

Dear Mr Halliday

Thank you for inviting responses to the proposal on the sex/gender/gender id/trans questions in data gathering. The endeavour of the guidance to clarify and open the basis for measurement and analysis is most worthwhile.

I have a BA in Mathematics, an MSc in Statistics and a PhD in Reasoning in Artificial Intelligence. I well understand that the quality, consistency and validity of data are crucial for measurement, analysis and forecasting.

I am concerned that the organisations you have consulted and this guidance itself take a particular stance on the sex and gender issue. The document's context is couched in terms of the needs of trans individuals, their privacy and their need for expression. The needs of women, girls, boys and men who are not trans evidently have secondary priority. That is wrong.

Biological sex is a key variable that must be clearly measured. People experience life differently because of their biological sex. Between their biological differences and concomitant smaller size and physical vulnerability, females have different needs regarding: refuges, prisons, changing rooms, toilets, hospital wards, safety, sport, all the needs specific to female bodies and child-bearing and much more.

Females also experience life differently because of gender. Gender is imposed on us all by the society we live whether we like it or not, though we can try to change society and refuse to conform. As the guidance defines, gender is a social construction that determines how males and females are expected to live and behave differently. Gender, an abstract concept, is how discrimination according to sex is built in to our society. Very often it is to the detriment of females as social patterns confine them to stereotypes, award them lesser respect than males and assume the normal human to be a healthy white male without caring responsibilities – institutions being established accordingly.

The guidance misinterprets a quote from Caroline Criado Perez saying that "... 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". She is saying that female bodied people are missed out because of society's attitude – i.e.

gender is the root cause of that omission. Her whole book “Invisible Women” argues that females and female experience need to be taken into account both on account of their sex and the gendered discrimination they experience.

The guidance accepts the current concept of Gender Identity, as someone's innate sense of themselves. I don't believe in gender identity. My stance is that anyone who lives in a gendered society cannot avoid the inculcation of gender and that that is what is experienced as gender identity. However it is nurture, not nature and it is mistaken to describe it as innate.

As someone who has spent most of her life trying to break down the gender boundaries and stereotypes females experience I find it profoundly distressing to have them reinstated and reinforced. A question that asks me my gender is incoherent and offensive. Gender is not mine, it is society's imposition and I resent it. I have been trying to escape gender since I expressed a childhood interest in astronomy and my parents could only buy me The Boy's Book of Astronomy.

My detailed comments follow.

Sex

For all the reasons I stated above it is necessary to know how females and males there are and how they are faring. This is not possible unless their data can be disaggregated.

This guidance does not propose a question or questions that will establish biological sex. Sex is a protected characteristic under the 2010 Equality Act and should be counted. Biological sex is also a core demographic variable and failure to collect it could undermine the collection of vital data and harm attempts to address discrimination and disadvantage that can occur on the basis of sex. Over 80 statistics experts signed a letter to the Times in December 2019 warning of the harms this approach will cause.

<https://www.thetimes.co.uk/article/census-fears-over-gender-identity-rmx0qgmzxq>

Misleadingly, the guidance states that “the 2010 Act doesn’t purport to define sex” just a few lines after correctly quoting the Act's specification

of sex as referring to a man or a woman, and that its definition 'man' means a male of any age and 'woman' means a female of any age. I think that is clear. Another section of the Act deals explicitly with gender reassignment, so the definition of sex is also clear in context.

The guidance argues that 'People generally may not necessarily answer a question about their "sex" by thinking about their biology'. Really? I think that's exactly what most people think, including trans people who go to so much trouble deciding whether to alter their bodies. There are good reasons why the term transsexual has been retired in favour of transgender.

The guidance should ask for sex at birth. It is unambiguous and what most people expect. It should also ask about legal sex and self-identified sex. That would be straightforward and comprehensible. Bending over backwards to offer a small number of people privacy may benefit them but discount many who are confused. It will distort the data.

I disagree that: "Questions about a person's biology should not be asked, except potentially where there is direct relevance to a person's medical treatment. Such a question is likely to breach an individual's human privacy". UK Government's guidance to GRC applicants states that "You should bear in mind that privacy does not mean absolute secrecy... Although the gender recognition process seeks to safeguard your privacy, you do not have a right never to disclose the fact that you obtained a GRC."

There is no question on Differences of Sexual Development. Those people seem to have been ignored completely, while most other people know which type of human body they have.

Gender and Gender Identity

The first question proposed, nominally about gender identity, actually asks for the individual's gender. This is confusing. If gender identity is required, it should be asked for.

What does it mean to ask someone what gender they are?

- Does it mean to ask them which gender stereotype society tells them they ought to be depending on their sex? Neither feminists nor trans people will be comfortable with that.

- Does it mean which sex they are? Many will think so.
- Anyone who has rejected the sexual stereotyping inherent in gender can't answer the question. Are non-conforming individuals supposed to adhere to the gender strictures they have rejected answer that their gender is that of the opposite sex?
- What are people at different stages of exploring transition supposed to say?

There are so many different ways people understand the word gender that it will not be answered in a reliable way and the data will be poor quality.

There are many trans individuals

Based on evidence that is almost ten years old the guidance repeats the common argument that the actual numbers of trans individuals are likely to be few so it's not a problem to include them. When the 2004 Gender Recognition Act was debated, the assumption was that there would be a few thousand transsexuals, as the term was then. The definition of trans has widened significantly since then. Stonewall now estimates 600,000 trans and non-binary people in the UK.

I also disagree that: "Whilst medical requirements for the trans population are not simply related to their sex at birth the numbers involved will not impact on resource planning". As the calls for single sex prisons, refuges, hospital wards, toilets and other facilities grow, there may be a corresponding need for a three way system of male, female and neutral to ensure that everyone has privacy and safety.

While 1% may not be too many in the context of skewing large numbers, where smaller numbers are concerned, such as shortlists or requirement for separate spaces, even small numbers can make a big difference.

Advice from external bodies

At various points the guidance quotes advice from EHRC.

EHRC are being challenged that their advice relating to the 2010 Equality Act is misleading in a case being brought by Ann Sinnott

– <https://uncommongroundmedia.com/the-2010-equality-act-is-being-undermined-by-official-guidance/>

EHRC guidance stating that collecting data on biological sex raises privacy concerns, and may be unlawful in the context of the Public Sector Equality Duty has been assessed as 'wrong or misleading or incomplete', in a legal opinion from Aidan O'Neill QC.

EHRC advice should therefore not be used uncritically.

Whilst I appreciate that trans individuals suffer prejudice, so do women. Biological women's rights are being eroded and not counting them makes it harder if not impossible for them to advance their arguments. I understand it is difficult to balance the needs of different people but it helps no-one to muddy the picture. We need good unambiguous data about everyone.

Thank you again for consulting.

Yours

Jane Hesketh