-only services was justified. It found one paper. And misrepresented its findings. As MBM write in their submission to this consultation,

“The EQIA cites a paper by Gottschalk (2009) to support the assertion that there is little evidence to justify applying a blanket exclusion, and therefore having a service or role limited to one biological sex. However, Gottschalk argues for retaining single-sex spaces, concluding that “Trans-inclusion then is one of the greatest threats faced by women”. Additional relevant sources are detailed below.” This is shameful as well as offensive. It also betrays a complete lack of understanding on the part of the Scottish Government for what constitutes best practice in the VAWG sector. Best practice in this sector is trauma focused. It does not frame trauma reactions as disrespectful or describes the female survivors experiencing them as in need of re-education like racists or homophobes. Even Rape Crisis Scotland’s own publications reflect this. The following is a quote from Healing from sexual violence, an information leaflet produced in 2013 and still available on its website

“Understanding your responses and reactions can help you heal. Knowing that your reactions are natural and common means that you are less likely to give yourself a hard time, and can help you deal with whatever arises”

And it quotes a three-stage model of recovery, the first stage of which is “Safety: the survivor has to be safe and feel safe from further abuse first, before healing can take place”

And yet, both the Scottish Government and Rape Crisis Scotland continue to misrepresent our concerns and objections. To be clear: we do not object to the presence of males who identify as trans in a female-only therapeutic environment because they are trans, but because they are male. Because their presence does not allow us to reach a state from which we can begin healing.

As victims of male violence, we need a space free from all males to be able to recover. We do not object to Rape Crisis Scotland or any other such service providing support to males who identify as trans. As survivors we would never deny another survivor much needed help to recover. What we ask is that the needs of both groups are met, and for 99% of female survivors this means a therapeutic environment that is female-only.

What we have experienced in the eight years since Rape Crisis Scotland has first adopted trans inclusion policies, on the basis of self-id, however, can only be described as abusive. In 2012, they told one of our members to seek help elsewhere because her child needed a guaranteed female counsellor. Since at least 2017, Rape Crisis Scotland has endorsed and advocated for transgender ideology and legislation. It has publicly amplified the voices of individuals and organisations who seek to abolish the sex-based exemptions upon which we rely for our recovery and of those who frame our need for a female-only service as transphobic, hateful and bigoted.

And these despicable attacks on us do not just come from trans rights activists, but also from the very services on which we rely for our recovery. The following quote is an extract from Stronger Together, guidance published on the Rape Crisis Scotland website until late 2019.

“In the circumstance that other service users say that they are uncomfortable sharing a service with a trans woman, this is rightly seen as no reason for the trans woman to be moved. The service has to make any decision about provision based on good practice rather than prejudice. In this situation, we would work to educate other service users – much in the same way that we would if we received comments regarding other service user's ethnicity, religious affiliation or sexual orientation.”

Guidance like this is not only demonstrably harmful to female survivors in the care of these services, it also leads to many others not approaching a service for help at all. In the public domain there are numerous reports from Canada as well as the United States on the impact that prioritising the feelings of males who identify as trans has on female survivors in what should be a female-only therapeutic environment. It almost always leads to the latter being or feeling forced to leave the service because they cannot recover from male violence in the presence of males, however they identify. Because these services are legally bound by trans inclusion policies based on self-id, males are prioritised even in cases where they behave aggressively towards female survivors, and where they sexually harass or assault them.

This has taken a tremendous toll on those of us who need a guaranteed female-only environment to recover. Instead of focusing on healing from sexual violence, we are now forced to fight to have our needs met. No female survivor of male violence should ever have to disclose her painful personal experiences publicly just to make herself heard, or to plead – as we have done in a recent meeting with the Chief Executive of Rape Crisis Scotland – to have her needs for a male-free space met.

At this meeting, we explained that female survivors, who are typically in crisis when they contact Rape Crisis services, should not be put into a position of being forced to object to the presence of males in a service they expect to be female-only. We shared examples of women who had told us they feared that doing so would see them excluded from the service and examples of several other women who were forced to self-exclude from services like RCS, because the presence of males was re-traumatising to them.

All to no avail. None of our compromise solutions were accepted. Instead, we were informed by a trans rights activists invited to our meeting by the Chief Executive, that we had no right in law at all to a female-only therapeutic environment. A country in which this is happening, is neither progressive nor equal or fair. It is cruel to expect female survivors to channel their energy into fighting for their rights when they should be focusing on their recovery.

And yet, if we don't, we are invisible in 21st century Scotland. We are not included in any surveys of service users; we hardly ever feature in the media. The few of us who can speak out, are ignored as solitary exceptions to the rule. We feel wholly abandoned by our government and by the services it funds. After being violated by males, we are now, in this debate violated once again. By being branded as transphobic, bigoted or hateful if we raise objections to the inclusion of males, whatever their identity, in female-only services. By having our concerns dismissed as “transphobic dog whistles” and our involuntary trauma responses to the presence of males in the therapeutic environment being framed as prejudicial and disrespectful.

We hope that you will listen this time. That we can be heard through our submission to this consultation.

Submitted by HEAL

A group of Scottish female survivors of male violence highlighting our exclusion from and loss of female-only services.

Footnotes:

19) Google search dated 17 March 2020

https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=female+survivors+mal+e+violence+&btnG=

- 20) <https://www.gov.scot/publications/foi-202000011201/>
- 21) Gottschalk, L. (2009) Transgendering women's space: A feminist analysis of perspectives from Australian women's services *Women's Studies International Forum*, 32(3): 167-178
<https://www.sciencedirect.com/science/article/abs/pii/S0277539509000478>
- 22) Gender Recognition Reform (Scotland) Bill: MurrayBlackburnMackenzie consultation response
<https://mbmpolicy.files.wordpress.com/2020/03/murrayblackburnmackenzie-gra-consultation-response-final-copy-16-3-2020-2.pdf>
- 23) <https://www.rapecrisisscotland.org.uk/publications/RCS-supportresources-healing.pdf>
- 24) https://www.scottishtrans.org/wp-content/uploads/2016/05/Stronger_Together_-_September_2015.pdf