

## **Potential impacts of GRA reform for cisgender women: trans women's inclusion in women-only spaces and services**

### **Key findings:**

- The literature presents two main arguments on why cisgender women (those whose gender identity corresponds with the sex they were assigned at birth) might be directly disadvantaged by trans women's inclusion in women-only services and spaces: because cisgender women may experience discomfort or fear in response to trans women's presence, and that trans women's misconduct would compromise cisgender women's safety.
- It is also claimed that trans women's inclusion in women-only spaces and services would lead to cisgender men posing as trans women in order to gain access to these spaces and services for malicious reasons.
- There appears to be a lack of primary research on the actual experienced impacts of trans inclusion in services.
- Much of the literature suggests that there is inadequate justification for a blanket exclusion of trans women from services or spaces, and that while there may be justification for basing access to some services on legal gender, conducting individual assessments and adapting services for each individual's needs can often replace the need for this.
- Opposition to the inclusion of trans women in women-only spaces tends to be grounded in a belief that trans women are not 'real' women, and that the difference in their experiences as trans women (and as people who have to a greater or lesser extent been socialised as male), rather than women assigned female at birth, is more important than any commonality of experience they may currently share.
- No evidence was identified to support the claim that trans women are more likely than cisgender women to sexually assault other women in women-only spaces. This lack of evidence is reiterated by other sources.
- This literature search did not identify any evidence supporting a link between women-only spaces being inclusive of transgender women, and cisgender men falsely claiming a trans identity to access these spaces and commit

sexual violence. Other sources included in this search reiterate a lack of any evidence to support this claim.

- Between half and three-quarters of people in the UK are comfortable with a transgender person using a public toilet according to their gender identity.
- Women tend to be more comfortable than men with transgender people using a public toilet according to their gender identity.
- There is limited research from which to draw any conclusion about whether or not transgender people have an athletic advantage in competitive sport.

## **Purpose**

The Family Law Team asked for an investigation of the following research question:

Are there potential disadvantages to people born with female biological characteristics (cisgender women), from transgender individuals being able to access women-only spaces or services, either as users or service providers?

## **Method**

A rapid evidence review was undertaken by the Scottish Government Library of the following resources:

- KandE
- IDOX
- Knowledge Network
- Proquest
- Google Selected
- Google Advanced
- Google Scholar

The relevant search terms used were as follows:

- Trans OR transgender AND "women's services"
- Trans OR transgender AND discrimination OR disadvantage OR exclude OR Exclusion AND "Women's services" OR "female services" OR services
- Marginalisation OR Marginalization AND LGBT OR Heterosexual
- "female services" OR "Women's services"

The publication date for results was not restricted, but the search was limited to literature in the English language and focusing on Europe or other societies similar to the UK. Citations in the articles identified were used to identify further literature for review.

The purpose of the work was to establish whether there is any evidence that cisgender women are likely to experience any negative impacts from trans women accessing women-only spaces or services (either as users or service providers). This search was intended as a scoping of the literature for input into the Equality Impact Assessment for the draft Gender Recognition Reform (Scotland) Bill. We are satisfied that these search terms returned a good selection of useful literature, however we welcome any reflection on other search terms that might usefully be used or indeed any other references to useful literature.

This review was undertaken in the context of proposals to reform the Gender Recognition Act (GRA), which is likely to lead to more trans people acquiring Gender Recognition Certificates (GRCs).

It must be noted that more trans women having GRCs would not automatically lead to an increase in trans women accessing women-only spaces and services, given that not all services or spaces check ID before allowing access, and that we know that many trans women already access these services and spaces. However, the potential impacts of trans women's inclusion is explored here in response to significant debate and speculation that GRA reforms would facilitate increased access to these services by trans women. It is important to be aware that there is some doubt over whether this would be the case.

Overall the evidence is limited, with a lack of larger-scale primary research directly examining the impacts of trans inclusion in women-only spaces. The review found some small-scale qualitative research projects of in-depths interviews with under 20 participants, some extensive evidence reviews, a large-scale mixed-methods research project examining comments on online articles, and randomly-sampled population-level surveys exploring attitudes towards trans inclusion.

## Direct impacts of trans women's inclusion in women-only spaces

The literature presents two main arguments which are used to justify the exclusion of trans women from women-only services and spaces: the **discomfort or fear** of cisgender women, and that trans women's **misconduct** would compromise women's safety (Gottschalk 2009, Dunne 2017, Eckes 2017, Stonewall 2018). There is considerable disagreement about the extent to which these arguments hold up.

### Discomfort or fear of cisgender women

Cisgender discomfort at the presence of trans women is attributed to different sources: from a feeling of privacy being violated; from being potentially exposed to 'unnatural' bodies where trans individuals have not undergone a full medical transition; and from a belief that trans women cannot empathise fully with women's experiences and feelings, and may instead perpetuate patriarchy through their presence (see Browne 2009, Gottschalk 2009, Eckes 2017, Dunne 2017).

Much of the literature reports that opposition to the inclusion of trans women in women-only spaces tends to be based on insistence that trans women are not 'real' women, and that the difference in their experiences as trans women (and as people who have to a greater or lesser extent been socialised as male), rather than women assigned female at birth, is more important than any commonality of experience they may share (Gottschalk 2009, Dunne 2017). Gottschalk, for example, found that whether or not those running women's health centres and refuges in Australia supported the inclusion of trans women in their services depended on whether or not they considered trans women to be women. In the case of trans woman Kimberly Nixon, who was refused a role as a volunteer peer rape counsellor in Canada, it has been shown that it was her self-definition as a woman that was at the heart of the legal battles that followed and was 'upheld by the BC Human Rights Tribunal in 2002, overturned by the Supreme Court of British Columbia in 2003, and disputed before the British Columbia Court of Appeal in 2005.' (Chambers 2007).

It is claimed that the presence of trans women who are seen by other service users as more masculine might inhibit some women from being as open in their dialogue (see Gottschalk 2009, Manners 2019). Some of the literature also highlights resistance from the providers of women-only services to having to use their resources to provide a service tailored to meet the specific needs of trans women (see Gottschalk 2009).

However, the literature identified did not offer an explanation for why the different experiences of socialisation and oppression that trans women have experienced compared to cis women justifies their exclusion, while the differences in experience between women of different ethnicities, classes or sexualities does not. Many sources note that women are very diverse, and that homogeneity of experience is not a prerequisite for women to self-organise nor for them to provide a good service to other women (Chamber 2007, Manners 2019). Manners also argues that while 'survivors of trauma abuse by men can find being in the presence of men triggering ... a survivor who is triggered by men will be triggered by anyone she perceives as

male regardless of how they identify ... [and that] it is important to note that this kind of policing of womanhood leads to the exclusion of cisgender lesbians and anyone else who does not conform to societal perceptions of what a woman looks like.' (2019).

Much of the literature suggests therefore that some cisgender women being triggered by masculine appearances does not justify a blanket exclusion of trans women from services or spaces (particularly given that they themselves are a very vulnerable group), but rather highlights the need for individual assessments and tailoring the service for each individual's needs, which are also likely to encompass a wide variety of things unrelated to gender identity (Dunne 2017, Manners 2019). Dunne, for example, writes that 'it is perhaps understandable that abuse victims will ... be sensitive to those who – voluntarily or involuntarily – have been masculinized by society. This sensitivity which survivors experience is real, and it is important that policy makers create appropriate structures to address the complex, individualised needs of these persons. It may be that, while the law can generally open gender segregated-spaces (toilets, locker rooms, fitting rooms, etc.) to all trans individuals, there needs to be a small, sub-section of services where stricter policies, perhaps based on legal gender, continue to apply.' However, he also goes on to note that 'It may be possible to protect cisgender women's sense of security without excluding trans persons ... justifications that centre on discomfort tend to be overstated, and can indeed be accommodated within a more nuanced, non-discriminatory approach' such as clear communication of policies and rules of conduct.

In terms of cisgender women's potential discomfort with seeing transgender bodies, Dunne argues that something being an established 'social norm' does not mean that it is justifiable and that 'Laws should only exclude trans persons from their preferred accommodations and services if exclusion pursues a tangible social good or avoids a potential harm'. (2017). He also notes that this, like other arguments against trans inclusion, hinges on applying standards to trans people that are not applied to cisgender people.

In addition, while there is literature detailing the concerns held by those providing women-only services, there appears to be a lack of any evidence around the actual experienced impacts of trans inclusion in services. Gottschalk for example, in her qualitative research with those running women's health centres, Centres Against Sexual Assault and women's refuges in Australia, found that her participants 'agreed that the presence of men inhibits women from opening up', but the research did not include recipients of the services (2009).

Domestic and sexual violence services in Great Britain have been supporting trans women in their single-sex women-only services for some time, and none of the representatives from the 12 domestic and sexual violence bodies and support services interviewed as part of the 2018 research conducted by npfSynergy on behalf of Stonewall (some of which provide mixed-sex services and all of which provide women-only services) had used the Equality Act exemption to deny support to a trans survivor. The research found that 'some participants said that the exemption should be kept as a safeguard, while others were concerned about other services using the exemption to turn away trans survivors when they should be

providing support.’ (Stonewall 2018). The representatives from 3 Scottish organisations who participated in the research ‘welcomed the Scottish Government’s proposed reform of the Gender Recognition Act, and advised that greater investment in training and resources in England and Wales would be critical in helping services become more trans-inclusive.’

While there is some research on the implications of trans women entering women-only festivals or lesbian groups, Gottschalk noted that as of 2009 there appeared not to be any research ‘that has examined the implications for women and for organisations providing a service to women when MTF [male-to-female] transgender people seek to enter spaces, either as clients or as workers, that have been reserved for women in order to meet women’s special needs’.

### **Risk of sexual assault from transgender women**

This literature search did not identify any evidence supporting the claim that trans women are more likely than cisgender women to sexually assault other women in women-only spaces. Much of the literature reiterates this lack of any evidence, legal, medical or otherwise, to support this characterisation of trans women as ‘deviant’ or predatory (Dunne 2017, Eckes 2017, White & Jenkins 2017). McKay, Lindquist and Misra (2019), reviewed the literature on violence, vulnerability and sexual and gender minorities from 1996 to 2016, including findings from 102 peer-reviewed articles as well as a small number of unpublished studies and grey literature, and found that ‘Notably absent from the evidence base are any data supporting the idea, widely espoused in public opinion around bathroom bills and other legislation affecting LGBTQ people, that sexual or gender minorities might pose a threat to the safety of those in the sexual or gender majority’. They note that, ‘Instead, this wide body of research indicates that sexual and gender minorities are themselves at elevated risk for physical and sexual assault, harassment, bullying, and hate crime victimization throughout childhood, adolescence, and adulthood.’ They found that research in this area tends to focus on young people, and they did not identify any studies ‘comparing physical or sexual assault perpetration of gender minority and cisgender individuals.’

### **Athletic advantage in competition**

There is ongoing debate around trans people’s participation in competitive sport, with the focus particularly on trans women, who are often considered to have an athletic advantage over cisgender women due to high levels of androgenic hormones (especially testosterone). However, Jones et al. suggest that no empirical research has yet identified the specific reasons for which men perform better than women in sport, and that there ‘has been a paucity of research that has directly explored how androgenic hormone levels are associated with athletic competence in both cisgender and transgender populations (e.g. running time)’ (2017). From their systematic literature review of research articles and case studies they conclude that ‘there is limited research from which to draw any conclusion about whether transgender people have an athletic advantage in competitive sport or not’. Their

further review of 31 competitive sports policies for transgender people (the majority from the UK and US, with 8 from other countries) found that while 7 'only required legal or medical recognition or do not ask for any evidence of gender ... the majority of sport policies unfairly exclude transgender people from competitive sport, as the requirements they place on them are not underpinned by evidence-based medicine' and that they instead 'have based their requirements for transgender competitors on indirect, inconsistent and unambiguous evidence.'

## **Indirect impacts of trans women's inclusion in women-only spaces**

### **Enabling 'predatory' cisgender men to access women-only spaces and services**

In addition to concerns about the inclusion of trans women in women-only spaces and services, it is also widely claimed that this inclusion would lead to cisgender men posing as trans women in order to gain access to these spaces and services for malicious reasons (Dunne 2017, Stones 2017, Stonewall 2018). In the context of potential reform to the GRA, some argue that simplifying the process of applying for a GRC would 'allow predatory men access to women's spaces by removing safeguards and allowing people to change their gender through a process of self-declaration which they deem insufficiently robust to protect vulnerable people.' (Manners 2019; see also Stonewall 2018).

Again, this literature search did not identify any evidence supporting a link between women-only spaces being inclusive of transgender women, and cisgender men falsely claiming a trans identity to access these spaces and commit sexual violence. Other sources included in this search reiterate a lack of any evidence to support this claim (Dunne 2017, Eckes 2017).

Many of the representatives from the 12 UK domestic and sexual violence bodies and support services interviewed as part of the 2018 research conducted by npfSynergy on behalf of Stonewall told the researchers 'that reforming the GRA to simplify the process of getting a Gender Recognition Certificate would have no relevance to how they run their service ... [since] thorough risk assessment processes would continue to safeguard against an incident of a violent man attempting to access services, while ensuring that all women receive the support they need.'

## **Public opinion**

The 2016 British Social Attitudes Survey found that the majority of both men and women were comfortable with a transgender person using a public toilet according to their gender identity (Clery, Curtice, & Harding 2016). Women were more



comfortable with this than men, with 72% of women saying that they were 'very' or 'quite' comfortable with a trans woman using a women's toilet, compared to 64% of men who said the same about a men's toilet.

Levels of comfort regarding transgender people's use of public toilets was somewhat lower among the Northern Ireland public. The Northern Ireland Life and Times (NILT) social attitudes survey results indicated that over half of respondents (also randomly sampled from the population) were comfortable or approving of 'a transgender woman using a female toilet (asked of women only) (59%); a transgender man using a male toilet (asked of men only) (55%); a transgender woman using a refuge if experiencing domestic violence (54%); an individual having the right to change their sex on a birth certificate after two years of living in their 'acquired gender' (53%). (Neill & McAlister 2019).

Stones proposes that her analysis of the comments made on online articles about the safety and privacy of transgender women using women's bathrooms 'do not support the belief that most women are against transgender females using female bathrooms', finding that around 70% of the cisgender women included in the sample posted non-negative comments and that 'about a half of the negative comments by cisgender females are incidental.' (Stones 2017). She additionally notes that it could be expected that since users with 'strong and polarized opinions' are more likely to comment on such articles, findings at the general population level would likely show a significant increase in the proportion of people who are apathetic towards the issue.

Stones' analysis of the comments made on online articles about the safety and privacy of transgender women using women's bathrooms also supports previous findings that men are more likely to support trans exclusion than women and that 'male violations from societal gender norms evoke stronger negative reactions than female violations'. She found that among the 1,035 comments sampled, those categorised as cisgender men were more likely to express concern around the issue, and that cisgender women were far more likely 'to assert that transgender women do not directly cause their safety and privacy concerns, typically emphasizing their concerns are about 'perverts' posing as transgender females' (Stones 2017).

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