

Dear Professor Halliday

I am an ordinary member of the public who has concerns about recent statements which seem to suggest that in the collection of data relating to Scottish Citizens it may be the case that information on sex is only requested in exceptional circumstances.

This seems extraordinary, unwise, and somewhat short sighted.

It is my understanding that the rationale behind this decision is a desire to be sensitive to the needs of transgender and non-binary individuals.

I have read the draft guidance around these issues and I have a few comments about some of the statements made within the guidance, as well as some general views on why I believe that data disaggregated by sex is important.

On P3, the guidance states

“Having high quality data is the backbone to having a public sector that can design services that meet, and are responsive to, the needs of all people in Scotland”

Good, I agree that high quality data is essential.

The guidance refers to the book ‘Invisible Women’ a couple of times, and quotes the author’s rationale for talking about a gender data gap rather than a sex data gap

“In naming the phenomenon that is causing so much damage to so many women’s lives, I want to be clear that the root cause and, contrary to many claims you will read in these pages, the female body is not the problem. The problem is the social meaning that we ascribe to that body, and a socially determined failure to account for this”.

It is clear to me that the author is referring to female bodies, that is, the bodies of those born female – people of the female sex. The author is not referring here to gender identity or to a person’s perception of themselves. She is referring to the socially constructed gendered expectations placed on people who are born with female bodies. And the report also makes clear that gender is a social construct, so it is clear that the working group understands this at some level.

The draft guidance repeatedly refers to transgendered individuals as 'trans'. I think that it is important to be clear in addition to those people who identify as transgender, there are also a small number who identify as transabled or as trans species. I think it is important to use the terms in full so that the data can clearly distinguish between the different types of 'trans'.

On pp9-10 the guidance refers to estimates of numbers of non-binary people, making clear that there are no definite numbers for this group. I believe that the numbers of transgender people are also unknown.

In order to collect clear data on how many transgender or non-binary people there are in Scotland, presumably you would need to ask a direct question about a person's transgender status. It would then be important to know whether that person is a trans woman or a trans man to know what services might be appropriate for them. This would depend on collecting data on their birth sex. In the case of non-binary people, while they may not wish to acknowledge their birth sex, it does continue to be important particularly for accessing appropriate healthcare. Presumably it would be helpful to understand how many transgender people there are in Scotland, and where they are in order to be able to provide transgender specific services in the right places. According to some sources, for example the BBC, there are around 100 genders. How is this captured in data collection and what, if any significance, is there to knowing the population numbers for each of those genders?

Sex is a determinant for key outcomes across all public services, regardless of how some individuals may perceive themselves or may choose to identify. Sex matters for the provision of health, social care, education, toilets, housing and many other areas. Not collecting data by sex will not change the requirements for provision, and it will not reduce the sex based inequalities which exist – it will simply mean that they cannot be reported on and that they cannot be addressed. This does not help anyone and is neither dignified nor respectful towards the groups who will be disadvantaged by the lack of data, namely women.

More data on the numbers and needs of transgender people is welcome. But this must be collected by asking about birth sex and gender identity, with the sex question being mandatory. Most transgender people do not go on to have full sex reassignment surgery. So a man who identifies as a woman still has a male body and will still

need services and healthcare based around that body. Similarly for a woman who identifies as a man. It is also the case that whilst a person can legally change sex, this does not change the material reality of their sexed body, the body of their birth sex. At a cellular level that does not change, whatever legal or cosmetic changes a person might make. This has lifelong implications for their health needs.

As acknowledged in the guidance, most people do not have a gender identity that is different from their sex. It is also probably true of most of this group that they don't have a gender identity at all. They simply are the sex that they are. This must be taken into consideration when thinking about questions around gender identity. The example templates included in the guidance do not seem to consider that many (?most?) people may wish to answer 'none' when asked about their gender identity.

My final point is about protected characteristics.

On P22 the guidance states ' For example, data on the protected characteristics may be collected by a public body, but not disaggregated in an intersectional way due to issues around sample size and risk of disclosing an individual's identity. In these cases, organisations should not risk disclosing information about a person's sex or gender identity. However, where sample size and quality allows, data should be disaggregated by socio-demographic factors, including sex, **gender identity**, gender reassignment, religion, age, disability, ethnicity and sexual orientation, where combinations of these factors can result in discrimination, disadvantage and inequality. '

This appears to include gender identity amongst a partial list of protected characteristics, but gender identity is not a protected characteristic. Is this an attempt to add gender identity to the list by stealth? You don't mention pregnancy and maternity or marriage and civil partnership, which are protected characteristics, and you omit belief which would go alongside religion— would these not sometimes be relevant?

As I stated at the top, I am an ordinary member of the public and can only write about what I see and believe. I am not in a position to submit a learned and fully informed piece to you. But I hope that you will consider some of my points and my questions. I would recommend that you once again read 'Invisible Women' by Caroline Criado Perez and that you will understand how clearly it is referring to the female sex, not to people who identify as women and girls, and that you will use this

understanding to conclude that it is essential to gather regular data on sex for all public services.

Yours sincerely

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