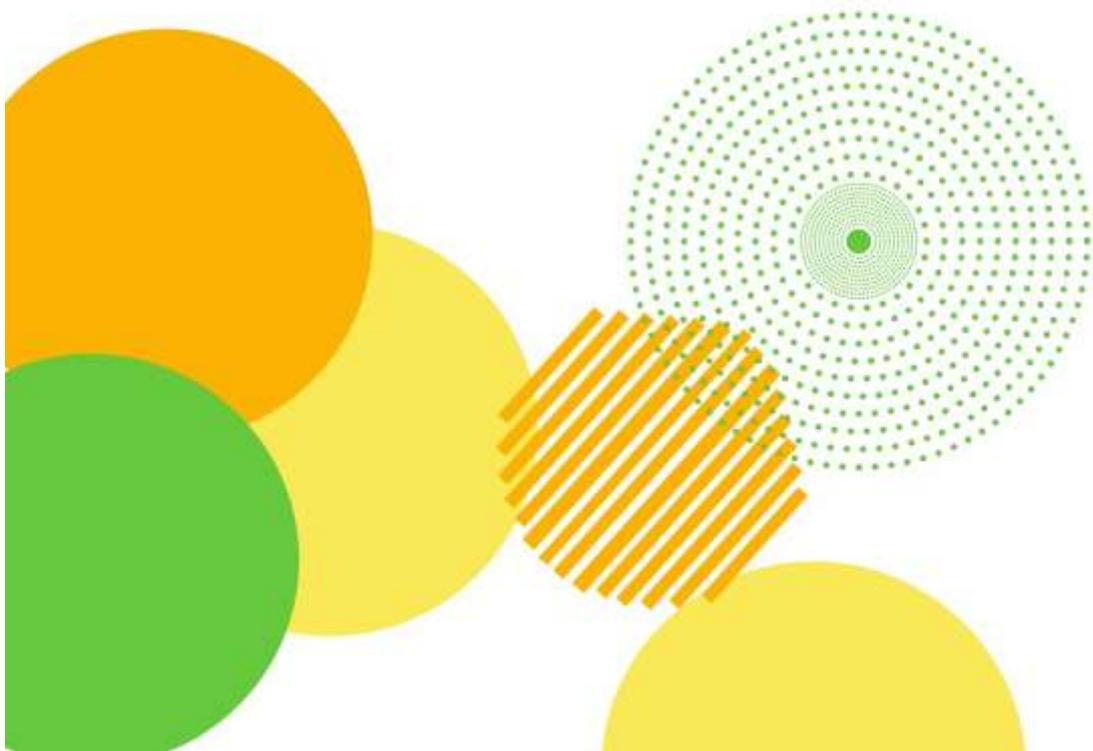


**Female Only Provision:**  
**A Women and Girls in Scotland Report**



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## INTRODUCTION

Women and Girls in Scotland is a grassroots, feminist, women's campaign group, including working class women, LGBT women, survivors of male violence and mothers. We formed to campaign for the sex based rights of women and girls in Scotland, as it had become clear not only that there is an increasing erosion of these rights, but also that there is a concerted attack on these rights and indeed on the very concept of sex itself. We observed that neither the Scottish Government nor any relevant funded organisations were taking any steps to address this, and nor have they made any attempt to consult with women and girls in relation to changes impacting us, such as changes to single sex provision.

We believe that women and girls still need to be protected on the basis of their sex, as females still suffer exploitation, discrimination, inequality, injustice and oppression due to our reproductive sex, and this is recognised in human rights and equality legislation. As such, we are undertaking a process of reviewing legislation, policies and proposals in order to identify where the needs of women and girls are not being considered or met, and we are working to address where this is the case.

As part of our research, we surveyed 2,000 women in order to gauge the ways in which women and girls are impacted/will potentially be impacted by changes to female-only provision that mean they are no longer single sex. While we are a Scotland based campaign group, current equality legislation is UK-wide in scope, and the Gender Recognition Act (GRA) proposals from both the Scottish and UK Governments will impact women and girls across the UK if implemented. Therefore we surveyed UK women.

Our survey was drawn up by two women and a transwoman, two of whom are working class and all of whom are resident in Scotland. We sent our survey to women's groups and organisations including Engender, Rape Crisis Scotland and the UK Women's Equality Party. Our survey was also available to the public across multiple social media platforms, including our own group Twitter account.

We would like to thank everyone who helped ensure our survey reached women to enable women's voices to be heard. We could not have hoped for such a huge and detailed response, and we are especially thankful to all the women who took the time to respond to our survey; women who in many cases had to write about past trauma. We recognise how difficult this is and we are deeply grateful to everyone who shared their experiences and views with us.

The survey questions addressed in this survey report, along with statistics tables for each question, can be found in Appendix A. We did not remove any responses to our survey from our statistics, apart from 37 responses across two questions due to a data capture error, explained in Appendix A. While the removal of these responses is not statistically significant, it is important to also note that self-selecting surveys are not statistically representative. However they do provide the valuable opportunity to capture the views, experiences and needs of particular groups of people, and often inform policy making. For example Engender carried out this type of survey to 'gather perspectives on women's equality and rights from individuals in Scotland'. We take the view that this survey should simply form the beginning of a process of broad engagement with women on changes to female-only provision, and as such this is not meant to constitute an exhaustive measure of the impact of these changes.

As our survey was carried out to gauge the ways in which women and girls are self-excluding/would self-exclude from female-only provision due to male inclusion, as well as to gauge how women and

girls may be otherwise adversely impacted by such changes to single sex provision, we have focused on responses that address these issues. However we do address other responses as appropriate.

We also published a discussion paper on the 30<sup>th</sup> May 2019, *Gender Self Identification in Scotland: A Women and Girls in Scotland Discussion Paper*, and this is a formative work in relation to this report, and as such our discussion paper is referenced in a number of sections throughout, and appended as appropriate.

## **FOREWORD**

We use the term ‘trans-identified males’ in this report (and in our survey) because natal males who have a trans identity don’t all identify as transwomen: there are many other trans identities (such as transfemme, trans non-binary, gender-fluid etc) that could allow males to have access to female-only provision. For example, Rape Crisis Edinburgh has said that all their events and services are inclusive of ‘non-binary’ and ‘gender fluid’ people. Additionally, as this was a survey, we also had to make sure to use purely descriptive terms, based on the dictionary definition of those terms, in order to ensure the language used was both clear and neutral. We therefore use the term ‘trans-identified males’ to denote all natal males with transgender identities, and wherever we refer to the terms ‘female’ and ‘male’ within our work, we are referring to these as sex terms, as per the dictionary definition.

We also ensured our questions were worded in such a way that respondents were not forced into a response that did not give them the chance to accurately reflect their views. For example our questions did not assume a respondent held a particular belief or ideology, and in addition to offering response options beyond simply Yes and No, we also provided a comments section for each question, as well as a final section that provided an opportunity for respondents to cover any additional comments relevant to the survey.

We also asked specific questions, with explanations of the possible impact of policies where appropriate, so that we would obtain responses that told us exactly how the respondent felt in relation to a specific issue, as opposed to asking questions such as ‘do you agree that women and transwomen should have the same rights?’ that would actually tell us nothing about that person’s views on any particular issues, as having the same rights to be free from forms of discrimination and inequality doesn’t mean that you need/should have the same specific protections (for example).

We understand that recognising sex can, in itself, be painful for some people, and while we are very sympathetic to this, it is important to note that women and girls have sex based needs and sex based rights, and as such, equality law already recognises that it is sometimes a tool of equality to treat trans people differently to the sex they identify as. In order to address the question of where and when female-only provision is required, relevant distinctions in regard to sex have to be made, and the sex based needs, rights and equality of women and girls must be properly considered.

Despite this, we are aware that some people took the view that we should not have run our survey, because they feel that trans people should never be excluded from any provision for the sex they identify as, regardless of the needs and rights of other groups and the impact on them. Indeed, a former SNP Councillor publicly referred to us as a ‘hate group’ because we asked women these questions, and retweeted calls from activists to ‘ruin’ our results.

While the results of this survey will demonstrate that these kinds of questions need to be asked, it is important to note at the outset that the issue in relation to changes to female-only provision that this survey report is addressing, is an issue in relation to sex, not gender identity.

### **Male violence**

Males commit the vast majority of violent and sexual crimes and are usually capable of rape and of easily overpowering women and girls. For example in Scotland, males commit roughly 84% of violent crime and 98% of sexual crime. Thus women and girls live in a climate of male violence, where males as a class are inherently a threat to us.

So while only a minority of males are predatory, women and girls have female-only spaces in large part because it has long been understood that females are in danger in respect to males *as a sex class of people*.

The Gender Identity Research and Education Society (GIRES) estimates that only 20% of the trans population will seek surgery at some stage, therefore it is likely that around 80% of trans-identified males remain fully male bodied. This means that the vast majority of trans-identified males, in addition to generally being able to easily overpower women and girls, also remain capable of rape. Indeed the Ministry of Justice confirmed to the BBC that there are currently transwomen in UK prisons who have been convicted of rape, as well as of a number of other sex offences against women and children.

As such, the minority of trans-identified males who are predators pose the *same threat* to women and girls as the minority of men who are predators. *Recognising this is not the same as to say that all transwomen and all men are predators*. It is simply a recognition that the *minority* of those who are, are *capable of the same violence* against women and girls, and have *carried out the same offences* against women and girls. Therefore identity doesn't alter the fact that *males as a sex class* are a threat to women and girls, and nor does it alter the fact that women and girls live in a climate of *male violence*.

Males are not only a potential danger, but as a potential danger, males represent a threat that has to be managed by women and girls wherever we may be vulnerable, as it is not possible to tell simply by looking at a male whether or not they are a predator. Furthermore, the presence of males in particular spaces can trigger the trauma women and girls live with due to being victims of male violence and of living in a climate of male violence. Therefore the inclusion of males in female-only provision is not only an issue because it affords the minority who are predatory with access to these provisions, but it is also an issue because male inclusion has the potential to adversely impact on women and girls in a number of ways, regardless of the intentions of particular male people. All of this will be explored below.

### **Women's trauma**

The trauma that women live with due to male violence is, in our view, one of the most sidelined factors in the current gender debate, in respect to understanding the need for female-only provision.

While the Scottish Government advised us that they do not hold any data on the prevalence of Post Traumatic Stress Disorder (PTSD) among women in Scotland, the Adult Psychiatric Morbidity Survey carried out for NHS England, has found that in England, 5.1% of women screened positive for PTSD overall, with a rate of PTSD at 12.6% for women aged 16-24. It is likely that PTSD levels will be broadly similar among Scottish women.

The percentage of women living with trauma from male violence is likely to be higher than this, given the levels of abuse and assault that women face and not all traumatised women have PTSD. These figures indicate that there is a substantial proportion of the female population living with extreme levels of trauma, and while this will not be a result of male violence in every case, it is very likely that many, if not most, will be, and the impact of this must be clearly understood in order to understand the needs of traumatised women and girls.

We also wish to highlight that human rights and equality legislation recognises that women and girls living with trauma should not in any way be blamed for their trauma, and that previous trauma and abuse are partly why provisions for women and girls may need to preclude all male people, regardless of how they identify, and thus can be lawful. And while trauma is not the only basis on which women and girls need female-only provision, it is also a basis on which women and girls need female-only provision, and this must be understood and addressed by policy makers.

## **SURVEY RESULTS**

### **PART 1: SINGLE SEX FACILITIES**

We asked women for their views on whether female communal changing rooms, showering facilities and sleeping accommodation in places like schools, swimming pools, gyms and hostels should also be open to trans-identified males. We also asked how likely respondents were to self-exclude from such spaces if they were inclusive of males.

We asked these questions as increasingly such spaces that are usually segregated by sex are now accessible to males who have a trans identity, and this is having an unseen impact that needs to be gauged if we are to understand how such policies affect women and girls.

#### **Results**

A majority of women (79.1%) said that communal changing rooms, showering facilities and sleeping accommodation in places like schools, swimming pools, gyms and hostels should not be open to trans-identified males. Only 17.9% of respondents said they would happily use such facilities if trans-identified males could access them.

Of those who said they would still use the facilities but would be uncomfortable (10.8%), many said they would be unhappy with younger female relatives using the facilities:

*“In answering for my daughters, I would think twice before letting them use these facilities on their own”*

*“I would still use them, but I would not take my children”*

*“I would likely change elsewhere. If I were on my own, I may decide that I could take sufficient care of my own safety etc. If I were taking my young nieces this would be a serious consideration and would definitely not use changing rooms”*

Some said they would take safety measures or modify their behaviour to ensure their safety:

*“It would just become another space that I would find myself being hyper-vigilant in. I would feel less safe, and I would certainly adopt new criteria for when I would use these spaces, such as only when other women are there, never on my own”*

Of those who said they would be unlikely to use the facilities (27.6%), some said that they would try to find other ways to have privacy and to feel safe:

*"I would (and do - this is happening to me currently) change in a toilet cubicle instead of the changing rooms- I would still be (I \*am\*) very unhappy and anxious, since a facility which allows men into the women's changing rooms will also allow them into the ladies toilets. I need sport in my life for my mental health, but it is horrendously stressful to have to be constantly on guard for men in what should be female-only areas."*

Again, some women said they would take safety measures or modify their behaviour to ensure their safety:

*"It means I would make lots more personal safety judgements and may decide I'd rather change somewhere else if I were not comfortable with who was in there. I would NOT allow my children to use them unsupervised and would be concerned about school swimming lessons. If I thought someone in there was disingenuous or posed a threat...what could I do about it?"*

*"It would at the very least make me feel like I needed to be permanently on guard against voyeurs and possible harassment."*

Many also raised their personal experience of male violence and how this affects them:

*"I would feel incredibly uncomfortable using shared sex spaces. I have PTSD after being attacked by a man while at my work as a nurse and being in a vulnerable position like this would very likely trigger these anxieties."*

*"Depending on the type of facility I would be extremely uncomfortable and would likely avoid it - I would not stay at a YHA anymore due to their policy of allowing self-identified women into single sex female dorms - as a teenager I was sexually assaulted by a man in a mixed hostel dorm and have relied on single-sex spaces since. I would not use showers at a pool or gym and would only change there if there were decent cubicles - even so I would be very uncomfortable as it is not uncommon for the changing rooms to be pretty empty at certain times of the day"*

Some also raised that predatory men who are not trans may try to take advantage of being able to access female-only spaces:

*"As a woman, I've been regularly sexually harassed since 9 years old. I know - and every girl and woman knows - how far males go for female nudity and sex. Claiming to be trans is no big deal for them, it's an easy lie for such a big reward. I would feel uncomfortable, unease, stressed and afraid if I needed to be naked in mixed spaces. The statistics are there: sexual assaults are very common in mixed spaces. Depending on the space, if there are no private stalls available, I would definitely not use those facilities". (Last year a Times newspaper investigation found that 90% of reported sex attacks in council sports centres or swimming pools occurred in mixed spaces, and these attacks include "voyeurism, harassment, sexual assault and rape".)*

Of those who said that they would definitely not use the facilities (39.5%), many shared their experiences of assault, abuse, domestic violence and rape, and many also shared that they have CPTSD (Complex Post Traumatic Stress Disorder):

*"I simply would not feel safe. I have suffered assault previously (not in these settings) and would not place myself in such a vulnerable position"*

*"It would prevent me using my gym completely. As a victim of serious sexual abuse, I could not change where males are"*

*"Due to my past history of abuse, I never feel safe around men full stop so would never allow myself to be in an enclosed space with a male bodied person. That would mean I never use public toilets, changing rooms, dormitories where there was a possibility of becoming trapped with a man"*

*"I am currently unable to use mixed sex facilities due to CPTSD following domestic violence, rape and a lifetime of abuse from men"*

*"I would feel paranoid due to PTSD . I would feel anxious and panic. I would not use the changing rooms"*

*"I have C-PTSD, I already self exclude from places where there will be lots of male bodied people and make conscious choices around when and where and with whom I am vulnerable. Having trans identified males in those spaces would mean I would have to self exclude from those places as well"*

In addition, a proportion of respondents stated they would no longer use these facilities as their religion forbade it:

*"As a religious woman with daughters where are we meant to go, when men take up what was just spaces for women. Nowhere, we are left with nowhere. We can just stay at home"*

*"I have been raped multiple times...I feel threatened when near men I do not know and I should be even more threatened when I am in a state of undress or illness. It would be cruel and triggering of my illness to force me to share women-only space. It is also against my (Muslim) religion"*

*"I am of a religious minority and feel I am being discriminated on the grounds of both religion and sex. I cannot be in a space where there may be naked male bodies no matter how they may identify"*

*"I just couldn't. I am religious and this would be for me and my daughters a place we couldn't go"*

*"I am a Muslim woman and a mother of daughters, therefore I would have to leave if a male was using women-only facilities, regardless of how he identifies. All the women I know in this country have experienced male sexual violence from the youngest age, including being flashed at, groped, followed and worse. I would absolutely not feel safe sharing such facilities with a male, would feel scared to raise the issue, and I would deem it inappropriate for my young children to be in the presence of an unknown male in a space where they are undressed"*

Women also raised that it's impossible for women to know which males are a threat to them:

*"I can't tell by looking at an individual whether or not they're a predator - that's why we have sex-segregated spaces in the first place"*

Of those who were unsure (2.3%), most commented that whether or not they would self-exclude would depend on how much privacy was afforded in the facilities.

*"Unsure about this and as usual, it depends on many other factors such as the overall privacy or otherwise of the changing rooms"*

Our survey provided an additional comments section to provide women with the opportunity to share any further ways in which they are self-excluding. Many raised 'gender neutral' public toilets as a particular issue in relation to self-exclusion from communal facilities:

*"I have noticed an increasing number of public spaces using 'gender-neutral' bathrooms that are not properly secure and private. Unfortunately I have had to stop using these after coming across men leaving their cubicle doors open while I was taking my 3 year-old daughter to the bathroom. It is infuriating that women and girls are being shut out of public life under the guise of being 'inclusive'"*

*"I have frequently walked away from and not used mixed gender toilets which are appearing more and more in public spaces. I will not use a toilet rather than take that risk, particularly at certain times of day and in certain places where I feel less safe"*

*"My daughters (9yrs) primary school has changed to unisex toilets and she regularly holds off going to the toilet until she gets home. This also means she avoids drinking at school so she doesn't need to go"*

*"I have to assess places before I take my daughters into them because my youngest had a panic when a man walked into the toilet on us when she was 4 years old. She wouldn't use public toilets for a long time after this."*

There were also some additional comments regarding the impact of males using female facilities:

*"I no longer use the changing rooms in my local sports centre - I use the toilets to change. This is still not a female only space, but at least I can lock a door. Getting exercise is extremely important to me, but it is now rife with anxiety, fear and trauma flashbacks as there are males using all the female facilities now. This is not a theoretical situation - it is happening right now, in the UK"*

*"Like many women I have experienced male violence and my emotional reaction will activate distress long before my rational brain can itemise all the reasons for accepting a born male in a hitherto protected space. I have stopped attending my local swimming pool because they have mixed changing rooms."*

## **PART 2: WOMEN'S SERVICES**

We surveyed women on their views regarding whether or not female-only survivor support services should be available to female survivors of male violence. We also asked respondents how comfortable they would be using such services if they were inclusive of trans-identified male service users and staff.

We asked these questions as we are aware that the Scottish Government placed conditions on their funding for women's services in Scotland in 2012 that mean these services must be accessible to transwomen, and at least some women's services are accessible to males with other trans identities. We are also aware that some women's services hire trans-identified male staff.

As outlined in our discussion paper, while the Scottish Government's policy clearly has the potential to impact on women's service provision in Scotland, to the point where it might lead to an end to all female-only women's services, the government did not carry out any research, consultation or assessment in regard to the impact of this policy on women and girls before its implementation.

Since sex is a protected characteristic, the impact of this policy on women and girls should have been assessed as part of the government's Public Sector Equality Duty (PSED). However, the Scottish Government not only confirmed with us they had not carried out this duty, but also told us they did not take the view that the government had to assess the impact of this policy change on women and girls, because of the government's broader policy aim of taking a 'gendered approach' to policy, and

to advocate for trans inclusion. Thereby the government has failed to carry out its duties under the Equality Act 2010 in relation to this policy.

We also approached Scottish Women's Aid and Rape Crisis Scotland to ask if they had carried out any research into whether women are self-excluding from their network of services due to changes that mean they are no longer single sex, and both organisations confirmed with us they have not.

As a result of the lack of any consultation with women in regard to changes to women's services that mean these services are no longer single sex, or any research or assessment in regard to the impact of these changes, we decided to gauge the impact of these changes in our survey.

## Results

A majority of women (80.1%) said that female victims of male violence should be able to access female-only survivor support services and refuges, and a majority (71%) said that if they had reason to use survivor support services or a refuge, they would not be comfortable if the service was inclusive of trans-identified males.

Many survivors, including women who have accessed women's services, highlighted that they could not use such services if male bodied people were present:

*"I have used such services. I would never go somewhere to flee male violence if I had to be confronted with male bodies"*

*"I was the victim of a brutal rape and battery, I didn't handle being around any male bodied person for months and I still have deep anxiety around males"*

*"No way would I use such a service. I am a rape and DV survivor and I would not want to be in a space with anyone who has been socialised as a male and who can rape"*

*"As a survivor of DV and marital rape? I would feel threatened by any male presence"*

*"I HAVE used a women's refuge. I NEEDED that space to be free from males to let my guard down and heal. My child who WITNESSED VIOLENCE needed to be in a place without male bodied people so he could relearn what safe felt like"*

Many women also highlighted that the inclusion of male bodied people in these spaces has already further traumatised them, or would further traumatise them:

*"I \*have\* been forced to use survivor support services where male-bodied people (both therapists and other clients) shared the space and it's literally devastated my life...it's not about 'comfort', it's about \*CAUSING HARM\* to be living in a state of constant fear in what should be a healing space"*

*"I am a survivor of long term violent sexual abuse at the hands of men. In those places, that are supposed to be safe havens for victims, a male would cause inevitable re-traumatisation"*

*"Yes, I was helped and sheltered after an extremely brutal rape and battery, I could not have accessed the safe space if any male had been on the premises. An electrician came to fix a problem, I was warned he was coming but sadly just having him in the building triggered me...the Dr called to sedate me"*

*"Being in the same space as someone with the same kind of body that traumatised me, would make me feel even worse - and more vulnerable. My mental health would definitely be impacted"*

*"I don't even know how to put it into words, sorry. I hope someone more articulate than me can. After my rape I was "triggered" by even familial lovely men getting too close sometimes. A place for systematically abused women needs other women. There's nothing like it, no matter how well-meaning the men involved are"*

*"I would feel very, very unsafe. Not only would I not feel safe using it but it would severely affect my PTSD and I would probably never feel safe to use a women's service again"*

The difficulty in being able to express discomfort, and in being able to speak freely in such situations, was also highlighted:

*"I would be very uncomfortable, but unfortunately I would keep that to myself and would be too scared to voice my discomfort"*

*"I would not feel safe. I would not feel able to speak freely about what has happened to me"*

*"I find it hard enough to talk about my experiences to my sister and female friends. My father doesn't know. I couldn't talk about it in a group with trans identified males"*

*"I have used such a support service in the past and I could not have done so if in particular the staff may have been trans identifying. I don't think I could have talked about my experiences in the same way at all if I had been talking to a trans identifying male. I just would not have been able to access the service, which would have had a very negative affect on my life"*

*"I would not feel comfortable or safe at all talking about my experiences and/or staying in a refuge setting with trans identifying males present"*

Many also said that a male presence would have prevented them from accessing services they need, or would cause them to leave services they are currently using, or has caused them to refrain from accessing services they would have otherwise used. Again, many raised PTSD:

*"Absolutely. I have had to seek refuge from violence more than once and would NOT have gone had there been males present in any format"*

*"Sorry I have PTSD and this would just prevent me from accessing service"*

*"I would top myself rather, and so I suspect would a lot of PTSD women"*

*"I would walk out. The trauma would be unbearable."*

*"Even if, at the point of contact, there was no trans identified male service users or staff, the possibility that there might be, at some point in my use of the service, would be enough to exclude me"*

*"This is very personal to me. I am currently in a refuge and have been for over 30 months with my child. The notion that we would have been presented with someone who "identified" as female is horrifying. Women and children fleeing domestic violence have been put through horrific gaslighting and violence. To tell them that this person they can see is Male is actually a woman, and that to object to this is bigoted is a final act of violence and gaslighting. Certainly I would have been unable to stay"*

*"I've had need recently and did not avail myself because the sexual violence support centre has males in their groups"*

Some women also highlighted the importance of their personal boundaries:

*“As a survivor of sexual violence it’s important to be able to control my boundaries”*

*“Having been in a relationship with elements of coercive control, financial, sexual and emotional abuse, and the use of crazy making gaslighting behaviour to manipulate my perception and confidence, I found female only support groups were the only place where I could truly safely explain myself and work through the traumas I suffered. I would have found the demand that in a refuge situation that I needed to compromise my boundaries and ignore my perception of reality very similar to the abusive situation I experienced, and this would likely inhibit my trust of staff and the system set up to help me, as well as undermining my ability to analyse and recover from abuse”*

Some women who have worked in survivor support services commented that female-only provision is important for recovery, and that there are women who need female-only services who will be excluded when they are not available:

*“It is imperative for healing and trauma. I have worked in refuges I know how traumatised those women are”*

*“I fund and commission these services and know that survivors of abuse cannot have male bodied people in these spaces without experiencing further trauma. I hate that the Scottish government is ignoring the trauma these women face to impose this requirement on women”*

*“As a former provider of women only services following sexual violence, most of the women I supported had specifically sought out women only provision”*

*“I work as a volunteer in a women-only facility where trans-identified males are included...I have spent a long time persuading vulnerable clients to engage with the service, reassuring them that it is women only, only for those clients to disengage when they discover that this is untrue...”*

### **Views of frontline staff in Scotland’s women’s services**

Our group spoke with a number of women who work in delivering frontline women’s services in Scotland, and they explained that while there is very little use of these services by trans people at the moment, with increasing awareness that these services will allow male bodied people access if they have a trans identity, staff and service users are increasingly discussing these issues. The staff we spoke to said that the women they have discussed this with have been very clear they would not be able to continue to access the service if a male bodied person was there, regardless of how they identify.

**This highlights that the measure of how the policy of trans inclusion in women’s services can potentially impact women, has to be based on whether or not the inclusion of male bodied people would prevent women from accessing these services, or would otherwise distress and re-traumatise women. The measure of the impact of this policy cannot be based on how many incidents have occurred or complaints have been made, as this would not provide a measure of those who are self-excluding/those who would self-exclude, and nor would this provide a measure of the distress and re-traumatisation women face/would face if trans identified males became service users or staff while they were accessing a women’s service.**

In light of the above, frontline staff told us they are very frustrated that women’s organisations continue to cite their trans policies as raising no issues. These staff not only take the view that there are serious issues with these policies in terms of the impact/potential impact on female service users/would be service users, but they point out that neither staff nor services users have been given the opportunity to be heard. Indeed staff have expressed frustration and disappointment that

there has been no open consultation with staff and service users regarding the impact/potential impact of these policies, and have told us that there is a culture whereby staff feel unable to raise concerns with these organisations at national level, and where those who do are either ignored or instantly closed down. Staff also told us that the only opportunities they have had to discuss these policies take place at events with the Scottish Trans Alliance (STA), where women do not feel that they can openly speak regarding these policies. We were told how attempts to raise this as an issue with their national level organisations also go ignored.

Staff advised us that training with the STA is of particular concern due to the guidance *Stronger Together: Guidance for women's services on the inclusion of transgender women* "developed through partnership working between the LGBT Domestic Abuse Project, Scottish Women's Aid, the Tayside Violence Against Women Training Consortium and the Scottish Transgender Alliance" wherein it is stated:

*"In the circumstance that other service users say that they are uncomfortable sharing a service with a trans woman, 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".*

Staff were very clear that the idea women who are too traumatised to share a service with male bodied people are to be considered 'prejudiced' and akin to racists is 'horrific', and explained that women should be listened to and understood as both needing and deserving a space where they can recover from their trauma without distress and re-traumatisation. They said that it is absolutely unacceptable that women should be essentially victim blamed for their trauma, and coerced to deny their trauma, and also coerced to remain in a situation they find distressing/re-traumatising/that transgresses their personal boundaries.

They told us that as a result of this, staff have been so disillusioned that they are currently arranging meetings outside of work to be able to discuss their concerns together and how to handle them. They told us they are also very concerned at the rhetoric from many women's services and national organisations implying that any requirement for female-only provision is transphobic. And in fact our group has been contacted by women who are currently on Rape Crisis Scotland (RCS) waiting lists for support, and who are absolutely terrified to ask for support on a female-only basis due to rhetoric both from RCS and from some of their network of services. One woman who has experienced multiple forms of abuse since childhood told us *"I also feel like I am being victim blamed by Rape Crisis for not wanting there to be males in the centre when I am there. I don't see how it is wrong that I feel the way I do after what I have gone through, and I don't see why I should have to go through more distress just to get help"*. We also know of at least one individual who has stepped back from accessing support because she finds it unbearable that her need for a female-only service is deemed transphobic.

Staff also noted with us that any potential adverse impact of these policies will disproportionately impact on the most vulnerable women, minority women, and women from working class backgrounds. They explained that in their view the most traumatised women are the least able to cope with male inclusion, and minority women often cannot access such services if they are mixed sex for religious or cultural reasons, and women with the least financial resources won't have an alternative if the loss of female-only women's services means they have to self-exclude. It was highlighted that these women are therefore the most likely to end up being unable to access the support they need if there is no longer any female-only women's services.

Staff also told us that they were very disappointed at the lack of engagement from their national level organisations regarding reform of the GRA and wanted to make it very clear that these organisations do not speak for frontline staff.

### **PART 3: SELF-IDENTIFICATION OF LEGAL SEX**

#### **The Gender Recognition Certificate**

The Scottish Government's proposals to allow trans people to acquire a Gender Recognition Certificate (GRC) on the basis of self-identification, means that trans people would be able to access a GRC by simply making a witnessed declaration that they intend to permanently live as the opposite sex, as opposed to on the basis of having a medical diagnosis of gender dysphoria and evidence of a period of lived experience. A GRC allows a trans person to change their sex on their birth certificate, and in our discussion paper we outline how GRCs and the change of legal sex they provide for, impact on the application of the single sex exceptions in the Equality Act (EA) 2010 (see Appendix B for this section of our discussion paper).

#### **The Single Sex Exceptions**

The single sex exceptions in the EA mean that female-only provision for reasons of privacy, dignity and safety, as well due to previous trauma and abuse, can be lawful, wherever this can be objectively justified; which in the simplest of terms means that there must be good reason to exclude trans identified males from female-only provision for it to be lawful. For instance, the EA provides an example in the explanatory notes of a group counselling session for female victims of sexual assault that precludes transwomen because the service provider judged that any male inclusion would mean the women for whom the service was intended would not attend. Thus female-only provision can be lawful, because it is recognised that women and girls need female-only provision in particular circumstances.

The UK Government Equality Office (GEO), the Equality and Human Rights Commission (EHRC) and the Scottish Government have all said that the single sex exceptions also apply to trans people with GRCs. However they have also said that holding a GRC impacts on how the exceptions can be used, although they are unable to articulate what this means in practice. And our discussion paper has additionally shown that even in instances where it would be objectively justified to implement the single sex exceptions for women and girls, it is usually not possible to implement these exceptions in regard to those who have GRCs. Thus GRCs are currently resulting in a weakening of equality protections for women and girls, the impact of which cannot at present be fully understood, and has not been assessed (Again, see Appendix B for this section of our discussion paper).

#### **Failure to adequately assess the GRA proposals**

In spite of this, the Scottish Government has not carried out a full Equality Impact Assessment (EQIA) in regard to the impact of their GRA proposals on women and girls, and has not consulted directly with women and girls in relation to the potential impact of these proposals. Nor did it engage with women's groups prior to the launch of the consultation in late 2017. As such we decided to gauge women's views in relation to this policy.

#### **Results**

A majority of women (80.8%) were against the government's Self-Identification proposals. It is the potential to impact EA protections for women and girls that informed most comments:

*“The vast majority of sex based protections for females in the Equality Act become much more difficult to uphold due to the additional privacy protections a legal change of sex provides. In other words, women's protections are weakened if this becomes legislated. It is a dangerous idea that will see the erosion of women's rights to protection and privacy”*

*“This would make the sex-based exemptions in the Equality Act meaningless since it would be impossible to verify whether someone was born female”*

*“It’s a safeguarding issue and will mean the Equality Act will not be able to be implemented”.*

*“Sex-based protections would be meaningless. It is open to an unimaginable amount of abuse and women and girls are the ones who will negatively impacted”*

*“In every practical sense, there is no way, legally, of proving that one really is female. It would make the current sex-based exemptions impossible to enforce”*

*“Self-identification already happens by the back door and it is becoming a disaster for women's rights...increasing the number of males in the legal female sex class (as the GRC does) with no gatekeeping erodes sex based protections for women and will make the EA exemptions practically unusable”*

*“They may as well tear up the section of the EA that says 'sex is a protected characteristic'. It becomes meaningless”*

*“A self-ID system will greatly increase the number of men who can legally become women and the sex based protection in the Equality Act will become worthless...most people at present are probably unaware that trans-identifying men with a Gender Recognition Certificate enjoy the sex based protection in the Equality Act as legal women. This is likely to be because they are relatively few in number. With a much larger number of male bodied men who are legally women, the presence of men in women's spaces will be normalised...protections in the Equality Act will be impossible to police and so will be lost”*

*“It would...make the current provisions in the Equality Act very hard to implement. It also seems to rest on an assumption that what makes us male or female is not our bodies but our brains; the way we feel, the things we are interested in or good at. This seems to me consist of nothing but stereotypes and is therefore based on sexism and a bad thing for everyone”*

*“This policy undermines the safeguarding of women and girls, is incompatible with maintaining single-sex spaces and would remove decades of progress in involving women and girls in public life and spaces”*

## **Confusion regarding the Equality Act 2010**

Some also mentioned that there is a lot of confusion in respect to implementing the EA single sex exceptions:

*“The EA exemptions are already poorly enforced/understood. Confusing people & organizations that they can’t challenge male bodied persons in single sex facilities”*

There is currently no advisory body in the UK that can offer advice on the practical operation the EA. There is a helpline for individuals who feel that they may have faced illegal discrimination - the EA Support Service (EASS). However the EASS confirmed to us that their service cannot advise on how to use the EA protections, it is solely a service to advise on possible instances of discrimination. And while the EHRC publishes general guidance on using the EA, it is not an advisory service, and their guidance is not only far from exhaustive, but the EHRC itself has highlighted that there is not enough clarity on the EA from the UK Government. In the EHRC’s report published on 25th February 2019, *Women’s Rights and Gender Equality in 2018*, they outlined that ‘practical guidance’ is needed to help ‘single-sex and separate-sex service providers, understand and navigate the complexities of sex-based exceptions in the EA 2010’.

As we covered in our discussion paper, there is not only a great deal of confusion and misunderstanding in regard to the EA, but there is also a great deal of pressure not to use the EA exceptions to provide female-only provision, not even where this can be objectively justified, because this is framed as a rolling back of trans rights and an attack on trans equality (see Appendix C for the relevant section of our discussion paper). And as covered above, there is confusion even among those who write, implement and regulate equality legislation in regard to how the EA exceptions can be applied. This is clearly creating a situation that is prohibitive in terms of upholding the EA protections for women and girls.

## **The impact on data**

Many women highlighted that proposals that could lead to much increased numbers of those changing their legal sex in the coming years, could have a detrimental impact on accurately recording data:

*“It will have an impact on data gathering for the gender pay gap, crime stats, medical and health outcomes, educational outcomes etc etc etc. Eg I work in a health care field where we already know our female patients have poorer outcomes but we don’t know why. How will self-id help us understand?”*

*“Would undermine data validity eg census, on employment patterns, perpetration of/being a victim of crime, income if you can’t differ between a person of one sex and a trans-identified one who was born the other”*

## **Self-identification elsewhere**

It was also raised that policies which allow trans people to change their legal sex don’t function the same way in different countries:

*“Even where self-ID is allowed (such as in Ireland) the government has recognised the need for continuing SEX-based protections. So a trans identifying person would be incarcerated in prison according to their BIRTH SEX, not their acquired gender”*

## The impact of self-identification in the NHS

As noted in our discussion paper NHS Case Study, the two largest NHS Boards in Scotland have stated they do not have policies in place that would prevent transwomen with GRCs from providing healthcare to female patients who have asked to be seen by a female healthcare practitioner (HCP). They have both said it is their understanding that the combined protections of the EA and the GRA mean that to preclude transwomen with GRCs from providing female-only healthcare, would require illegal discrimination and a criminal sharing of information (See Appendix D for our NHS Case Study). This means that, for example, a woman who was been raped, and who has asked for an intimate healthcare procedure to be carried out by a female healthcare practitioner (HCP) and has had this agreed, could still be faced with a male HCP. Furthermore, this would happen without previous warning.

### Self-exclusion from healthcare

While we did not specifically ask a question in relation to healthcare, many women raised in this section of our survey, as well as in the additional comments section of our survey, that they have concerns in relation to the impact of the government's self-identification proposals on their healthcare provision. Many of these women said they would self-exclude from accessing forms of healthcare if it cannot be provided on a female-only basis, and there are also women missing healthcare appointments already:

*"If self ID became law then I would be anxious about all situations where normally I would expect to either have access to a female only space or access to a female member of staff e.g. having a smear test/or other intimate medical procedure...I would be worried about my mum receiving intimate care from nursing staff when she is older. I would be worried about having to stay at hospital in case I was put into a mixed sex Ward"*

*"I would not attend smear tests if I could not have a woman HCP. I would not have spoken to a rape crisis counsellor had she been a man"*

*"I've been raped and sexually assaulted, I've also been in abusive relationships, I've had mental health issues for years now due to all this. I won't feel safe if I have to stay in a mental health unit if I have to be in with men. I just won't seek help in future if this is the case"*

*"I don't want to accept any intimate care or treatment from a trans identified male that I wouldn't accept from other males. I am concerned that in future I may not be able to request (and get) treatment from a female clinician"*

*"The NHS currently try whenever possible to provide me with female health care providers due to my traumatic history. If their definition of female and mine change, it means that I'm unlikely to access medical care"*

*"I am desperately scared that when I ask for a female doctor or nurse to perform gynaecological procedures I will get someone who is a 'former man'. I am worried that I will not be able to insist on an actual woman because of the right of the trans identified person to confidentiality regarding their status & also that I would be condemned for being a bigot. If I was faced with a trans identified man/transwoman I could not access medical treatment"*

*"It would be impossible to ask for a woman practitioner to carry out mammograms, cervical screening or personal care. The health of women whose ethnicity or religion forbids contact with males would be endangered"*

*“Anxious about accessing health services as I'm very aware of how much a male bodied member of staff carrying out any personal examinations on me would be a huge no for me. This would ruin progress I've made as a victim of sexual abuse from a male”*

*“My smear is due. Three years ago I was ignorant of all this! My doctors lists gender and not sex. I am scared to ask them if I can have an actual female. I know if I think the nurse that walks in to do my test is male I have the right to leave but my previous traumatic response has been to freeze which looks an awful lot like acquiescence to an observer. I don't know what to do about this”*

*“I've already missed 3 smear tests because I am so scared of being presented with a male nurse. I ask for a female nurse, but if the sex of a HCP must be kept secret how will my request mean anything?”*

#### **PART 4: PRISONS**

Our group is aware that while the Scottish Prison Service (SPS) carried out an EQIA on its trans policies (introduced in 2014) which include housing trans prisoners in the estate that corresponds with their self-identified sex, they failed to assess the impact of this policy on female prisoners. In our prisons question we stated that transwomen prisoners who hold a GRC are automatically eligible to be moved to the female estate, however, as outlined, currently in Scotland all transwomen prisoners are eligible to be moved to the female estate, regardless of whether they hold a GRC or not. In fact the SPS confirmed to us that it has not yet housed a trans prisoner with a GRC.

It is not possible for our group to survey female prisoners regarding the impact of this policy, so we decided to include a question in our survey to see whether women agree with the policy of housing transwomen prisoners in the female estate.

#### **Results**

A majority of women (80.9%) were against transwomen being moved to women's prisons. Many raised how this places female prisoners in danger, and how their rights are being compromised by such policies, and how distressing this can be:

*“They are knowingly being put at risk of sexual harassment, assault, rape, STDs and pregnancy by men they have no means of escaping from. Many women have already been subject to male sexual violence in their lives and the state should not be retraumatizing them, denying them privacy and dignity and putting them at risk of further male violence”*

*“Male prisoners put female prisoners at risk of rape, sexual assault, pregnancy, sexually transmitted infections, physical assault, coercive control, and all forms of male violence. This is cruel and unusual punishment for female prisoners, who are entitled to safety, privacy, and dignity”*

*“How will the prison service protect those women from sexual assault, rape, consensual sex that results in babies born in prison, the stress of being trapped in the presence of males - showering, changing, sleeping”*

*“The right to safety and dignity for those female prisoners, many of whom have suffered male violence, cannot be disregarded or set aside”*

*“Obviously very unsafe and an infringement of the rights of those women imprisoned with that person”*

*“No one born male should be allowed to identify themselves into the female estate, I am sure you are aware of the recent case concerning “Karen White”...it is worth remembering that the majority of women prisoners are in prison for non violent offences and have themselves been victims of violence. If I can refer to my fear of this situation being in a refuge I can only imagine that distress must be amplified by 1000s if you are in an environment where you cannot leave”*

Some respondents had experience with the prison service and raised concerns around the safety and the wellbeing of female prisoners, as well as the particular vulnerability of female prisoners:

*“People do not understand that the female estate for the prison service merely consists of two types of prison: Open and Closed. Women are not ranked in order of dangerousness. Lifers are held separately for the bulk of their sentence until they become eligible for Parole, but otherwise women are all either in an Open prison with few locks, usually open grounds, lots of personal autonomy and opportunities to socialise with lots of other prisoners...the toilets and showers often have no division, or they are large areas separated by only shower curtains and women would be easily got at if someone wanted to watch or assault her. In many parts of the female estate “cells” are not locked by staff and women can move between rooms throughout the building or at least along their corridor”*

*“I’ve worked with women who have been to prison, most of which was for non-violent crime. Most of them have a history of male violence behind them, abusive fathers/brothers/uncles/boyfriends...they shouldn’t ever have to share a prison with someone with a male body”*

*“I work with male and female prisoners and am deeply concerned about the risks (physical and emotional) to often extremely vulnerable women”*

It was raised that women have already been assaulted in prison due to the policy of housing transwomen in the female estate:

*“Dangerous sex offenders have already been placed in the female estate and gone on to assault women. To think that making this process easier would not exacerbate the problem is ridiculous...I have heard the argument that men are sexually assaulted in prison too as a counter to these incidents and would only say that just because we can’t prevent all assaults doesn’t mean that we shouldn’t try to prevent those that we can”. (Last year transwoman Karen White was convicted of sexually assaulting two women in a female prison while being held there on remand).*

It was also raised that experts have warned of the potential for abuse of policies that allow natal males who identify as transwomen to be moved to the female estate.

*“Experts in the prison service have cautioned that men WILL abuse this to gain access to the women’s estate. They will do it for a perceived more comfortable sentence, access to co-defendants, and access to vulnerable women. A huge proportion of women in prison are previous victims of abuse, and the vast majority are convicted of non violent crimes. Adding male bodied people will lead to certain abuse and trauma of these women. Forcing them to share showers and toilets with male bodied people is against their human rights as women. Free women have the choice at least to avoid public showers and toilets that allow trans males access, prisoners do not have that luxury”*

*“The prison services themselves state that a disproportionate number of male sex offenders are motivated to gain trans status in order to access women’s prisons”*

Dr. James Barrett, President of the British Association of Gender Identity Specialists, submitted a response to the 2015 Women and Equalities Committee Transgender Equality Enquiry, raising the

following concerns regarding abuse of policies which allow transwomen to be moved to the female estate:

*“It has been rather naïvely suggested that nobody would seek to pretend transsexual status in prison if this were not actually the case. There are, to those of us who actually interview the prisoners, in fact very many reasons why people might pretend this. These vary from the opportunity to have trips out of prison through to a desire for a transfer to the female estate (to the same prison as a co-defendant) through to the idea that a parole board will perceive somebody who is female as being less dangerous through to a [false] belief that hormone treatment will actually render one less dangerous through to wanting a special or protected status within the prison system and even (in one very well evidenced case that a highly concerned Prison Governor brought particularly to my attention) a plethora of prison intelligence information suggesting that the driving force was a desire to make subsequent sexual offending very much easier, females being generally perceived as low risk in this regard”*

Many highlighted that it’s important that trans inmates are protected too, just not at the expense of women:

*“Trans-identified males in prison need a safe place from male violence. I think everyone would agree with this. The female estate is NOT it! ...as a society we need to ask ourselves WHY we have separate prison facilities for males and females. Unless we are happy for all prisons to be mixed sex, there can be no logical justification for including a trans-identified male in a female prison. As with other women-only spaces, if additional facilities need to be provided, I would support that but not at the expense of existing facilities for women”*

*“There is sadly a continued danger from male bodied individuals to female bodied individuals and this is magnified in the prison population where overwhelmingly crimes such as sexual assault and violence are crimes committed by male individuals. Transgender identified prisoners deserve protection, safety and dignity in prison; but this is not a problem for the female estate, and female prisoners to solve. Transgender facilities should be provided in a third space...the female estate should remain a space for female bodied people as this protects them from male violence and the possibility of pregnancy while they are incarcerated.”*

### **Risk assessments**

Of the respondents who said that transwomen should be housed in the female estate, many raised risk assessments as an adequate measure to ensure the safety of female prisoners:

*“There is already extensive oversight on prisoner placements. They're called risk assessments”*

*“Current rules for risk assessment allow trans prisoners to be moved or isolated if they pose a risk”*

In the Scottish Prison Service Case Study in our discussion paper (See Appendix E for this section of our discussion paper) we highlighted how the impact of the policy of moving transwomen to the female estate in Scotland has had an adverse impact on women in Scottish prisons, including leading to major setbacks in women’s progress, and drug relapses. This happened in a single sex service where, unlike most others, each prisoner moved to the female estate has first been risk assessed in detail by a multi-agency case conference (access to most forms of female-only provision would not involve such an assessment at all). It is therefore clear that risk assessments cannot prevent women in prison being adversely impacted by the inclusion of transwomen prisoners in the female estate.

## Social Class

We also raised in our discussion paper that since the prison population comes disproportionately from the most deprived communities in Scotland, policies which adversely impact female prisoners are policies which thereby disproportionately impact on working class women. However the impact for working class female offenders is even more pronounced. In Scotland earlier this year, a transwoman who had sexually assaulted a 10 year old girl in a supermarket toilet, and filmed a 12 year old girl while she was in a toilet cubicle in a supermarket, was later housed in a hostel for homeless female offenders by Fife Council. The media reported that women were extremely distressed, with one resident quoted as saying, *“This is a women’s hostel and it’s all women who work here. I feel sick and can’t stop thinking about what [she] has done.”*. However, Fife Council said that it acted in line with national policy, stating:

*“Each situation is subject to individual consideration and specific assessment. In situations like these the assessment and planning is carefully undertaken on an inter-agency basis. We all use the national accommodation strategy for sex offenders and through this process levels of risk are carefully assessed, risk management strategies are put in place and on-going monitoring is undertaken”.*

As such, it appears that national multi agency strategies in regard to public safety and housing male sex offenders in Scotland, are leading to homeless female offenders being housed with male sex offenders.

## PART 5: ADDITIONAL COMMENTS

### Lesbian women

Our survey provided a separate section for respondents to make any further comments on ways in which they are otherwise self-excluding and/or being impacted by changes to female-only provision. A number of lesbian women raised with us that they no longer feel able to organise together, or to have their own spaces, or even to be able to define their sexuality on the basis of being a female homosexual, due to the change in how some are defining sexuality as based on gender identity, not sex, and also the pressure to accept this. Women also raised that they feel there is no opportunity to discuss this within the LGBT community:

*“I can’t find a lesbian group in my area that is exclusively female. There are no spaces available to me where I can be with other female lesbians, discuss my experience as a lesbian, and find support exclusively from other female lesbians because all of the groups now include male bodied people who identify as lesbians . I do not wish to discuss my body or my sex life in the presence of a male”*

*“LESBIAN-only groups are being pressured to include males AS LESBIANS or be called bigot, hater, transphobe, TERF. We HAVE to come up with solutions that strengthen legal protections for women and girls (not weaken them) AND legally protect people who identify as trans”*

*“I am a gay female and don't frequent gay bars anymore or go to pride as gay women are targeted and harassed. Lesbian is a protected status but we are being vilified as bigots for not accepting people with physically male bodies as a viable sexual partner”*

*“As a lesbian, I would most definitely self-exclude myself from certain events because lesbians are being denied the right to meet in female-only spaces as they are being told that they are 'transphobic' if they do not allow trans-identified males who identify as a 'lesbian' into women's spaces”*

*“I am a gay woman and I already feel excluded from women's groups, we are not allowed to even talk about this subject. To even ask a logical question is transphobic. LGBT groups are excluding lesbians by saying lesbians can have a penis, if you don't agree you are not welcome...There is a lot of conflating areas on this subject but there is only one voice being heard*

Our discussion paper addressed the attacks on lesbian women due to their sexuality, and how lesbian women are variously told that their orientation is not a sexuality if it excludes male bodied people, accused of having a fetish, told that their sexual orientation is ‘anti-trans’, and that to be a female homosexual means they are a ‘terf’ (See Appendix F for the examples of typical homophobic abuse towards lesbian women used in our discussion paper). Our paper also covered how this has not been addressed by funded LGBT organisations or women’s organisations. In light of this climate, we wrote to four of Scotland’s foremost government funded LGBT organisations; LGBT Health, LGBT Youth Scotland, Stonewall and the Equality Network, in order to ask for their support for the lesbian community in Scotland. Specifically we asked if they would give their support to the following statement:

*“Exclusive same sex attraction is a valid and real sexuality, there is absolutely nothing objectionable about being exclusively same sex attracted, and those who are should be able to live their sexuality free from any form of hate, discrimination, coercion or harassment, and are fully supported by our organisation as part of the LGBT community”*

We have provided a breakdown of our communications with each of these organisations in Appendix G, the summary of which is that LGBT Health did not respond to any of our attempts to secure a response from them in regard to our statement, even after discussing our email with us in a phone call and reassuring us they would respond. LGBT Youth Scotland replied to say they had received our emails, but did not give their support for our statement and ignored our further attempts at contact. Stonewall told us ‘we cannot help you with that’, so they formally declined. And the Equality Network told us they never provide support for statements they don’t write themselves, however they did go on to confirm with us that they do not consider women to be lesbians on the basis of being female homosexuals, because the *only* way they define the term ‘lesbian’, is based on gender identity (so for example they would not, then, consider women who are solely attracted to other females regardless of their identity, as lesbian women).

As such, none of these LGBT organisations gave their support to our statement, which would have given recognition that being exclusively same sex attracted (homosexual) is a sexual orientation, and would have been a clear statement that they support homosexuals as part of the LGBT community, as lesbian women and gay men, and that they reject the homophobia we outlined. Indeed all of these organisations appear to *only* define the terms ‘lesbian’ and ‘gay’ based on gender identity, i.e. there is not even a dual definition that recognises that many, perhaps most, lesbian women and gay men define themselves as such because they are homosexual.

Not only does this mean that these funded organisations do not advocate for, support, or represent those who are homosexual on the basis of being lesbian or gay, but this change in definitions is clearly having an impact on lesbian women in a number of ways. Perhaps most important of which is the fact that women who are female homosexuals cannot recognise themselves as lesbian anymore, or even that their homosexuality is a sexual orientation, without facing accusations of being exclusionary of male people, and facing exclusion themselves in a number of ways (as we have picked up in our survey).

Female homosexuals are being denied recognition as lesbian women by our foremost LGBT organisations, *and it is this refusal to recognise female homosexuals as lesbian women* that means they are unable to live their sexuality free from hate, discrimination, coercion or harassment, because these women are shamed and referred to as bigots for not being sexually open to male bodied people, and for wanting to organise in any way that does not include transwomen who self-define as lesbian.

In other words, this homophobia is solely justified by the idea that lesbian women should be romantically/sexually open to male people who identify as women. Women have to endure this kind of homophobia, as well as exclusion and self-exclusion because of it, without any national level organisations advocating for, supporting or representing them in the face of this, or even willing to recognise this as homophobia at all, or indeed how their redefinitions are contributing to this situation for lesbian women.

### **The toll on women**

Our discussion paper addressed the current climate women are facing in respect to the debate around sex, gender, single sex provision and the government's proposals to reform the GRA (See Part 2 of our discussion paper) and many respondents raised the impact of this climate, and also of the idea that women don't need protected:

*"It messes with my head! It tells me I don't matter. My safety is irrelevant. I feel threatened by the fact that this is even being considered when violent and sexual crime statistics show consistently that men can be a serious threat to women"*

*"Having to have this debate is upsetting in itself, and climate is one of fear and shaming for women who speak out...I would want to challenge a man in a woman's space instinctively if it were safe i.e. other people around, but now I would worry that they would call the police and report a hate crime. This makes me think twice about how to handle a situation and whether I would risk it. This conflict is deeply distressing also. It has increased my feelings of hypervigilance etc from PTSD"*

*"My anxiety and depression would become worse, I already feel very nervous of men, now I feel that women really aren't seen as important or equal in society - males are just allowed to have whatever they want to the cost of women. I am losing hope in the government/organisations that are ok with this"*

*"Women are losing not only their exclusive spaces, but their right of free speech...I hate being harassed on the internet. I hate receiving death threats, rape fantasies, wished of violent harm. I don't feel safe in my local area, and certainly can't attend 'LGBT' events, since women like me are targeted and dehumanised with 'TERF'"*

*"Even more distressing is the abuse that women are receiving for even questioning this proposed policy (Self ID) to the point that I feel afraid to even fill in this questionnaire"*

*"Women are being silenced. Even the mildest questioning of an ever increasing set of trans rights demands is denounced as bigotry, so people don't speak up"*

*"I already feel nervous about using the gym changing room at my university. This is particularly due to the amount of no-platforming and censorship of gender critical feminists at my university. I know that my university would absolutely encourage trans identified males to use my female changing rooms and I would be told that I am the one with the problem if I contested it"*

*“The main problem is that anyone who talks about this is labelled a transphobe and their jobs are at risk. So concerns are ignored and women are silenced. There is no one prepared to speak for women”*

*“I do not take part in any public debates about this issue as women who have done so are exposed to such venomous abuse and some have experienced physical attack”*

*“Where I am self excluding at the moment is around contributions. I'm an academic, and I write op-eds, and I'm writing NOTHING about this, much to my own anger, because of what I've seen happen to Kathleen Stock. I'm more junior and my future would be threatened”*

### **Political exclusion**

Many women commented that intolerance of feminist views and a general climate of hostility towards women who advocate for their sex based rights, is impacting on their political participation:

*“I have avoided attending political meetings or becoming further involved with the party for which I used to campaign as I know these (gender critical) views are unwelcome”*

*“I am a member of a political party, standing for election next year (2019)...I want to stand up for women's and girls' interests but I feel under some pressure from other party members. I have already told Party officials that I am gender critical...I expect to be marginalised because of this”*

*“I have withdrawn from political (small and big 'p') groups I used to contribute to since I am afraid of the reaction were I to raise this issue..this self-silencing is a disturbing aspect of what has become an entirely toxic debate”*

*“Not sure if this is relevant, but I feel completely shut out of politics now...all parties have betrayed women in one way or another, in terms of political representation and overall safety and well-being, but they have also shown a shocking disregard (for) the history of women's oppression”*

## **PART 6: EQUAL REPRESENTATION**

### **All Women's Shortlists**

We also asked women for their views on whether All Women's Shortlists (AWS) should be open to trans identified males, as we are aware that while the purpose of AWS are to help women attain more power and representation in areas where we are underrepresented due to our sex, that increasingly sex inequality is no longer addressed on the basis of sex inequality. In our view, it is important to understand why women feel they still need initiatives such as AWS to address sex inequality.

A majority of women (78.8%) felt that initiatives such as AWS should be retained for female candidates only, with most who commented highlighting that women face inequality and underrepresentation on the basis of being female:

*“Women are different from men. We are not different because we are universally more nurturing or better at remembering birthdays or worse at mathematics or any other invented and fake reason. We are not different because we "feel like" women...Women are different from men because from the day we are born we are placed in a box labelled "Less Than Men"...and this "Less Than Men" box is then reinforced every single day...then as we grow we notice more and more that the voices and faces that surround us - the MPs, the journalists, the CEOs, the leads in movies, the panellists on talk shows... are male much more often than they are female. And those who are female are treated*

*differently ...we have been full participants in the political process for a tiny percentage of human history, and are still not fully represented in Parliament. We continue to be denied full bodily autonomy, with every country in the world legislating about what we do with our own uterus. We risk our health and economic security in childbirth and motherhood...we are paid less for equivalent work. We take on the lion's share of domestic work and unpaid care, further limiting our ability to seek out self-fulfilment...and none of this is due to our gender. This is entirely due to our biological sex. Biological sex is the source of history's definition of women as "Less Than Men". Women are united as a group by our biology, not by some amorphous concept of gender inside our heads"*

*"Women are still treated as inferior on the basis of our female biology. Women only shortlists were created with the fact of current social misogyny in mind. Until sex based discrimination against females is no longer an obstacle for women, women only short lists are necessary to achieve equality"*

*"Only women understand how our biology impacts us, and we can fight for our rights and need to break gender stereotypes that are so damaging"*

Some highlighted that women and girls don't yet have sex equality, and view male inclusion on shortlists meant to address sex inequality as simply acting to further sex inequality:

*"Allowing males into women only shortlists and positions ensures that females are even less represented"*

*"I believe that all sections of society should be represented in public life, but not to the detriment of women who are still under represented in all areas. Women's shortlists, grants, awards etc were created to promote female participation in politics, STEM, arts etc. Already we are seeing trans identified males winning awards meant for women...this is diluting female representation...we are losing women's voices"*

### **Sex inequality**

Human rights and equality legislation recognises sex as the basis on which women and girls face discrimination and inequality, and as such is the basis on which women and girls need protected from discrimination and inequality. The points women raised in regard to AWS are therefore consistent with the recognition that women and girls suffer sex inequality, not gender inequality; that is to say that women and girls suffer inequality due to our sex, not due to how we relate to, or express, femininity and masculinity (i.e. gender).

However increasingly, the Scottish Government is no longer monitoring or addressing the inequality women and girls face in Scotland on the basis of sex. For example, the Gender Representation on Public Boards (Scotland) Act 2018, brought forward to ensure equal representation between women and men on Scotland's public boards, actually means we will no longer be able to know the percentage of females on Scotland's public boards. Any male who identifies as a woman can be considered the same as a female, even though they are not underrepresented on the basis of sex. As such, women's representation could actually decrease on our public boards; indeed a 'gender balanced' board could consist of 100% male people, so long as half of the board identified as women, and this complete absence of any female representation would be invisible, because sex balance is not only not required, but nor will this be monitored. Many public boards consist of a small number of people, so it would not be difficult for women's representation to in fact decrease or stay the same, even when it appeared externally to have increased.

It is not necessary to ignore sex as a basis for inequality in order to address any other form of inequality, and it is clear that any failure to monitor and address sex inequality threatens progress for women and girls, so this approach only makes sense if sex inequality in itself is no longer understood to be a problem. And indeed it seems that for many, sex inequality no longer matters at all.

At a Fawcett Society panel event last year, President of the Liberal Democrats, Sal Brinton, said she would be 'absolutely happy' if the House of Commons was 100% male so long as half of those males were transwomen, and while there were politicians present from the other main UK political parties on the same panel, none raised any issue with a 100% male UK parliament.

Females are over 50% of the population; the idea that female people do not deserve fair representation means that female equality no longer matters. A 100% male UK parliament is not a serious contention, but the issue is that the idea of this is deemed acceptable, because female inequality is now deemed acceptable.

Many seem to take the view that there are so few trans people that any impact on the equality of women and girls of replacing sex with gender identity like this would be minimal. However female people are still facing discrimination and inequality on the basis of sex, and it is not necessary for this to no longer be addressed on this basis in order to meet the needs of trans people. For example, in respect to political representation, specific initiatives can be set up for trans people so that they are equally represented. We would hope it is clear that a UK Parliament where women and trans people are represented based on these respective populations, would constitute a fair and equal parliament, and that a 100% male parliament absolutely would not. As such, we hope this example helps to highlight that any idea that sex should no longer be addressed or monitored is an idea that is antithetical to sex equality and fair treatment.

Additionally, the current size of the trans population in the UK is unclear. For example, while the Stonewall estimates that roughly 1% of the UK population is trans, NHS England has said that it is preparing for up to 3% of the population to have a trans identity before long, and GIRES has said it's likely that 5% of the UK population is 'gender variant'. It is therefore not possible to assume that any impact on women's equality would be minimal, especially not in those areas where women are already extremely underrepresented, and/or where power and influence is already concentrated in very few hands.

Furthermore, the idea that gender identity should replace sex like this has other repercussions, particularly since gender identity is viewed by many as a personal issue, much like sexual orientation. For example in March last year, when the Conservative LGBT National Executive appeared to elect all male officers for 2018, when asked about the complete exclusion of women, one of the elected officers on the National Executive replied "We don't make our members declare their gender...please don't assume the gender identity of our committee".

When gender identity replaces sex like this it renders sexism invisible. If we can no longer question the absence of females on the basis of sex there is no way to address female inequality. Society is still deeply sexist, even those who claim to be progressive are often steeped in sexism. For example last year it was reported that Momentum elected 17 male candidates for 17 chair positions. We would contend that this doesn't happen because men are just better - and yet being unable to challenge this on the basis of sex is now called progress.

## **PART 7: THE POSITION AGAINST FEMALE-ONLY PROVISION:**

The majority of responses to our survey that were against precluding trans people from any form of female-only provision, usually took the position that this is wrong on ideological grounds. For example most who left comments wrote variations of the following statement:

*“Trans women are women. Therefore their bodies are women's bodies. Therefore they belong in women only facilities”*

This might help explain why, in the minority of survey responses where respondents said they would not self-exclude from female-only spaces that were opened to trans-identified males, a majority of those respondents also took the view that women and girls should not have access to any form of female-only survivor support services.

The existence of female-only services doesn't preclude the same services being offered separately on a basis that includes trans-identified males. For example, a service that offers group support for survivors of male violence can have specific days/sessions/venues where those services are offered on a female-only basis and a trans-inclusive basis. So the idea that women and girls should never have access to any female-only services, regardless of the availability of the same services for trans people, and regardless of the needs of women and girls, only functions to advocate for the needs and rights of female people to be ignored. An end to all female-only provision is not necessary for trans people's needs to be met, or indeed for their rights to be upheld (See Appendix H for our discussion paper section that outlines the relevant human rights, and rights under the EA, of trans people and women and girls). And while such a view is, then, inconsistent on principle with any political position rooted in recognising and upholding the human rights and equality of *all people*, it is in fact consistent with the advocated positions of organisations such as the Scottish Trans Alliance and Stonewall.

In 2015 the Scottish Trans Alliance (STA) requested in their written evidence submitted to the Women and Equalities Select Committee Transgender Inquiry, that the UK government *“remove the exception that allows single sex services to discriminate against trans people”* and also that they *“remove the genuine occupational requirement (GOR) allowing some jobs to require applicants must be cisgender and replace it with a GOR allowing posts delivering trans-specific services to require applicants must be transgender”*.

Which means that the STA – the foremost trans organisation in Scotland, and an organisation that has worked closely with the Scottish Government and various other public bodies in relation to gender policies - has asked the UK Parliament to prevent any women's services being offered on a female-only basis, and to remove the ability of organisations that provide vital services to female survivors to only employ female staff in how they deliver their service. They asked for this while at the same time asking that services for trans people should be able to ensure their services are only delivered by trans people.

Additionally, Stonewall stated the following in their written evidence submitted to the same Inquiry:

*“Stonewall is deeply concerned that exemptions within the Act actively remove protections for trans people. Schedule 3, Part 7, permits service providers to deny ‘transsexual’ people access to separate or single-sex spaces. Exemptions in Schedule 9 in the area of occupational requirements allows employers to have a requirement for employees ‘not to be a transsexual person’... Stonewall also believes that these exemptions sit in contention with the Gender Recognition Act as they imply that being a ‘transsexual person’ supersedes a person's legal gender”*.

And Stonewall also stated the following in their 2017 document 'A Vision for Change':

*"Stonewall will advocate for the removal of all instances of permitted discrimination of trans people from the (Equality Act 2010)...Stonewall will lobby political parties in England, Scotland and Wales to include full equality for trans people, and the reform of the Equality Act, as part of their political commitments".*

In these statements, Stonewall equates the single sex exceptions in the EA, which allow for the sex based needs and rights of women and girls to be met, as outlined above, as legislation that removes trans people's protections and prevents 'full equality for trans people'. Stonewall also questions whether the EA exceptions should be applicable to trans people with a GRC *under current legislation*.

So organisations at the forefront of LGBT campaigning in Scotland and informing gender policies in Scotland, believe that trans people should have protections based on their distinct needs as trans people, as well as having the exact same protections as the sex they identify as *under all circumstances*, but that female people should not have their sex specific needs met, and as such should lose all forms of female-only provision, and thus should not have their human rights and equality considered or upheld. This is how these organisations have articulated and advocated for 'trans equality', and our group would contend not only that this is not equality on any measure, but also that it is hard to imagine a viewpoint more conflicting with women's rights than this.

## **PART 8: OUR FINDINGS AS PART OF A BODY OF EVIDENCE**

While self-selecting surveys are not statistically representative, we wish to note how our findings are consistent with those of a number of other surveys and polls, and how evidence of the need for female-only provision, as well as lack of support for the government's GRA proposals, is overwhelming.

### **Women's Resource Centre**

In 2007, the Women's Resource Centre (WRC) carried out their 'Why Women Only' survey, which included surveying organisations, interviewing staff, running focus groups and commissioning a poll of 1,000 women across the UK. Their poll asked *"Should women who are victims of sexual assault have the choice of a women-only support service?"*; 97% of respondents answered Yes. This poll also asked *"What advantages do you think there are to having women-only services (e.g. counselling, training, refuges, professional networks) for women who use them?"*; 84% of respondents answered that an advantage could be that women *"Feel more comfortable talking about personal things"*; 71% answered that an advantage could be that women *"Feel safer generally"*; and 53% answered that an advantage could be that women *"Don't have to worry about unwanted attention or sexual harassment"*.

While the WRC did not distinguish between women and transwomen in this research, the results of this poll show that the vast majority of women they polled believe that women should have women-only services, and identified that such services are warranted for reasons of comfort and safety, and this is entirely consistent with the findings of our survey in regard to female-only provision, where women have been clear that for reasons of distress, re-traumatisation, and not feeling/being safe, they need female-only provision.

### **Women's National Commission**

In 2010, the Women's National Commission (WNC) conducted an online survey in regard to women-only service provision to ascertain the shape of women's organisations and women-only services. Their survey revisited questions asked in the 2007 WRC survey, and their findings are based on the views of 297 respondents, including service users and service providers. When asked *"Do you think it is important for a woman who has been sexually assaulted or has experienced any other form of violence to have the choice to access a women-only support service?"* 99% of respondents answered Yes. And when asked *"What advantages do you think there are to having women-only services (e.g. counselling, training, refuges, professional networks) for women who use them?"*, while no percentage was provided for responses to this question, the WNC stated *"the general consensus is that such services are particularly important for more vulnerable women and women from cultural and religious backgrounds that discourage mixed spaces, as they may otherwise not be able to access them"*. And when asked *"How does being women-only make a difference to the women you reach or your service users?"* women-only service providers said *"the vast majority of women who access their services tell them that they feel much safer in single-sex environments"*.

Again, while the WNC did not distinguish between women and transwomen, this work shows that the vast majority of women they surveyed, including those working in the delivery of women's services, believe that women should have women-only services, and identified that such services are not only warranted, but are particularly important for more vulnerable and minority women. Providers were also very clear that for the vast majority of women who access their services, 'single sex environments' make them feel much safer. And again, all of this is entirely consistent with the findings of our survey in regard to female-only provision; where not only was safety and being able to be free from distress and re-traumatisation raised by women, but also minority women raised how their religion prohibits them from accessing mixed sex spaces, and this potential impact was recognised by WNC's respondents, in outlining how such women may not be able to access women's services if they are 'mixed sex'. That the WNC's respondents also raised that the most vulnerable women are also those most likely to be impacted by the loss of single sex provision, is again completely consistent with our findings. Our survey results and consultation with frontline staff working in women's services, indicate that in addition to minority women, it's also the most traumatised women and the least advantaged women who are also most likely to be impacted by the loss of single sex women's services provision.

### **The Equality and Human Rights Commission**

In 2012, the EHRC published a report: *The impact of changes in commissioning and funding on women-only services*. This research consisted of a stakeholder consultation followed by fieldwork with 25 women-only service providers including interviews with service users. This survey covered services in the areas of "domestic violence, offenders and ex-offenders, health, sexual violence and abuse, homeless women, skills and employability support, and 'one-stop-shops' providing a range of services". Nineteen service providers were based in England, three in Scotland and three in Wales. The vast majority of women interviewed said that the women-only aspect of the service was *"important in their decision to attend in the first place"*, and the reasons for this *"revolved around feelings of: safety and security; building confidence and trust; peer support; and the ability to talk more freely and open up about the issues facing them. This was particularly the case for ethnic minority women"*.

Again, not only is this report consistent with the findings of our survey in that the reasons women gave for needing a female-only service also revolved around feelings of safety and security, and the ability to talk freely regarding the issues they face. But again, as with our own work, this report recognises that single sex services are also particularly important for minority women.

## Panelbase

In 2017, a poll conducted by Panelbase for Wings Over Scotland, of 1,022 Scottish adults, asked “A new government review of the Gender Recognition Act 2004 has proposed that people should in future be allowed to legally decide which sex they are simply by self-identification, without the current medical or psychological assessments which can take 2 years or more. This would mean abolishing all current single-sex public spaces, such as women-only changing rooms and men-only toilets, and it would become a hate crime to disagree with someone about which sex they were. Broadly speaking, what is your view of this proposal?”. Only 18% of respondents said that this is ‘a good idea’.

In 2018, Panelbase conducted the same polling for Wings Over Scotland, of 1,020 adults in England, and only 19% of respondents answered that these proposals are ‘a good idea’.

While some have criticised the wording of the question in these two polls, the findings of these polls are consistent with the findings of the two polls below, which also asked a question on the government’s self-identification proposals. And only 16.9% of respondents to our survey said they support these proposals, which is also consistent with this poll.

## YouGov

In 2018 YouGov conducted a poll of 1,688 adults for Pink News, where they asked “Do you think a person should or should not have to obtain a doctor’s approval to change their legal gender on official documentation (e.g. birth certificate, passport)?”; only 18% said they “should not have to obtain a doctor’s approval”.

As already outlined, at the moment trans people must have a diagnosis of gender dysphoria in order to procure a GRC and legally change sex, so this question was specifically addressing this condition in relation to obtaining a GRC. That only 18% said a doctor’s approval should not be required, is consistent with the findings of both the Panelbase polls and also our survey, in relation to support for self-identification of legal sex.

## Populus

In 2018, a Populus poll of 2,074 adults asked “Do you think that those who wish to legally change their gender on official documentation (e.g. birth certificate, passport) should or should not have to obtain a letter from a doctor as part of the requirement(s)?”; only 13% said that they should not have to. This poll also asked “Do you think someone who identifies as a woman but was born male and still has male genitalia should or should not be free to use female changing rooms where women and girls are undressing/showering?”; only 14% said this ‘should be allowed’. This poll also asked “If someone who identifies as a woman but was born male and still has male genitalia commits a crime and receives a prison sentence, do you think they should serve their sentence in (followed by various options)?”; only 12% said born male prisoners who identify as a woman should be sent to a women’s prison. This survey also asked “Currently, women are able to request a female doctor/nurse when undergoing intimate medical procedures such as smear tests. Do you think a doctor/nurse who identifies as a woman but was born male should or should not be allowed to perform such procedures if a woman has requested a female practitioner?”; 50% said this ‘should only be allowed if the patient has been consulted and consents’; 16% said this ‘should not be allowed under any circumstances’. Only 9% said this ‘should be allowed in all circumstances’.

Again, these findings are entirely consistent with our own results: in regard to those against the GRA self-identification proposals, and those who believe communal facilities such as changing rooms

should be female-only, and those who believe that women's prisons should be female-only, our results are practically identical. This polling also picked up that many believe that women should be able to access female-only healthcare in regard to 'intimate medical procedures', and our survey picked up that women need access to female-only healthcare for a number of reasons, and that without being able to access such healthcare, many would not access potentially life-saving healthcare for fear of being faced with a male HCP.

## CONCLUSION

It is clear from the findings of both our discussion paper and our survey of 2,000 women that opening up female-only spaces, services, groups and initiatives to male people, is impacting the privacy, dignity, safety, welfare, participation, representation and equality of women and girls.

### Actions to take before GRA reform

We highlighted in our discussion paper how the Scottish Government needs to understand the impact of self-identification policies on women and girls in Scotland in relation to changes to single sex provision, in order to be able to understand the potential impact of their GRA proposals in regard to self-identification of legal sex, as these proposals could greatly exacerbate any adverse impacts of the loss of female-only provision, given that the possession of a GRC has the effect of weakening EA protections for women and girls that allow female-only provision (See Appendix I for this section of our discussion paper). **Only once the government understands the need for female-only provision in Scotland, and how the interaction between the EA and the GRA currently impedes meeting the needs, human rights and equality of women and girls, and also understands what needs to be done to address this and has carried this out, can the government adequately assess the impact of any proposals to reform the GRA, and be able to carry out an adequate consultation process.**

### Improving women's rights in Scotland

The government also needs to understand the impact of self-identification policies in respect to the loss of female-only provision in Scotland for the purpose of being able to address the adverse impacts of these policies.

We believe that the Scottish Government should do all it can to assess and address the kinds of impacts we have raised here, and to uphold sex based rights and protections for women and girls in Scotland. Our group encourages the government to operate under a principle of doing the maximum it can under the powers and competencies it has, not the minimum. And while the EA is reserved legislation, the Scottish Government has not only been clear that they are willing to negotiate with the UK Government regarding Scotland-specific amendments to the EA, but that they are also willing to raise any identified impact of their GRA proposals in respect to the EA single sex exceptions with the UK government, very recently confirming the following with our group:

*"We are aware that there are differing views on how the single sex services exception applies. While the 2010 Act is reserved law in these matters, the Scottish Government recognises the need to consider these differing views, which were raised in responses to our consultation on reform of the Gender Recognition Act 2004. Consequently, the Scottish Government response to the results of the consultation will outline our views on any impact on the 2010 Act and whether we need to raise this matter with the UK Government".*

Therefore it is clear the Scottish Government acknowledges that any issues regarding how the GRA might impact EA protections should be addressed, and is willing to take appropriate steps in respect

to engaging with the UK Government in order to protect women and girls. Self-identification policies in Scotland in respect to single sex provision are already having an adverse impact on women and girls, and in line with engaging with the UK Government where legislation is failing/potentially failing to protect women and girls, we hope the government will act to address this too, and we will cover exactly how the government can do this in our recommendations below.

### **Why female-only**

**Both our discussion paper and survey report make it clear that it is *the very presence of a male bodied person in spaces alongside women and girls where women and girls are at all vulnerable*, such as communal changing rooms, communal showering facilities, communal sleeping accommodation, women's services and prisons, that is enough to cause discomfort and distress for women and girls, and is enough to cause further re-traumatisation for women and girls who have suffered abuse and assault. It is also enough to cause women to self-exclude from using female-only provisions they would usually use, including self-excluding in ways that could lead to serious personal harm, in addition to social exclusion and inequality.**

Many women raised with us that they have CPTSD/PTSD and this would prevent them from being able to share any of these kinds of spaces with male bodied people without enduring extreme distress and re-traumatisation. They highlighted that their lives are already severely limited due to this trauma, and female-only provisions are one of the few ways they can feel safe while participating in public life.

**Our discussion paper and survey report, as well as the previous polls and surveys summarised in this report, strongly suggest that it's the most vulnerable women, minority women and working class women who are most likely to be impacted by the loss of female-only provision.**

As a result of the above findings, while the inclusion of trans identified males who have behaved aggressively and/or have in any way been violent or predatory, clearly has had an impact on women and girls, *it is not necessary that a trans identified male is in any way themselves a danger to women or girls for their inclusion in female-only provisions to cause discomfort, distress, re-traumatisation and female self-exclusion. And the impact of policies which allow male bodied people access to female-only provision doesn't even require use of these provisions by male bodied people to impact women and girls. For many, even knowing there is a possibility of facing a male person is enough to ensure their self-exclusion, including self-excluding from women's services and from accessing potentially life-saving healthcare. Therefore the impact on women and girls of changes to female-only provision that mean they are no longer single sex, does not depend on the number of trans people in Scotland, and nor does it depend on trans individuals themselves.*

As such, risk assessments cannot prevent this impact, because the impact of these changes is largely not dependent on the actions of individuals. Furthermore, even the most thorough risk assessments cannot prevent women from having to deal with distressing and inappropriate sexual and predatory behaviour from trans identified males, as our Scottish Prison Service Case Study has made clear.

## RECOMMENDATIONS FOR THE SCOTTISH GOVERNMENT

### Review and consultation regarding female-only provision

The government should carry out an urgent review into the need for female-only provision in Scotland, in order to understand the needs of women and girls in respect to single sex provision. This review should be centred around open consultation with women, and should also be informed by grassroots and minority women's groups in order to ensure a diversity of relevant perspectives inform this consultation and review. Within this review, the particular impact/potential on vulnerable, minority and working class women of the loss of female-only provision needs to be fully researched, consulted on, and understood.

We ask that the government rejects any notion that complaints to service providers can provide an accurate reflection of the impact/potential impact of changes to female-only provision that mean they are no longer single sex. For the reasons outlined in this survey report, **the government cannot understand self-exclusion, or the impact/potential impact on women and girls of these changes, without directly consulting with women in regard to the impact of these changes.** We also urge the government to listen to women in their own voices wherever possible, as a general principle.

### Review of women's services provision

In light of the testimony of survivors in this report, the government should urgently undertake a thorough review of women's services provision in Scotland, and act now to ensure that women's services can be offered on a female-only basis and still receive government funding. This review should involve ascertaining which women's services are currently offered on a female basis in order to be able to gauge gaps in provision, and then act from there to ensure adequate female-only provision is available for women in Scotland. This can be achieved in a number of ways, and does not require a loss of service provision for trans people.

We also ask that the government attaches a funding condition for women's services that they do not characterise the need for female-only provision as transphobic, on the basis that this is acting to prevent women in need of support from accessing women's services in Scotland. The Scottish Government should be clear that it also supports female-only services, and that such provision is necessary in a number of respects to meet the needs of women and girls, as well as to uphold the rights and equality of women and girls, and should embed this recognition in equality strategies as appropriate.

### Review of female-only healthcare provision

The government should urgently undertake a review in relation to the provision of female-only healthcare in Scotland, and work to ensure that female-only healthcare is available to women and girls in Scotland, understanding that failure to do this will impact on women and girls' access to healthcare. It is not acceptable that women and girls can agree with their NHS provider to be seen by a female HCP, but could still be faced with a male HCP and prior consent wouldn't be sought either. This is in contravention of the General Medical Council's patient consent principles, and is clearly a female consent, welfare and healthcare issue. The government should also ensure that all relevant legislation, such as the Victims and Witnesses Scotland Act 2014, allows women to specifically request a natal female HCP.

## **Review of national strategies in respect to women's safety and male sex offenders**

The government should review national strategies in relation to public safety and the management of sex offenders that allow male sex offenders to be housed with homeless female offenders. Fife Council cited their actions as in line with national policy and the Multi-Agency Public Protection Arrangement (MAPPA) with police, NHS Fife and the Scottish Prison Service, and a decision that was the result of a risk assessment. Housing female offenders with male sex offenders is clearly not an acceptable outcome of this process and this must be urgently tackled. We ask that the government acts with urgency to ensure this does not happen again in Scotland, and that adequate strategies are in place to protect the public, and in particular vulnerable women.

## **Organisational recognition, advocacy, support and representation for lesbian women**

The government should urgently engage with the lesbian community in Scotland, in order to understand the impact of the loss of organisational recognition, advocacy, support and representation for lesbian women on the basis of being female homosexuals, and of the homophobia, exclusion and self-exclusion they are facing as a result of the idea that lesbian women should be sexually/romantically open to male people who identify as women. It is the view of Women and Girls in Scotland that lesbian women deserve separate funded advocacy organisations that can say they recognise female homosexuals as lesbian women, and that this statement is not in any way objectionable, and that lesbian women deserve to live free from any form of hate, discrimination, coercion or harassment as a result of their sexuality.

## **Review of sex inequality policy in Scotland**

We ask the government to recognise that failure to monitor and address sex inequality not only makes it impossible to know the true extent of sex inequality in Scotland, but is also inconsistent with the principle of treating female people equally and fairly on the basis of sex. Furthermore, we ask that the government recognises that replacing sex with gender identity can function to facilitate sex inequality, and means that female people cannot challenge our absence on the basis of sex, which has already been used to justify our complete exclusion. As such, we ask that the government commits to ensuring that wherever women and girls face inequality and discrimination due to our sex, that the government monitors and addresses our inequality on the basis of sex, regardless of any other inequalities it wishes to address, and will seek to amend legislation accordingly.

## **Women and girls as stakeholders and our own advocates**

The government must ensure it adequately consults all impacted groups in relation to sex and gender policies, and should be clear that women and girls are stakeholders in regard to sex and gender policies, and as such, should be engaged with and properly considered in relation to such policies.

In our discussion paper we addressed how the government and parliament should act to involve a diversity of perspectives in policy making and how this ensures best practice (See appendix J for this section of our discussion paper). However this report specifically raises the profound conflict between the advocated vision of trans equality promoted by LGBT organisations such as the STA and Stonewall, and any position that would recognise the sex based needs, human rights and equality of women and girls. Our work has shown how upholding the human rights and equality of women and girls does not mean that the human rights and equality of trans people cannot be upheld, and has also shown that trans people do not have the right to always be treated as the sex they identify as, precisely because this would infringe the rights of others (Covered in Appendix H). The conflict

outlined in this report should make it clear to both the government and parliament that policies promoted by LGBT organisations are not necessarily in the best interests of women and girls, and may in fact promote the infringement of our human rights and equality, and wrongly portray this as upholding trans rights.

### **The need to strengthen protections for women and girls**

In our view it is unacceptable that the UK and Scottish Governments, as well as the EHRC, are unclear on how holding a GRC impacts considerations in regard to applying the single sex exceptions in the EA. We also think it is unacceptable that the current EA and GRA are apparently incompatible, as together they are interpreted by major providers to nullify the single sex exceptions (As explained in Appendix D). Furthermore, the equality protections for women and girls in the EA recognise that women and girls have sex based rights to privacy, dignity, safety, and to recover from abuse and trauma, and to be able to participate in society, and to equality. As such, we believe that the optional nature of the single sex exceptions, meant to uphold these rights, combined with the fact that the EA is open to confusion, nullification and misrepresentation, means that the EA does not adequately protect women and girls.

As part of its review regarding the need for female-only provision in Scotland, the Scottish Government should identify the ways in which the EA can be strengthened and clarified to ensure that female-only provision is available to uphold the needs and rights of women and girls, and that there is recourse in regard to discrimination where these are not upheld. Our protections should not simply be an option but a requirement; we must be able to take action in regard to discrimination whenever the lack of female-only provision functions to discriminate against us.

While the EA is reserved legislation, as outlined above the Scottish Government is willing to engage with the UK Government in regard to the EA for reasons of protecting women and girls. As such, we ask that the Scottish Government engages with the UK Government to ensure the EA adequately protects women and girls in the ways we have outlined, and we also ask the Scottish Government to identify any action it can take in respect to devolved powers in order to achieve the same.

### **Guidance and advice regarding the Equality Act 2010**

In the meantime, we ask that the government produces specific guidance regarding the EA single sex exceptions, as well as a point of contact in an advisory capacity, to help people in Scotland be able to understand the EA as it stands, and how to use the EA to uphold protections therein. Ideally there would be a service similar to the EASS, only it would be providing advice on applying the EA (it is important to note that the EHRC only provides some general forms of guidance, and is not an advice service). We would note that this would be of benefit to all protected groups in the EA, and that the lack of any EA advisory service is clearly a barrier to full use of the EA throughout the UK.

## **Review of the policy making process**

The government has failed to uphold its own equality duties in relation to funding for women's services, and has stated that it does not believe it has to assess the impact of such policies, even though these policies can impact women and girls - a protected group. The government cannot opt out of carrying out its duties under the EA, and it is very concerning that the government does not seem to realise this. It is also our view that the government has also failed in its duties under the Children and Young People's Scotland Act 2014, as outlined in our discussion paper (See Appendix K for our Guidance for schools Case Study) to ensure it upholds the UN Convention on the Rights of the Child in Scotland, and this failure has resulted in guidance being used in Scottish schools that potentially breaches children's human rights, something the government has been aware of for four months, and has taken no action to address. Furthermore, the government failed to assess the impact of their GRA proposals on women and girls before publishing their GRA consultation, and as such women were not able to comment on any assessed impact.

We believe these failures warrant a review of how the government is approaching policy making. As already outlined, we believe that the government should be doing more to include a diversity of perspectives and it would be useful to draw up strategies that would ensure diversity and inclusion in respect to policy making, and in particular to ensure the inclusion of working class women in the policy making process. However beyond adequate engagement, the government has to ensure adequate assessment.

Assessments should be carried out before consultations take place, in order to allow consultees the opportunity to comment on any assessed impacts, otherwise the consultation process is undermined. Wherever consultations do not take place, the government should ensure to assess the potential impact of policy proposals before legislation is drafted and certainly before any policies are implemented.

Assessments should also be carried out retroactively as appropriate; so for example the government should now ensure to carry out an EQIA in respect to its funding policies for women's services, and should also carry out CRWIAs in regard to school guidance. The government must also carry out a full EQIA in regard to its GRA proposals and how these can impact women and girls. However, as outlined above, only once the government understands the need for female-only provision in Scotland, and how the interaction between the EA and the GRA currently impedes meeting the needs, human rights and equality of women and girls, and also understands what needs to be done to address this and has carried this out, can the government adequately assess the impact of any proposals to reform the GRA, and be able to carry out an adequate consultation process. And this cannot happen without consultation with women and women's groups in regard to the need for female-only provision, as outlined in our first recommendation.

## **AFTERWORD**

We surveyed women on changes to female-only provision that mean they are no longer single sex, because policy makers and organisations meant to represent our interests have failed to do so. In our view, the responses to our survey make it clear that these questions should have been asked a long time ago. If women and girls had been adequately engaged with, and the voices, needs and rights of women and girls had been adequately considered, we believe that women and girls would be much better protected in Scotland than we are right now.

Our discussion paper and survey report have not only demonstrated that sex segregation is often necessary to meet the needs of women and girls, and to ensure our rights and equality are upheld, but our work has also demonstrated that wherever sex segregation is necessary, trans people can be provided with third provisions that still uphold their human rights and equality. The reality is there is no reason for any group to be made unsafe, or to lose their legal protections.

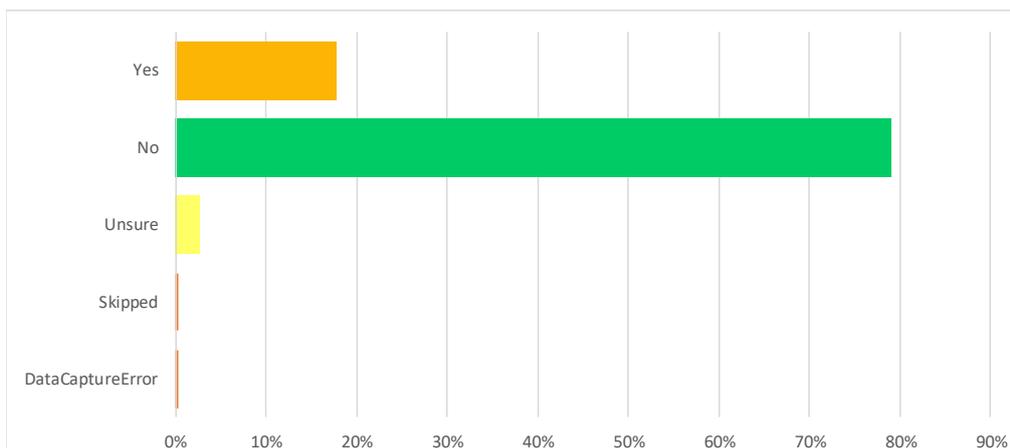
We hope that policy makers will take a rights based approach to policy making that seeks to uphold the equality of all groups, and we hope that policy makers and relevant organisations will support our recommendations, and that the relevant government departments will take the steps we recommend. We look forward to working with the government and parliament in relation to our findings and recommendations, as appropriate.

**APPENDICES:**

**APPENDIX A**

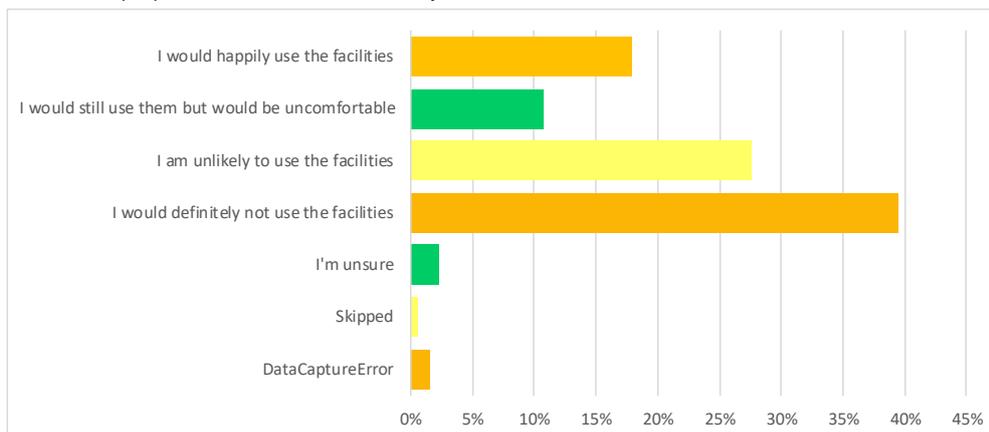
**Tables**

Part 1 (a): Do you believe that female only communal changing rooms, showering facilities and sleeping accommodation in places like schools, swimming pools, gyms and hostels should also be open to trans-identified males?



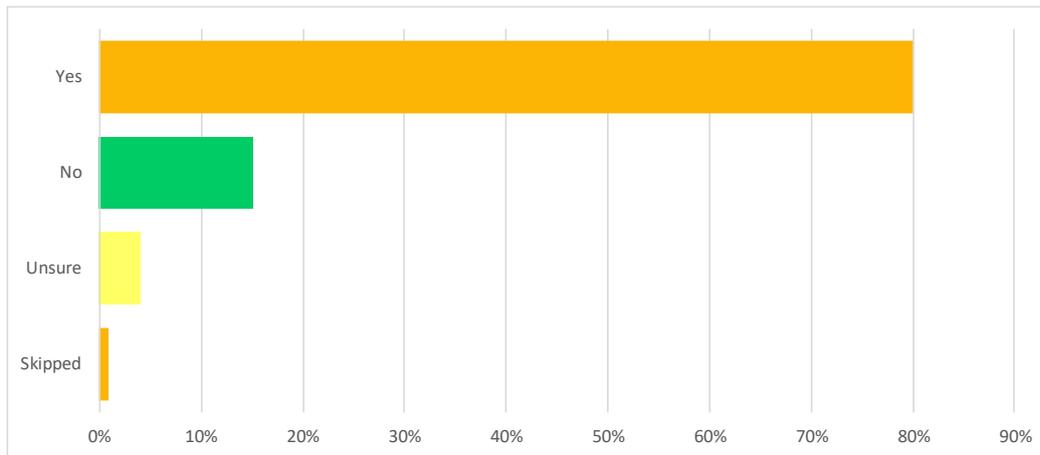
Answer Choices	Responses %	Number
Yes	17.7%	354
No	79.1%	1582
Unsure	2.6%	52
Skipped	0.3%	5
DataCaptureError*	0.4%	7

Part 1 (b): How likely would you be to self-exclude from activities such as swimming and going to the gym, if male bodied people could access the female only facilities there?



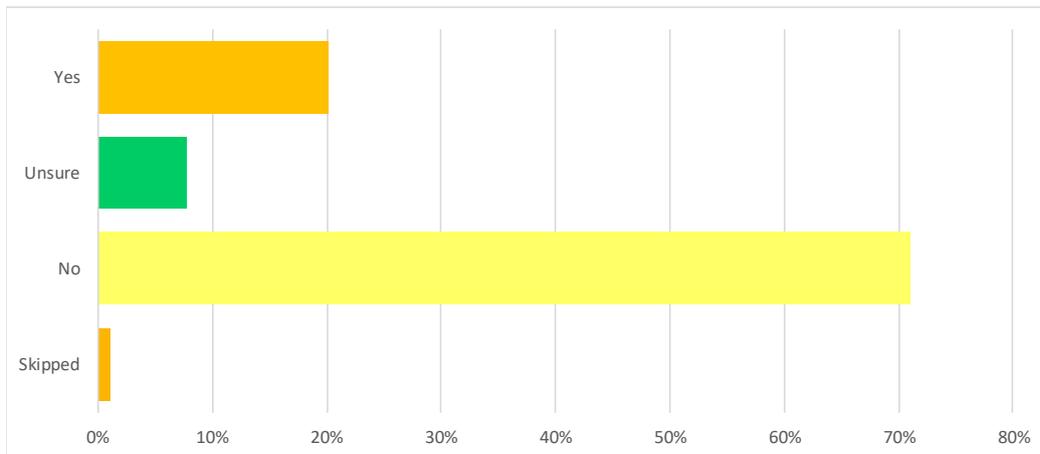
Answer Choices	Responses %	Number
I would happily use the facilities	17.9%	358
I would still use them but would be uncomfortable	10.8%	215
I am unlikely to use the facilities	27.6%	552
I would definitely not use the facilities	39.5%	789
I'm unsure	2.3%	45
Skipped	0.6%	11
DataCaptureError*	1.5%	30

Part 2 (a): Do you believe female victims of male violence should be able to access female only survivor support services and refuges, where they would not have to encounter male bodied people?



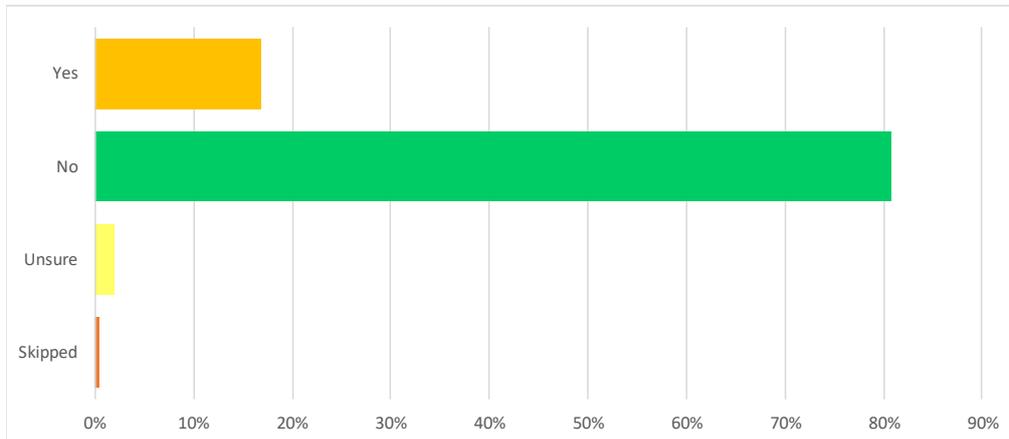
Answer Choices	Responses %	Number
Yes	80.1%	1601
No	15.2%	303
Unsure	4.0%	80
Skipped	0.8%	16

Part 2 (b): If you had reason to use survivor support services or a refuge, would you be comfortable using it if it was inclusive of trans-identified male service users and staff?



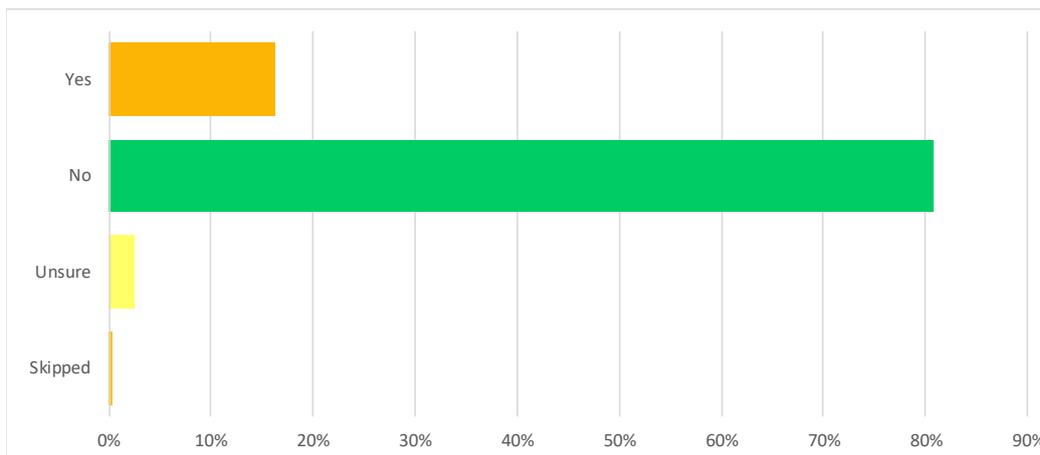
Answer Choices	Responses %	Number
Yes	20.2%	404
No	71.0%	1420
Unsure	7.8%	156
Skipped	1.0%	20

Part 3: Self-identification is a legal proposal that would allow any person to legally change their sex without any medical diagnosis or process, i.e. on their say so without having to fulfil any conditions or requirements. It allows men for whom cross dressing is a paraphilia, the same rights as transsexual people with dysphoria (i.e. people who suffer intense distress due to their physicality and who have had surgery and other treatments to change some sex characteristics). Self-ID also means that the vast majority of sex based protections for females in the Equality Act are much more difficult to uphold, due to the additional privacy protections a legal change of sex provides. Do you support the policy of allowing self-identification of legal sex?



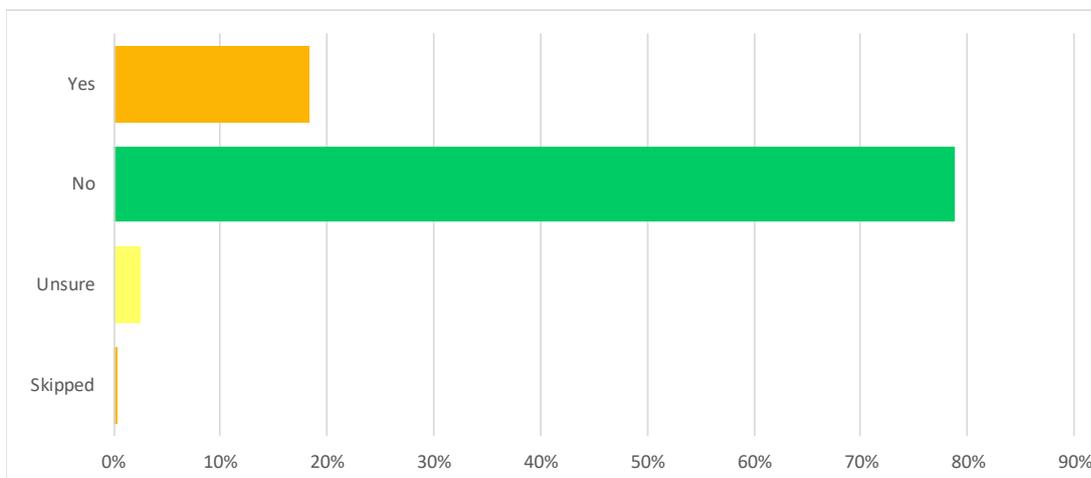
Answer Choices	Responses %	Number
Yes	16.9%	338
No	80.8%	1616
Unsure	2.0%	39
Skipped	0.4%	7

Part 4: Any male prisoner who changes their legal sex is permitted to be moved to a female prison. Under the proposed self-ID law, this means a male prisoner could complete a simple administrative process to change their legal sex, with no oversight, and then would automatically be able to transfer to the female estate. Do you believe that trans-identified male prisoners should be housed within the female estate?"



Answer Choices	Responses %	Number
Yes	16.4%	327
No	80.9%	1617
Unsure	2.5%	49
Skipped	0.4%	7

Part 6: Initiatives such as All Women Shortlists help women attain more power and representation in areas where they are underrepresented. They also allow women to bring their experiences of being female to the table and use them to effect the changes that will improve the lives of women and girls. Do you think these initiatives should be open to trans-identified males?



Answer Choices	Responses %	Number
Yes	18.4%	367
No	78.8%	1575
Unsure	2.6%	51
Skipped	0.4%	7

### Data Capture Error

There was an error in the specification of data capture for the two questions in relation to women’s facilities addressed in Part 1 of this report, which meant that check boxes (multiple response) were used rather than radio buttons (single response). This permitted users to provide multiple answers to both these questions. Since there is no way to determine a definitive answer for these users, we have identified and excluded these responses, which account for 37 responses in total. For transparency, we have provided the excluded responses to both questions in the two tables below:

Part 1 (a): Do you believe that female only communal changing rooms, showering facilities and sleeping accommodation in places like schools, swimming pools, gyms and hostels should also be open to trans-identified males?

Yes	No	Unsure	Total Responses
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		1
<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	2
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	4
			7

Part 1 (b): How likely would you be to self-exclude from activities such as swimming and going to the gym, if male bodied people could access the female only facilities there?

I would happily use the facilities	I would still use them but would be uncomfortable	I am unlikely to use the facilities	I would definitely not use the facilities	I'm unsure	Total Responses
		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		10
		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	1
			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	1
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				1
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			11
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		1
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	1
	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	4
					<b>30</b>

## APPENDIX B

### The impact on women’s rights of basing access to a GRC on self-identification

The government’s proposals intend to change the basis for acquiring a GRC from having a diagnosis of gender dysphoria, and evidence of a period of living as a member of the opposite sex, to simply a witnessed declaration that a person intends to permanently identify as the opposite sex. The removal of any diagnosis in particular means that the number of people who could access a GRC and change their legal sex would be much higher, as many, perhaps most, of those who now identify as trans do not have a diagnosis of gender dysphoria (the vast majority of trans people do not currently hold a GRC). So the government’s proposals in regard to who can be considered as legally female and male, would mean a change in who can be considered as the opposite sex in law, in the form of a change in the criteria which must be met, as well as potentially vastly increasing the number of those who could have the increased protections and rights that come as a result of holding a GRC.

The UK Government Equality Office (GEO) and the EHRC have both said that the GRC impacts on how the single sex exceptions can be used. The GEO told our group *“The fact that a trans person has legal gender recognition will form part of the service provider’s decision as to whether to provide a different, or even no service, to a trans person”*. And the EHRC has stated on its website that *“the sex discrimination exceptions in the EA (apply) differently to a trans person with a GRC or without a GRC”*, due to the change in legal comparator class to that of the opposite sex. We also contacted the Scottish Government to ask for the government’s view on whether a GRC could potentially impact on how the single sex exceptions in the EA can be applied, and the government responded to say *“whether an individual has a GRC will, in our view, be a factor”*, and as such they agree with the GEO and the EHRC. Therefore it is clear that the GRC impacts on how the single sex exceptions can be applied in practice, because whether a person holds a GRC will be a consideration in deciding whether or not differential treatment is objectively justified.

However, all three of these bodies declined to set out exactly how they saw this working in practice. So there is agreement that while the single sex exceptions can be applied to trans people with GRCs, holding a GRC will make a difference in terms of how and when those exceptions can be applied, but none of these bodies – which are responsible for producing, implementing and regulating equality

legislation - have been able to say on what basis holding a GRC alters considerations in regard to whether trans preclusion can be objectively justified. For example, even though the EHRC cites the change in comparator class as the reason why holding a GRC can impact on how the exceptions can be used, they cannot say how this change in comparator class should be considered by a service provider/suchlike. For example, a GRC cannot be considered as meaning trans people should always be treated as the sex they identify as, as it is clear the exceptions still apply to trans people with GRCs, so what difference does it make? No-one can say.

Furthermore, our work has uncovered that even though the single sex exceptions also apply to trans people with GRCs, applying these to people with GRCs in practice is very difficult, as joint protections under the EA and the GRA mean that it is not possible to ascertain if a person holds a GRC. And even if a trans person discloses their status to an employer or other organisation, this information cannot be shared (See Appendix D for our NHS Case Study which demonstrates this).

## **APPENDIX C**

### **Equality Act 2010: common misunderstanding and current practice**

However what is currently happening in practice in Scotland is very far from this. The EA exceptions are rarely employed, and this is likely due to widespread confusion about and misrepresentation of equality legislation, as well as pressure not to use the exceptions.

For example, the recent multi-signatory letter published by the TIE campaign claimed that it is a 'settled legal matter' that trans people can access the single sex services that correspond with how they identify, and as outlined above, this is incorrect. But such misrepresentations persist, and often among those who hold positions where a failure to understand the EA can result in serious policy failures in relation to women and girls.

Indeed many who signed this letter and who hold various establishment positions have been incoherent regarding the EA in respect to this debate. For example, many deny that there is a threat to single sex services while at the same time arguing that any use of the exceptions to allow female-only provision is transphobic and functions to roll back progress on trans equality, even though these exceptions are a tool of equality legislation.

Many also claim that blanket policies that preclude trans people from accessing forms of single sex provision are legally prohibited, and again, this is incorrect. In correspondence with our group on this point, the GEO used an example in the explanatory notes to the EA of a group counselling session for female victims of sexual assault that precludes transwomen "*because the service provider judged that inclusion would mean the women for whom the service was intended would not attend*". The GEO highlighted that preclusion of trans people on a 'case by case basis' refers to the specific set of circumstances under which they are precluded, i.e. 'case by case basis' refers to circumstances, not individuals, and this is how services such as group counselling sessions for female victims of sexual assault can lawfully be provided for natal females only.

The kinds of misrepresentations and incoherent positions regarding the EA that we have outlined here are contributing not only to a great deal of confusion around the EA, but also to a climate where those who would invoke those protections are particularly fearful of doing so, as they will be attacked as being transphobic and/or as 'rolling back trans rights', and by organisations, not just individuals. Indeed it seems unarguable to our group that there has been a deliberate attempt to create such a hostile climate for those who would use the EA exceptions to protect women and girls

that they are rarely, if ever used. That this has so far been successful is, in our view, a significant factor in the erosion of the protections of women and girls in Scotland.

However as discussed in the following four case studies, responsibility for the erosion of women and girls' rights also lies with the Scottish Government and other public bodies, who have neglected to ensure that their policies are assessed for the impact on protected stakeholders, despite statutory requirements to do so.

## **APPENDIX D**

### **Case study: NHS Scotland**

Our group contacted the two largest NHS Boards in Scotland, NHS Lothian and NHS Greater Glasgow and Clyde, to ask how they can provide female-only healthcare under current legislation.

Both NHS providers told us that they do not have policies in place that would prevent transwomen with GRCs from providing agreed female-only healthcare, as it is their understanding that the combined protections of the EA and the GRA mean that to preclude transwomen with GRCs from providing female-only healthcare would require illegal discrimination and a criminal sharing of information.

#### **NHS Lothian**

NHS Lothian advised us that in their view *“To exclude (transwomen who are legally female) from carrying out female only care would be a breach of section 22 of the Gender Recognition Act 2004, and a criminal offence. There are also restrictions under the Equality Act 2010 around requiring staff to disclose their gender identity and staff selection on this basis. For these reasons, NHS Lothian does not have any policy to guarantee that a legally female member of staff carrying out female only care as requested by a patient, will be biologically female”*.

#### **NHS Greater Glasgow and Clyde**

NHS Greater Glasgow and Clyde advised us that *“there is currently no NHSGGC policy in place that would prevent transwomen who are legally female from providing agreed female only healthcare”* and said that in their view this would involve *“outing trans members of staff”*, and they also cited the EA and the GRA as a basis for this position.

This means that, for example, a woman who has been raped, and who has asked for an intimate healthcare procedure to be carried out by a female healthcare practitioner (HCP) and has had this agreed, could still be faced with a male HCP. Furthermore, this would happen without warning. So in these circumstances, not only would she be faced with a male HCP, which could lead to enormous distress and re-traumatisation, but no consent would have been formerly sought either. The health boards' position does not rely on it being impossible for anyone to tell that the HCP is male, just on the Board being unable to distinguish officially between staff born female and those who are recorded as female staff but were born male. We hope that it is clear that this is a very serious patient welfare and consent issue, and is unacceptable.

This situation, happening now, shows that once someone has a GRC it is not possible in most circumstances to treat them other than as the sex they identify, even when precluding them from a role or space would clearly be objectively justified and entirely necessary. The way the law is written is interpreted by major providers to mean it is not possible to have a process in place where a GRC holder's trans status can be legally ascertained or shared.

## APPENDIX E

### Case Study: Scottish Prison Service

While the Scottish Prison Service (SPS) carried out an EQIA on its trans policies (introduced in 2014) which stipulates that trans prisoners should be accommodated in the estate that corresponds with their self-identified sex, they failed to assess the impact of this policy on female prisoners. Our group wrote to the Equality and Human Rights Commission (EHRC) regarding this issue. However the EHRC has refused to take any action, despite acknowledging that the SPS had failed to uphold its equality duties under the PSED.

We also contacted the SPS, and have been very encouraged by the response. SPS management appear to understand the problem, and that they have not properly considered the impact of their trans policies on female prisoners and staff. The SPS have stated they will review their trans policies, and as part of this, speak with female prisoners and staff, as well as with women's groups.

#### Impact on female prisoners

We also spoke with prison staff in order to better understand the impact of the SPS trans prison policies. We were told that the policy of moving transwomen to the female estate has had an adverse impact on a number of women in prison. (Note that the prison estate consists of areas where prisoners mix and live among each other, and areas where prisoners are kept away from other prisoners, for reasons of safety).

The Commission on Women Offenders 2012 report highlighted that women in prison are themselves often the victim of severe and repeated sexual abuse. In 2008, Kenny MacAskill, then Cabinet Secretary for Justice, said that 78% of women in Cornton Vale prison had been victims of abuse. Frances Crook, CEO of the Howard League for penal reform, has said 'women prisoners are very vulnerable. A lot have abusive men in their lives, who are part of the reason they have ended up in prison'. Therefore it is very clear that women in prison have usually experienced a great deal of trauma as a result of male violence.

Staff were at pains to highlight with us that the issue is not always one of whether a trans person is themselves a danger, but that for many women simply having to share intimate spaces where they are vulnerable with someone who is male, and therefore the same sex that is usually easily able to physically overpower them and rape them and that has subjected them to violence/sexual assault/abuse, is in itself re-traumatising. Andrea Albutt, President of the Prison Governors Association and a woman who has managed women's and men's prisons, has previously said *"I have seen women feeling very threatened by transgender prisoners' presence. To put all men who declare they are women into women's prisons would be very damaging"*. It should be noted here that the Gender Identity Research and Education Society says that around 80% of trans people will not seek surgery in their lifetime, and as such, the majority of transwomen are fully male bodied.

Staff have also highlighted particular behaviours that have also had a major impact. For example incidents where transwomen have been aggressive, including punching the wall in front of female prisoners during arguments/moments of stress, has a very different impact on women than if it was another female prisoner behaving aggressively, in that this behaviour is triggering the trauma female prisoners are living with due to male violence when it is coming from a person who is male. We have also been told of incidents of a more sexual nature that women found very uncomfortable and distressing, such as a transwoman often walking through the prison wearing extremely tight leggings and with a very visible erection, and another where a transwoman would very loudly tell their

girlfriend on the phone what they wanted to do to her with their penis, making sure that women could hear what they were saying. We were also told of one incident where a transwoman in the female estate threatened to rape female prisoners and female staff, which is of course hugely distressing for those women. There are also shower facilities in women's prisons where the shower doors only go from calf to shoulder, and thus women's bodies are easily visible to others using the facilities. We were told how the inclusion of male bodied people in these facilities is itself uncomfortable and distressing for many women, but that it's particularly distressing in relation to those who have exhibited inappropriate and predatory behaviour.

We were told how the cumulative impact of this policy has been to lead to major setbacks for women in prison, including drug relapses. And this has all happened in a single sex service where, unlike most others, each prisoner moved to the female estate has first been risk assessed in detail by a multi-agency case conference. Access to most forms of female-only provision would not involve such an assessment at all.

It is our view that this, again, is an intolerable and unacceptable situation for women and it could have easily been avoided if women's human rights and equality were considered and upheld in policy making. We are hopeful that the SPS moves forward with a robust review process that takes a human rights and equality based approach to how prisoners are cared for, and that ensures to understand and respond to the needs of female prisoners.

We were also told by prison staff that they would have expected the Scottish Trans Alliance (STA) to be aware of most, if not all of these incidents, as the STA is entitled to be present at the regular case conferences for trans prisoners and generally is. We are therefore extremely concerned that as recently as last month, the STA was referring to the fact that 'prisons will still be able to use robust risk assessment to determine where to house a trans prisoner' by way of arguing that self-identification policies and proposals will not in any way impact on women.

Lastly, we wish to highlight that in 2005, researchers from Glasgow Caledonian University produced a report on social exclusion and imprisonment in Scotland which found that 'the imprisoned population of Scotland comes disproportionately from the most deprived communities in Scotland'. As such, any impact of self-identification policies in prisons functions to disproportionately impact on working class women.

## **APPENDIX F**

"It's not a sexuality if you're only attracted to vaginas"

"If you exclude transwomen, you're not a lesbian, you're a vagina fetishist"

"If you call yourself a lesbian but are only cool with girls with vaginas, you are siding with anti-trans rhetoric"

"Look, all I'm sayin is if a lesbian says she only likes vaginas then she's not a lesbian she's a terf congrats".

## **APPENDIX G**

### **Our email to Stonewall, Equality Network, LGBT Youth Scotland and LGBT Health**

This is the email we sent to the following four organisations last year:

*'Hi, I am emailing from a new campaign group, Women and Girls in Scotland, and we are contacting you as we are currently approaching various organisations to ask for support for the following statement:*

*"Exclusive same sex attraction is a valid and real sexuality, there is absolutely nothing objectionable about being exclusively same sex attracted, and those who are should be able to live their sexuality free from any form of hate, discrimination, coercion or harassment, and are fully supported by our organisation as part of the LGBT community".*

*Our group includes LGBT women and we are working to tackle, among other issues, increasing homophobia, and we hope you can confirm to us that you can support this statement as a LGBT organisation.*

*Many thanks for your time, we very much look forward to hearing from you.'*

## **Responses**

### **LGBT Health**

We initially emailed LGBT Health on the 12<sup>th</sup> September 2018 to ask if they would support our statement, and then on the 10<sup>th</sup> December we called and we left a voicemail as we had not received any response, we also emailed again on the same day. Then on the 17<sup>th</sup> January 2019, we emailed LGBT Health again. When we had still received no response, we called on 29<sup>th</sup> January and were told to email again and they would ensure get a response for us. We did that right away on 29<sup>th</sup> January but as of publishing this report we have not received a response.

### **LGBT Youth Scotland**

We initially emailed on the 12<sup>th</sup> September to ask if LGBT Youth Scotland would support our statement, and then on the December 10<sup>th</sup> we called as we had not received any response, and were told we would be called back but this did not happen. Then we emailed on the 17<sup>th</sup> January and we then received a response from Fergus McMillan on the 18<sup>th</sup> of January in the form of an email, to say that he was aware we had been in touch, but he did not tell us if LGBT Youth Scotland would give its support to our statement. So we responded on January 19<sup>th</sup> to ask again if they would support our statement, or at least confirm with us one way or another. However we have never received any response from Fergus to this email. We did call LGBT Youth Scotland on the 29<sup>th</sup> January to ask if he was going to respond to us, and we were told we would be called back but we never were.

### **Stonewall Scotland**

We initially emailed Stonewall Scotland on the 22<sup>nd</sup> August 2018 to ask if they would support our statement, and then on the 10<sup>th</sup> of December we called as we had not received any response, and were told to send an email direct to a specific email address, which we did the same day. However when still had not received any response by the 17<sup>th</sup> of January we emailed Stonewall Scotland again. Then on the 29<sup>th</sup> January we decided to call again as we had not received any response, at which point we were told 'we cannot help you with that'.

### **The Equality Network**

We initially emailed the Equality Network on the 12<sup>th</sup> September 2018 to ask if they would support our statement, and then when we had not received any response to this we call on the 10<sup>th</sup> of December and were told to send the email again to 'Lynne', which we did right away on the same

day. We then emailed Lynne again on 17th January as we had still not heard back. Then on the 21st January 2019 we heard from Tim Hopkins who told us that the Equality Network were declining to give their support for our statement, saying the Equality Network does not 'sign up to externally prepared statements'. However in our exchange, the Equality Network did confirm with us that it does not regard homosexual women and men as lesbian or gay on this basis. For example, in response to this question: "while we understand that the Equality Network defines lesbian and gay sexual orientations as based on gender identity, what we are trying to understand is whether you also recognise lesbian and gay sexual orientations that are based on sex, not gender identity?", Tim said "as you noted, we define "lesbian", "gay" and "bisexual" in terms of gender. Others may use different definitions, of course, but those are the ones we use for those terms". Our response: "Okay thanks for the clarification Tim. We now understand that you only define lesbian and gay in terms of gender identity", & Tim's response: "Those are the definitions we use".

## **APPENDIX H**

### **Respecting everyone's human rights equally**

To understand the impact of self-identification policies on women and girls, we think it is important to start with the human rights context, and how the rights of different groups should be respected equally.

The way we understand how human rights relate to different groups of people is rooted in recognising the needs of these different groups in relation to those rights. For example, for women and girls, human rights to privacy, dignity and safety means that women and girls should not have to share spaces with the opposite sex in particular circumstances, while for trans people these rights are met by ensuring they do not have to use provision specifically set aside for their natal sex.

In other words, these human rights are meant to allow different groups to access certain forms of provision safely and without distress, on the understanding that without providing for this, the ability of these groups to engage in society would be impacted, as would their wellbeing. These rights are met by not forcing groups to share with or be dealt with alongside certain other groups. They are not dependent on groups being able to share with or be considered alongside particular other groups.

A human rights approach to the debate on single sex provision would therefore be rooted in the recognition that where women and girls need female-only provision for the purposes of providing privacy, dignity and safety. Such provision cannot include any male people regardless of how they identify, but also that third spaces should be supplied for trans people. Any approach that says that the human rights of women and girls to privacy, dignity and safety should not be met in order to allow another group to access their provisions is not, therefore, a human rights approach, and instead represents a kind of hierarchy, where the one group is prioritised over another.

'Gender neutral'/unisex/mixed sex spaces often meet the needs of trans people because they do not force trans people to share spaces meant solely for their natal sex. But 'gender neutral' spaces do not meet the sex based needs of women and girls, because these are rooted in needing male-free provision, and not just for reasons of privacy, dignity and safety, but also for reasons of previous trauma and abuse. Again, not only is there no evidence that women and girls no longer need female-only provision for these reasons, but the evidence shows that women and girls are far less safe in mixed sex spaces.

This understanding of the separate human rights of women and girls and trans people has largely been missing in this debate. Supporting trans rights and equality is all too often characterised as supporting that trans people should always be treated as the sex they identify as. But this is quite simply not a human right, and nor is this a right trans people have under the Equality Act 2010 (EA), precisely because this would infringe the rights of others.

Single sex exceptions in the EA allow for trans people to be treated differently to the sex they identify as (including trans people who have legally changed their sex) when this is necessary to meet the needs and rights of other groups. And the EA provides examples of third options for meeting the needs of trans people in such cases where their preclusion can be objectively justified. Although some people dispute that the law allows this, groups such as Stonewall and the Scottish Trans Alliance have specifically campaigned for this part of the EA to be repealed, which indicates that they recognise that these exceptions exist.

This provision under the EA is not only in recognition of the human rights of women and girls, but is also in recognition of the fact that if women and girls are not afforded those rights, this impacts on our welfare and on our ability to participate in society, and thus our equality.

### **Equality Act 2010: common misunderstanding and current practice**

However what is currently happening in practice in Scotland is very far from this. The EA exceptions are rarely employed, and this is likely due to widespread confusion about and misrepresentation of equality legislation, as well as pressure not to use the exceptions.

For example, the recent multi-signatory letter published by the TIE campaign claimed that it is a 'settled legal matter' that trans people can access the "gender specific services" that correspond with how they identify, and as outlined above, this is incorrect not least because "gender specific services" are not a concept in existing law. But such misrepresentations persist, and often among those who hold positions where a failure to understand the EA can result in serious policy failures in relation to women and girls.

Indeed many who signed this letter and who hold various establishment positions have been incoherent regarding the EA in respect to this debate. For example, many deny that there is a threat to single sex services while at the same time arguing that any use of the exceptions to allow female-only provision is transphobic and functions to roll back progress on trans equality, even though these exceptions are a tool of equality legislation.

Many also claim that blanket policies that preclude trans people from accessing forms of single sex provision are legally prohibited, and again, this is incorrect. In correspondence with our group on this point, the GEO used an example in the explanatory notes to the EA of a group counselling session for female victims of sexual assault that precludes transwomen "*because the service provider judged that inclusion would mean the women for whom the service was intended would not attend*". The GEO highlighted that preclusion of trans people on a 'case by case basis' refers to the specific set of circumstances under which they are precluded, i.e. 'case by case basis' refers to circumstances, not individuals, and this is how services such as group counselling sessions for female victims of sexual assault can lawfully be provided for natal females only.

The kinds of misrepresentations and incoherent positions regarding the EA that we have outlined here are contributing not only to a great deal of confusion around the EA, but also to a climate where those who would invoke those protections are particularly fearful of doing so, as they will be attacked as being transphobic and/or as 'rolling back trans rights', and by organisations, not just

individuals. Indeed it seems unarguable to our group that there has been a deliberate attempt to create such a hostile climate for those who would use the EA exceptions to protect women and girls that they are rarely, if ever used. That this has so far been successful is, in our view, a significant factor in the erosion of the protections of women and girls in Scotland.

## **APPENDIX I**

### **The need for government clarity**

As a result of all the above, it is clear that far from the government being able to assume that self-identification policies constitute best practice. Indeed, there is already evidence that such policies can adversely impact women and girls.

The Scottish Government can only understand the impact of existing self-identification policies, and indeed of the government's self-identification proposals in relation to the GRA, if it has assessed the impact of such policies on all affected groups, including women and girls.

The Scottish Government cannot do this until it is itself clear about how possession of a GRC impacts the application of the single sex exceptions in the EA, both in terms of how the GRC impacts considerations in regard to what can be objectively justified, as well as how the GRC can impact on applying the single sex exceptions in practice.

The Scottish Government also needs to give a clear view on how it will take a human rights approach that gives equal respect to women's rights and trans rights, and will also have to come to a view on how to best use the EA to uphold the protections for women and girls.

Furthermore, the government must urgently address persistent failures in carrying out the government's equality and human rights duties, and must start with assessing the impact of existing and planned policies on all protected stakeholders, and this needs to also be carried out retroactively where needed, as the SPS is doing.

### **The need for further work**

It is clear that the government has a great deal more work to carry out in order to understand the impact of their GRA proposals. We hope it is now clear that women and girls are already facing an erosion of our rights and protections, and this is impacting on our welfare and equality. Further, we hope it is clear that the government's GRA proposals could greatly exacerbate this situation due to the GRC currently functioning to weaken EA protections for women and girls (the potential extent of which cannot be made clear until the exact basis on which the GRC impacts on the exceptions is clarified), and also due to the fact that the government's proposals will change who can access a GRC, and potentially vastly increase the numbers of those who can procure a GRC.

The government has to ensure it understands exactly how self-identification policies are already impacting on women and girls in Scotland, and exactly how their GRA proposals will potentially impact on the protections of women and girls, before moving forward with any reform of the GRA.

We would also highlight that a particularly toxic strand of argument in this debate has been to assert that use of the EA protections for women and girls and upholding the human rights of women and girls is effectually a rolling back of trans rights and equality. The persistent and apparently systemic failures in terms of understanding human rights and equalities duties and legislation, and the impact this has had in terms of the erosion of the rights of women and girls in Scotland, is not an act of upholding trans rights and equality, it is an act of neglecting the rights, needs, welfare and equality

of women and girls. As such, any and all remedy of this failure does not constitute a rolling back of the rights of any group.

## **APPENDIX J**

### **What makes good policy: Women's Organisations' consultation with women**

We are concerned about the lack of consultation between Scottish Government funded women's groups, and ordinary women.

Engender state that they have decades of 'gender expertise and analysis' that informs their policy advocacy, and that their evidence base is taken from 'working with women and a wide range of women's groups', and that they 'substantively engage with women through consultation and participatory research processes and through hearing from women using frontline services'. They also state that they offered 'relevant opportunities for engagement' to women regarding issues around 'gender identity and women's equality'.

In November 2017 Engender, Scottish Women's Aid, Close the Gap, Rape Crisis Scotland, Zero Tolerance and Equate Scotland released a joint statement, in support of the government's GRA proposals regarding self-identification. This was released without engaging with the organisations' members, staff, service users (where relevant), or with women more broadly. We know this because women in our group were among those who wrote to these organisations to ask who they had consulted before jointly releasing this statement.

When asked if they would share the evidence-base for their position on self-identification (i.e. details of consultation or research) and if they would discuss this, these organisations, including Engender, refused to do so, saying that they did not have the time. Women contacted these organisations to ask these questions and engage in dialogue on this issue included rape survivors, writing out of concern regarding changes to female-only provision.

The only attempt by any of these organisations to engage with women on GRA reform was a meeting arranged by Engender, after the GRA consultation had closed. However, this was cancelled at short notice, despite the fact that many women had tickets. And despite being asked to reschedule the event, Engender refused to do so, and instead produced a podcast making a case for the GRA proposals, with no opportunity for dialogue. Women were invited to submit questions that could be answered in the podcast. We are aware that several women did just that but they reported to us that these questions were not addressed in the podcast.

Our group also contacted Engender to ask if they could share any consultation, research or other evidence to support their position on GRA reform. We were also told that they did not have the time to share this with us.

### **Views of frontline staff**

We spoke with women who deliver frontline services in women's organisations in Scotland, whose national level organisations are included in the letter in support of the GRA.

They describe a culture in which they and service users are either not consulted, or discussions take place in contexts where they do not feel free to speak honestly. They told us that they are very disappointed at the lack of engagement from those running these organisations in regard to changes to services for women who are survivors of male violence which mean they are no longer single sex. And they expressed disappointment at the lack of engagement around GRA reform.

As discussed more fully in our forthcoming report, we believe these organisations cannot speak about how their service users feel, or how the policies they support may be preventing women from accessing their services, because they have not carried out work to properly gauge this.

We know from our own research that women not only need female-only services, but that women have self-excluded from accessing support - and many more would self-exclude from accessing support - if not available on a female-only basis.

Current Scottish Government funding policy means that the women who require, but do not access services that are not female-only, do not become service users because they can't, and therefore their viewpoint can be treated as though it doesn't exist.

### **What makes good policy: Transparency and avoiding deference**

It is clear that all of this is very far from the claim made by organisations like Engender that their policy advocacy is based on 'working with women and a wide range of women's groups' and that they 'substantively engage with women through consultation and participatory research processes and through hearing from women using frontline services'.

This is why our group is urging the Scottish Government and parliament to reject deference in policy making; that is to say that the evidence basis of any policy position should always be sought, and policy should never be rooted only in the views a particular organisation provides without taking care to scrutinise what those views are based on.

We would also highlight that a lack of transparency in policy advocacy organisations, particularly those funded by the government and with ample lobbying opportunity, is never conducive to good policy making. It constitutes a failure to ensure that the basis for their policy advocacy is open to scrutiny by outside groups and bodies, and it also functions to obfuscate who is, and more importantly who is not, being listened to. Even when these organisations are almost completely reliant on Scottish Government funding, they cannot be held about any aspect of their evidence base or consultation processes.

It is also very concerning that the FM's National Advisory Council for Women and Girls is not publishing any feedback from women to their monthly 'spotlight' topics in regard to 'gender equality', meaning that a board of appointed council members are able to choose how to interpret and act on what is put forward to them, and indeed decide which perspectives are considered and how. Nor is it clear that members of the Advisory Council have sight of all of the submissions the Council receives.

The lack of transparency about evidence is particularly concerning given the response of Emma Ritch, Executive Director of Engender, also a council member of the NACWG, to a letter from 14 transsexuals to MSPs on 23rd April 2019, to highlight their concerns regarding the government's GRA proposals. In response, Emma Ritch tweeted: "27% of women agree that "women often lie about being raped" according to the 2014 SSA (and compared with 19% of men). There's a reason we don't deliberately integrate that perspective into criminal justice system design: evidence.". In fact the evidence as to whether the government's proposals constitute good policy or not is still being collected, and the diversity of perspectives of trans people contributes to this process.

We understand that it is not always possible to publish every form of consultation that informs policy advocacy, but we would argue that the principle should be that there is as much transparency, and as little mediation as possible. Which perspectives are we not hearing because people with

power and influence have decided that they simply do not matter? How often is 'evidence' offered to the government and parliament that is taken on without any scrutiny?

Additionally, in the joint GRA response by Engender, Scottish Women's Aid, Close the Gap, Rape Crisis Scotland, Zero Tolerance and Equate Scotland acknowledged that the Scottish Government had not carried out a full EQIA in relation to the impact of their GRA proposals on women and girls. Engender and their 'women's sector colleagues' have said that EQIA's are being carried out 'at too late a stage of policy development on now a number of occasions' and that EQIA's should be published 'ahead of any draft legislation'. Despite both these things, these organisations did not ask the government to carry out an EQIA in the recommendations in their GRA consultation response, and nor did they ask for women to be more broadly consulted in any way.

We hope that MSPs will always ensure to consider the basis for all policy advocacy, irrespective of the source of that advocacy. And we hope the government and parliament will act to dismantle a culture of deference wherever this persists, and that it is recognised that transparent policy advocacy is crucial to good policy making.

## **APPENDIX K**

### **Case Study: Guidance for schools**

The government also funded guidance for use in Scottish schools that was developed by LGBT Youth Scotland and the Scottish Trans Alliance, *Supporting Transgender Young People: Guidance for schools in Scotland*. The Government has publicly stated support for this guidance, even though it has not assessed the guidance in order to gauge any potential infringements on the human rights of children, or any impact on the equality of all protected groups of children. Nor did those who produced the guidance, or any local authority that has promoted the guidance to schools, or indeed schools themselves.

Our group carried out a Children's Rights Impact Assessment (CRIA) in regard to this guidance as no-one else had done so (this can be found on our website). We found that this guidance potentially breaches 11 Articles in the UN Convention on the Rights of the Child (UNCRC). In response to our work, the Children and Young People's Commissioner Scotland (CYPCS) has been clear that a CRIA should have been undertaken in respect to this guidance before its implementation in Scottish schools, and has said that this is the responsibility of the Scottish Government.

Both our group and the CYPCS wrote to the Scottish Government, to ask which actions the government will take to uphold its duty. The Scottish Government recently responded to say that even though this guidance was funded by the government and has the government's support, since the government is not implementing this guidance as policy and that it is "*up to individual schools and local authorities how they deliver relevant and engaging learning*". The response made clear that the government will not take any actions to address that this guidance potentially breaches 11 Articles of the UNCRC, and thereby has the potential to cause serious harm to children in Scottish schools. Indeed our group is aware that this guidance has already adversely impacted on girls in Scottish schools.

So while the government can act to ensure that this guidance is assessed on the basis of children's rights and equality and that the UNCRC is being upheld in Scottish schools, it has decided that it won't, despite the CYPCS taking the view that this is a government duty and despite Nicola Sturgeon's recent statement that the government will write the UNCRC fully into Scots law by 2021, recognising the urgency of ensuring children are fully protected in Scotland.

We consider this position to be unsustainable. If the government is committed to the UNCRC but is saying that this commitment does not extend beyond policy drawn up by the government itself, then the government must act to ensure that it either commissions independent guidance for Scottish schools that takes a rights based approach that upholds the UNCRC and the EA, ensuring the needs of all groups are considered fully and equally, or write up legislation that ensures the same.

We also consider the government's position in regard to this matter to constitute a failure in respect to Christina McKelvie's Ministerial duties under the Children and Young People Scotland Act 2014 (CYPSA). This Act states: "*Ministers must keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements*", and, that where appropriate, Ministers should "take any of the steps identified by that consideration". And the government has confirmed with our group that "*carrying out of a CRWIA (Children's Rights and Wellbeing Assessment) is...part of our implementation strategy to deliver Scottish Ministers' duties in relation to children's rights under (this section of the CYPSA)*". Therefore it is a Ministerial duty to take appropriate steps, including drawing up CRWIAs in relation to policies that impact on children, to ensure the UNCRC is best upheld in Scotland. The Act does not restrict this duty to Scottish Government policies, and the CYPCS has again confirmed with our group that in its view the government should be acting to uphold the UNCRC in all the ways it can, including carrying out CRIA's/CRWIA's in regard to policies in Scottish schools.

As such, we believe the Scottish Government's actions so far constitutes a serious failure to uphold human rights and equality protections, and that its approach is inconsistent with Scottish children's rights legislation.



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