

## Chief Statistician

I attended one of your public meetings and was quite reassured that the paucity of proper disaggregated sex data was something that your organisation was anxious to address. However, on reading your draft Guidance on the collection of sex and gender data, I was quite shocked at the dismissal of the need for collecting data on legal sex based on EHRC guidance: guidance which has been criticised by other legal opinion and which is in fact being challenged in the courts. Moreover I was perplexed to read a justification of the conflation of sex and gender by a total misreading of the ideas expressed in "Invisible Women" by Caroline Criado Perez. While it is indeed true that the traditional gendered role women are forced to live by men in order that men maintain their control over women and their reproductive role, is a subordinate role from which discrimination arises, that is not the end of the story. It is the physical differences which, when ignored, because of women's lack of status, results in harm to women. Car manufacturers ignore women because of their lower social standing and or their perceived lack of importance in society and as a result they don't bother to provide female shaped safety dummies for their safety tests. This would not matter if women were just small men, however their bodies are completely different and therefore they die in car crashes, when men wouldn't, because of their female sexed bodies.

I was later appalled to read "In a small number of instances it may be necessary to record a person's legal sex" How can any organisation monitor sex discrimination if it does not have accurate data. |The collecting of so called "gender" data only will totally skew the results and will prevent the proper monitoring of health and safety issues of the two sexes and the monitoring of institutional sexism. Such discrimination will cross gender identities and thus render the data worthless, e.g.:

### 1. Lack of promotion due to perceived reproductive role

No discrimination: Male sex class. Men, transwomen, non binary and gender fluid persons born male, as they cannot get pregnant.

Discrimination: Female sex class. Women, transmen and non binary and gender fluid persons born female because they can all potentially get pregnant.

2. Health and safety, e.g. PPE for Health workers designed for male bodies only.

No discrimination: Male sex class. Men, transwomen, non binary and gender fluid persons born male, as masks are designed for male face.

Discrimination: Female sex class. Women, transmen and non binary and gender fluid persons born female because masks don't fit female faces properly and for example, despite being in the majority of health workers and in a period of a Pandemic, they are being unnecessarily put at risk at this very minute. (It is perhaps fortunate that their female immune system appears to make them less susceptible to Covid, otherwise we might be witnessing a worldwide femicide of health workers. At last we have an advantage of being a member of the female sex class.)

It is also important to note that the inclusion of a subset of the male sex group into data being gathered about women can have a disproportionate effect on statistics. Crime statistics are an example of this because males, no matter their gender identities, have a much higher rate of offending than women, as well a totally different pattern of offending. Therefore the inclusion of male offenders within female figures totally skews them and renders them worthless.

The idea implied in this draft document that it is not important to gather and properly analyse sex disaggregated data, given what we know of the discrimination women face in the world, is an idea which will further entrench the institutional sexism so prevalent in our society.

Moreover, to imply that the gathering of gender identity data will suffice is downright dishonest. The vast majority of the population do not have a gender identity per se. In fact given that the definition of gender identity seems to rely very heavily on sexual stereotypes, I would hazard a guess that the vast majority of Scottish women would deny having a feminine gender identity. As I said above, women's gendered roles may feature in their discrimination in society. However, that has nothing to do with their gender identity, whatever that might be, but rather their sex. No transwoman will ever face the same discrimination as a member of

the female sex class. They may well suffer discrimination but it will be for very different reasons. No transwoman will be put at risk by being asked to use equipment designed for the opposite sex, no transwomen will suffer discrimination because of pregnancy, menstruation problems, menopause etc. Institutional sexism is still rampant and can only be addressed by continuous and scrupulous monitoring using accurate data.

I also do not understand why you have produced two scenarios for data collection regarding people with the protected characteristic of Gender Reassignment as laid down in the Equality Act. I understand that data might be needed to monitor potential discrimination suffered by this group. However, surely it would be enough to ask simply whether somebody identifies as belonging to this group, without asking them to out themselves by describing their particular gender identity, an action which goes against WPATH guidelines. Moreover, given the complexities and sheer number of potential gender identities ( over 100 according to the BBC), none of which are defined by law, and the small number of people for whom gender identity is an issue, for what purpose and use would such data be? Surely a voluntary question asking whether an individual identifies as a person intending to or undergoing gender reassignment would be enough for the purposes of monitoring discrimination. Any other information needed by an individual organisation, for perhaps operational reasons, can then be obtained on a need to know basis.

On page 2 of your overview you state. " Whilst the concepts behind definitions are important, so too having data that is high quality, and can be used to drive changes and improvements that will save time, money and lives - for the benefit of everyone" If this was the intention of this draft guidance, I would respectfully maintain that you have failed . High data quality cannot be obtained by conflating two totally different groups with completely different needs and requirements. At your meeting I believed that your office understood that the lack of data concerning women was discriminatory and should be addressed. However, it is obvious from this draft that once again women are at the back of the queue. REDACTED