

Women and Equalities Committee

Oral evidence: [Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission](#), HC 1470

Wednesday 22 May 2019

Ordered by the House of Commons to be published on 22 May 2019.

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Members present: Mrs Maria Miller (Chair); Tonia Antoniazzi; Sarah Champion; Angela Crawley; Jess Phillips.

Questions 464–571

Witnesses

I: Janet McDermott, Head of Membership, Women's Aid; Karen Ingala Smith, Chief Executive, Nia; Diana James, Volunteer, Cornwall Refuge Trust Women's Refuge and Norda House Men's Refuge.

Examination of witnesses

Witnesses: Janet McDermott, Karen Ingala Smith and Diana James.

Chair: Good morning. Welcome to our witnesses and to those who are watching online or joining us in the public gallery. We are hearing evidence today as part of our ongoing inquiry into enforcement of the Equality Act 2010—the law and the role of the Equality and Human Rights Commission. This evidence session provides an opportunity to hear from providers of services to victims and survivors of domestic abuse about how they understand and apply the requirements of the Equality Act when delivering single-sex services. Before we do the usual questions from members, perhaps you could say your name and the organisation you represent.

Diana James: I am Diana James. I am here on behalf of Cornwall Refugee Trust.

Janet McDermott: I am Janet McDermott. I am here on behalf of Women's Aid Federation of England.

Karen Ingala Smith: I am Karen Ingala Smith. I am here on behalf of Nia.

Chair: That is wonderful. Thank you very much in advance for your contribution today and for all the time you must have taken getting here and preparing. We are very grateful. The first set of questions is going to come from Jess.

Q464 **Jess Phillips:** I have to declare for the record that I have worked for many years with Women's Aid, and I have also worked with Karen on various things over the years. It is only right to state that.

A number of the submissions that we have had to the Committee, specifically regarding the enforcement of the Equality Act, are afraid to use the Equality Act exceptions that allow them to exclude someone with protected characteristics of gender reassignment from single-sex services. Is this a widespread concern among service providers? I will start with Janet as the Federation's representative.

Janet McDermott: This issue has come up quite a lot in the last couple of years. We did a survey of members last year. The main concern that members had was around what might happen, rather than what had happened. There was concern about a potential clash between the Equality Act exemptions as they stand at the moment and potential changes in the Gender Recognition Act, and a general, fairly unspecific concern about possible legal challenges to organisations' frontline practices.

Q465 **Jess Phillips:** Because the inquiry is specifically about enforcing the Equality Act as it stands today, notwithstanding the obvious concerns that



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we all know about in terms of what may change in the future, prior to the talk of changes to the Gender Recognition Act—I could not remember the bloody word.

Chair: Parliamentary language, please.

Jess Phillips: I apologise. I am not great at that. Prior to that, had anyone from Women's Federation ever got in touch with you to talk to you about what they would do in this situation?

Janet McDermott: I have been working in the federation as head of membership and delivering membership services since 2012. Most of the inquiries that our team have had have been around how to write guidance. They have not been about specific cases, incidents, referrals or how to respond to referrals; they have been more about how to write the guidance so it complies with the law. All the members say that they regularly use the schedule 9 exemption for recruitment purposes—that is very standard across the sector—to recruit women workers who are working with women survivors and, in that way, to protect our women-only spaces.

I personally have been responsible since 2014 for our quality standards accreditation process. In our quality standards, we have a couple of items. We have one around protecting women-only spaces, and most of the challenges around accrediting that have been to do with services that have taken on local authority contracts to deliver services to men as well as women, and how they have then protected the women-only services that they deliver. Other than that, I do not think we have had a lot of inquiries or evidence from members around using the exemption.

Q466 **Jess Phillips:** What are their concerns now?

Janet McDermott: They have a concern about whether the law is going to change, but they also have a concern that there may be challenges to their practice, I suppose because the world is changing. Particularly in relation to younger survivors, they are getting increasing referrals of trans women, young LGBT survivors and young people who are identifying as non-binary. Our services are realising that younger people are viewing gender in a more fluid way and therefore we need to think through what our response is in terms of our traditional core services, which are women-only services for women survivors of violence against women and girls.

Q467 **Jess Phillips:** Are they concerned that they might be sued if they turn somebody away based on a risk assessment?

Janet McDermott: Yes, that is their primary concern. Their primary request to us is for firm guidance on how to write their policies so that they would not be vulnerable to that. They have also been asking for guidance around how to be inclusive of different gender identities because many of our services do genuinely want to honour the spirit of inclusive practice. The sector has already made huge strides in terms of



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developing specialist provision for BME women, disabled women and, in some areas, for lesbian and gay survivors.

Those services are real flagships but a lot of it is a resources issue. Our sector suffers hugely from not being able to meet the demand from women survivors. To be developing additional specialist services is a huge challenge for them. We do have a really strong tradition, as I say, in the sector of BME women setting up their own services that are led by and for BME women, to address that intersection between survivors who are fleeing violence against women and girls but are also experiencing racism from communities and from the state, and need services that understand those intersections.

Q468 Sarah Champion: A couple of years ago—I do not have the most recent data—37% of the specialist refuges had hit the wall because of funding cuts. Do you believe that there is provision out there if people were looking for specialist services?

Janet McDermott: There is some provision, but there is not enough. A lot of it has been cut. I was involved in setting up a specialist refuge for Asian women in Sheffield in the 1980s. I can remember, off the top of my head, at least 25 similar BME-specialist refuges and outreach services that we used to refer to regularly for survivors in Sheffield. At least half of those have gone; it is maybe more than half. A lot of those services have gone in the last 10 years. I was quite shocked, coming into work nationally, to realise how many of the specialist refuges for BME women that we used to send survivors to from Sheffield have disappeared. When we did our survey with members about specialist LGBT services, we could only find four services in the whole country that were specialist and led by and for lesbian, gay, bisexual and transgender survivors. Three of those were in London. For the rest of the country, there is very little provision.

Q469 Jess Phillips: Karen, the original question was about whether the exception to exclude was something that is worrying the sector. Currently the law, to be clear, states that there are exceptions for single-sex services.

Karen Ingala Smith: The law is currently clear, but the guidance is a different thing. I also think I understand the law because we have looked at it quite closely as Nia, but there is widespread concern in the sector. Because I am somebody who speaks out regularly about the need to protect women-only services, I do get people contacting me and talking to me about it. Since I said on Twitter and Facebook that I was coming here this morning, I have literally been inundated with responses from women, survivors and service providers, who are saying, "Please speak out for us. We are afraid". I know one chief exec who was asked to give evidence this morning and she has not come today because she was scared about the implications of speaking out. It is not just about litigation; it is about funding. Nia runs East London Rape Crisis, and we currently deliver service in nine boroughs in London. I have messages



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from at least two boroughs with concerns about Nia's position. One funder said she would think twice about awarding funding to Nia because of our women-only position. The leader of one east London council has described Nia as feminist extremists. It is not just about the law. Of course we cannot prove that has a direct impact. It is people saying things that we can never directly relate to it, but it creates a climate of fear.

Q470 Jess Phillips: That is interesting. To pick up on what Janet was saying in relation to that, the commissioning framework potentially has not followed the exceptions in the Equality Act, and that is part of the problem. Lots of places have been told that they have to provide services for men to get any contracts.

Karen Ingala Smith: That is correct. Commissioners understandably are under pressure to provide services for everybody, and that is right. I do not think a single person who has been subjected to sexual or domestic violence should not be able to access specialist services, but that does not mean to say that one-size-fits-all services are the best for everybody. In fact, they are usually the best for nobody.

I want to come back to the Women's Aid survey of members, because as a member organisation we wrote and complained about that survey. Anybody who knows anything about methodology would recognise that that survey was very biased and used some subjective definitions that we did not agree with. I wrote to the Women's Aid's chair and the chief exec at the time and raised concerns.

Q471 Jess Phillips: What was wrong with it?

Karen Ingala Smith: They used definitions that I would not agree with, that are value statements, that are matters of opinion and that are not matters of fact. The questions were loaded.

Q472 Jess Phillips: Such as?

Karen Ingala Smith: For example, the definition was given that, "A trans person is somebody whose gender identity or gender expression differs in some way from the gender that they were assigned at birth". You could say that sex and gender and gender identity are not the same thing. Sex is the biological group into which we are born. We are not assigned a gender at birth; our sex is observed and it is recorded. Gender is a set of rules and norms that we are socialised into. Basically, the Women's Aid survey started from a very biased position and from a position you could not recover from.

Diana James: Our experience is that we have never actually used it. We have never considered needing to use the Equality Act because we have been inclusive within the women's refuge. We run a men's refuge as well, but within the women's refuge, we have always been inclusive of trans women.



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Q473 **Jess Phillips:** You have within the men's too, presumably.

Diana James: Yes. We have also had transmen going into the men's. We have faced similar issues, speaking to my colleagues, going back, about butch or mock lesbian women accessing refuge. There are issues around that that we have dealt with. We have just dealt with them as they have occurred.

Q474 **Jess Phillips:** Has it occurred a lot?

Diana James: Do you mean problems?

Q475 **Jess Phillips:** No. Do you have many trans people coming forward? Is your refuge in Cornwall?

Diana James: Yes.

Q476 **Jess Phillips:** Is this something that has happened a number of times?

Diana James: We have had trans women through the women's refuge and we have had transmen through the men's refuge, and lesbian, gay and bisexual people through our refuge all the time.

Q477 **Jess Phillips:** You have never had any call to rely on the Equality Act.

Diana James: No. This is going back from memory and looking in the records, we have never had one serious issue occur.

Q478 **Jess Phillips:** Have you ever had any complaints within your refuges?

Diana James: No, we have not.

Q479 **Jess Phillips:** You mean about that particular issue. You must have had some other complaints. I have worked in a refuge. People complain.

Diana James: If you get half a dozen traumatised women in a refuge, not everybody is going to get on with each other. There is going to be, "My abuse was worse than yours. What are you doing here?" If you get a lesbian in a refuge, "Women do not hit as hard as men do. Your abuse was not as tough as mine". You do get stuff like that but you deal with it through policies, sitting down and speaking to people about issues they are facing and you work it through.

Q480 **Jess Phillips:** You risk-assess people as and when they come in.

Diana James: Always.

Q481 **Jess Phillips:** If there was a trans person who was deemed to be, let us say, a child protection risk—

Diana James: They would not get in.

Q482 **Jess Phillips:** They just would not get in on that basis.

Diana James: No. We would do the police checks and we would do all the safety checks. Of course we do interviews when we meet. We do the prior stuff, everything, all the procedures before someone gets in,



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because you could have a woman come along who is a lesbian and we could have her ex-partner in the refuge. Therefore, we have to be really careful about everybody who gets into a refuge.

Q483 Jess Phillips: Do any of you very learned people in this field know of any cases where somebody has been turned away and has then used the Equality Act?

Janet McDermott: I have not come across a case.

Q484 Jess Phillips: Have you come across that in the case of men applying for jobs at a refuge? I have.

Janet McDermott: Regularly, yes, which is why I say the main use that we make of the Equality Act is with regards to recruitment. In terms of our members, and at national office as well, we do regularly get applications from men for posts when we have put the wording of schedule 9 in the advert. We still get the applications.

Q485 Chair: To probe that a bit further, you started off by saying that there is a level of concern about this issue, but when Jess asked whether you can think of a case, there was no case that had come forward. What is driving the level of concern and how could that be better handled, given that it is something that appears to be a real worry for you?

Karen Ingala Smith: I have a case. A women's organisation that I worked in before I worked at Nia, so going back about 10 years now, recruited a trans-identified male. The person did not say they were a trans-identified male through recruitment.

Q486 Jess Phillips: Were they a trans woman? Just to be clear, they presented as a trans woman.

Karen Ingala Smith: Some people use that language. I do not believe it is accurate language. This organisation employed that person and there were problems. I am going to call him a "he". He developed an obsession with a female member of staff and sexually harassed her. We also had complaints from two other female members of staff that he flashed at them in the corridor—as you would imagine, a male flasher but he used to lift his skirt. We went down employment procedures with that person and they basically tried to take legal action against the organisation.

Q487 Jess Phillips: Was that using the Equality Act?

Karen Ingala Smith: I do not remember because I am going back 10 years, but when that was unsuccessful, they wrote to lots of the organisations' funders and made lots of nasty allegations against the organisation.

Q488 Jess Phillips: The Equality Act might not have been enforced 10 years ago, to be fair. It was 2010.

Karen Ingala Smith: It was before that.



Q489 **Chair:** Going back to the level of concern that is there, what could we be doing to make it less so?

Janet McDermott: What we do with our members is remind and reassure them about the robustness of their own processes, because what Diana was describing was the very robust risk and needs assessments that our members use to pick up any malicious, vexatious or disruptive intention by anyone trying to access the service. They are very pressured services, so we want to make that they are being accessed by genuine survivors. Our members and ourselves work really hard to make sure we have those processes in place. They are both about initial assessment but also about managing relationships in communal living situations and managing group work.

Domestic abuse is about an abuse of power and control, so all our practice has to be about challenging any hint of perpetuating coercive behaviours in residents in refuge and in our services. The services can be unsafe places for all sorts of reasons, as I said earlier, because of racism, because of homophobia, because of different levels of access to privilege, status, power and so on. We have to manage those power dynamics all the time within our service-user population and in relation to looking at a new referral and how safe our service is going to be with its current service users for this new potential referral.

Karen Ingala Smith: Before I was a chief exec, I worked in refuges as a frontline worker for many years. I have opened the door to more women and children than I could count, and I do not think it is that simple. When you first take a referral, it is over the telephone. Sometimes a woman is in an immediate place of danger and she has to get to the refuge quickly. Anybody who knows about refuges knows that sometimes you get women turning up, if they are lucky, with a bin bag full of stuff and the bin bag full of stuff is sometimes just the children's toys, because they have picked out what is the most important to them. You do not get time to do a massively detailed risk assessment usually before the woman arrives. Expecting refuges to accommodate males who identify as trans is asking a lot of a refuge. I want to give examples of some of the scenarios that you are asking somebody about over the phone.

Q490 **Chair:** I do not think anybody is suggesting that. We are just talking here about risk assessment and how we build confidence. I do not think anybody is asking you to accept people who you do not think should go into a refuge.

Karen Ingala Smith: I am talking about risk assessments. Basically, you are asking somebody to differentiate in terms of transgender people who are born male and have experienced men's violence, have managed to unpick male socialisation and the sense of male entitlement. They will come into the refuge and not use that position to abuse women. There are transgender people born male who genuinely experience violence but still behave in a male socialised way and bring the trappings of that entitlement with them. There are transgender people who are born male,



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who are narcissistic perpetrators and have managed to convince themselves they are the victims. We all know that male perpetrators often see themselves as victims. There are transgender people born male who are fetishists of female victimhood. We have delivered services or have been accessed by males to whom that would apply. There are also men who are pretending to be trans and are using a pretend trans status to try to track down women. It is really complicated. It is not just a simple, straightforward risk assessment that is foolproof.

Q491 **Chair:** Is that not the point that Janet was trying to make? I wrote it down: that the robustness of assessment is key. Is it not that if you have a robust assessment, one will be able to deal with the issues you are talking about there?

Karen Ingala Smith: I do not think it is that straightforward.

Chair: I do not understand what you mean.

Q492 **Sarah Champion:** When you get that phone call, what do you do to do that process?

Karen Ingala Smith: Usually you try to speak to the woman herself rather than the referral agency because you want to build that relationship of confidentiality with her and that relationship of trust. You also want to hear from her what has happened to her, rather than second hand through a referral agency. You will just take very basic details: maybe name, where she is from, whether she has any children, what happened to her, who the perpetrator is, where she is from and whether there are any areas her perpetrator frequents, because you have to find out whether they are near the refuge. It is usually just that very, very basic information. Does she have the money to get to you?

Q493 **Sarah Champion:** At that point, you would say are you a cis woman or a trans woman?

Karen Ingala Smith: Why would you? No, we do not ask that question.

Q494 **Jess Phillips:** To join in, as someone who has taken a million referrals myself, you do a much more thorough risk assessment when the woman is in front of you.

Karen Ingala Smith: That is true but that is at the refuge.

Q495 **Jess Phillips:** It is not uncommon—especially at the moment, because of a completely different equalities issue to do with migrant women and no recourse to public funds—for women to be turned away at that stage, during the more strengthened risk assessment.

Karen Ingala Smith: Do you mean when they arrive at the refuge?

Jess Phillips: Yes.

Karen Ingala Smith: My experience is that it is really uncommon for a woman to be turned away when she has turned up.



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Q496 **Chair:** Bringing Diana in here, because you were talking about the fact that, because of the risk assessment process you use, you do not have these concerns. What is the difference in the risk assessment process that is going on here?

Diana James: We have experienced staff who are used to dealing with the chances of a perpetrator trying to gain access to a refuge, which, as has been said, is not that uncommon. We have those. Police checks are done as well, just to make sure there are no issues around child protection.

Q497 **Jess Phillips:** When you say police checks, what police checks do you do? I have to say I have never done a police check on a victim and never would.

Diana James: We get in touch with the local police and they go through a check to make sure there are no issues around child protection and stuff like that for someone accessing a refuge.

Jess Phillips: I have to say I have never heard of that, but okay.

Diana James: We are pretty vigorous in our protection stuff.

Q498 **Jess Phillips:** Do you think that maybe you do that because you have a men's refuge as well? I have to say I have never done that.

Diana James: We do have a male refuge as well, yes. That is something we do. Generally speaking, it is 24 hours before someone gets into the refuge. We do not take someone immediately.

Q499 **Jess Phillips:** You do not take referrals.

Diana James: We do take referrals.

Q500 **Jess Phillips:** You do not take referrals instantly: "We have a bed".

Diana James: No, we do not.

Q501 **Jess Phillips:** Does it come through a referral portal from the local authority?

Diana James: Sometimes, yes. Sometimes we get the call straight through on our helpline but we still go through our procedures.

Chair: I am conscious that we are getting into all the other questions at the same time. Tonia, do you want to really focus in on the organisation policy?

Q502 **Tonia Antoniazzi:** Talking about organisational policy, what approach have you taken to deciding whether and if so when to apply the single-sex service exceptions under the Equality Act?

Karen Ingala Smith: We have a prioritising women policy that we implemented last year. That deals with the Equality Act. We decided to do that because we decided as an organisation we wanted to protect single-sex women-only services as much as possible. Because of the way



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commissioning and the Equality Act work at the moment, we are able to provide single-sex services to our refuges, our women's service, our rape crisis and domestic and sexual violence group work situations. In our other services, we are contracted to provide services, in most cases to women as well as men. Where that is the case, we provide services to everybody.

Q503 Tonia Antoniazzi: Did anything in particular prompt you to develop the policy?

Karen Ingala Smith: Yes. We were setting the organisation's strategic plan. When you are doing that, you look at the external environment. We thought the external environment was hostile to women-only services and we felt that if we did not name a commitment as an organisation to fighting for women-only services that we would be complicit in their erasure. It first started out as putting it in the strategic plan. From that, we went on to produce the policy. That basically put what we decided in the strategic plan into a working document. Of course, the consultation on the Gender Recognition Act was happening at the same time. It is an issue we have been aware of for a long time but, as everybody is aware, it has been higher profile for the last couple of years.

Q504 Tonia Antoniazzi: What particular challenges have you faced during this time?

Karen Ingala Smith: During this time, we have had one situation where staff members complained against another staff member and accused her of using hostile language. We found an attempt to silence members of staff who wanted to talk about women-only services. We have provided services to women and men who identify as transgender in our community-based services. We have not admitted anyone to the refuge or the women's centre. We have had issues but nothing that we have not been able to deal with yet.

Q505 Tonia Antoniazzi: When you have been developing the policy, have you taken legal advice on the process?

Karen Ingala Smith: Yes, we did. We got a legal organisation to look over it pro bono for us.

Q506 Tonia Antoniazzi: Does it specifically address the requirements of the Equality Act?

Karen Ingala Smith: It does. I can talk about that in more detail if you want me to.

Tonia Antoniazzi: Yes, that would be helpful.

Karen Ingala Smith: It specifically refers to the Equality Act and CEDAW. CEDAW is important because CEDAW talks about male violence against women as a form of discrimination. We reference CEDAW as well. With regard to service provision, we reference the Equality Act paragraph 27, part 7, schedule 3, which provides that it is not unlawful sex



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discrimination to provide services to women only if it is a proportionate means of achieving a legitimate aim and meets one of the six conditions, which include that if the services were provided for women and men jointly, it would not be as effective and that the level of need makes it not reasonably practicable to provide separate services for one sex, and gives the example of women-only support services.

We also use the Equality Act paragraph 28, part 7, schedule 3, which provides that there is no discrimination related to gender reassignment in the provision of services if the targeted provision is a proportionate means of achieving a legitimate aim. As Janet mentioned, we refer to schedule 9, which she said was very common, in relation to employment of women only.

Q507 Tonia Antoniazzi: Janet, what approach have you taken to developing policy?

Janet McDermott: Our quality standards are one of the main vehicles that we have, because our members are all independent charities, so they generally tend to set and develop their own policies and procedures. The membership of the federation has been quite loose. In 2014, I wrote the quality standards for Women's Aid in order to get some consistency of quality of provision across the whole federation. We have been rolling those out for the last five years. At the moment, about a third of the members have the quality mark.

In that, we have enshrined some standards around protecting women-only spaces for women survivors as a safe space for recovery. Combined with that is some narrative around role-modelling, leadership and women owning their own organisations and spaces as a strategy for resisting abuse and giving survivors hope and understanding of how to empower themselves and seeing other survivors. A lot of our organisations have been set up by survivors. The activism has come from other survivors. It carries on that learning across the sector for women survivors. That has been enshrined in our quality standards.

When we scrutinise each individual organisation's policy and procedures, we are looking for that philosophy to be embodied in their practice. We do value women-only spaces very highly, but we also value flexible and responsive approach to different identities and different experiences. The other theme that goes very strongly through the quality standards is that there is not one model of being a woman, and the question of how we meet the diversity of women who come into services and make sure they are getting support from women who they recognise as understanding their experience and that there is some commonality. That is where the diversity of led by and for provision has developed across the sector. We hold that as really important as well. As I say, it is quite mature and developed in the BME sector, but in the LGBT sector there is very much less specialist provision. The expertise and specialised practice is less developed. We are learning as a sector.



Q508 **Jess Phillips:** Why do you think it is less developed?

Janet McDermott: The ironic thing I always find about our sector is so many of our services are set up by lesbians, yet lesbian survivors are quite invisible in the practice and the delivery, because the overarching narrative is that the services are for women fleeing male perpetrators. It can be quite difficult for a woman fleeing a female perpetrator to have a kind of identity or voice.

Q509 **Jess Phillips:** I think it is less likely as well.

Janet McDermott: Yes, it is very much less likely. That is why the services are underdeveloped. In the study that Catherine Donovan and Marianne Hester did a few years ago—they wrote a book called *Domestic violence and sexuality: What's love got to do with it?*—they did quite a wide survey of lesbian, gay, bisexual and transgender survivors. They identified that, as with male survivors, a lot of survivors find their own solutions in their own communities and among their own families and friends, and are less likely to be seeking services. They are also less likely to be in danger of domestic homicide and facing very severe violence, the kind of violence that women are fleeing from, and often women with very young children are fleeing from as well.

Diana James: Some of the barriers to LGBT domestic abuse services is about the reporting. It is the coming forward and admitting the fact that it is happening; it is letting down the community; it is how you will be seen by the authorities—how you will be seen by the police and statutory authorities. There are big historical barriers to doing that. History may have changed, in reality, to now, but that history still exists in the community mind. Therefore, that comes forward through a lack of reporting. A horrendous number more incidents happen before someone will report or try to gain that help. Of course, we know that abuse escalates rather than diminishes through relationships. That is a particular issue.

My abuse when I went into refuge was from another woman. The level of violence was quite high. Also, as a survivor, I have a trans history. If I had not got a refuge place, I doubt I would be sitting here talking to you at the moment. A refuge saved my life, which is why I do the stuff I do.

Q510 **Jess Phillips:** Would you want to see trans-specialist refuges?

Diana James: It might come to that in the short term but I do not see that being a long-term solution. It has to be inclusive but the policies and the protections for women spaces have to be, as long as they are not abused.

Q511 **Jess Phillips:** To play devil's advocate, the women's movement started women-only spaces for the reason that they wanted something different.

Diana James: Yes, Erin Pizzey.

Q512 **Jess Phillips:** Do you think that in this particular quandary about the



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Equality Act and single-sex spaces, one of the solutions may well be to have specialist LGBT—or just the T, in this instance—trans refuges?

Diana James: I do not see it. I do not see, first, that there is going to be enough need in certain parts of the country for it to happen, because the number of trans survivors seeking refuge is low. If you have the right policies and everything in place and your procedures are robust, we do not see that there is an issue with the survivors that we get. We are really happy with how we are doing it at the moment.

Janet McDermott: Just in answer to that question, it is not an either/or.

Q513 **Jess Phillips:** You could have both. We allow BME women into the mainstream refuge.

Janet McDermott: Exactly. The history of the BME sector has been that it is about choice. White women have a much wider choice of getting a service from other white women than BME women have of getting a choice, but all BME women do not necessarily choose to go to a specialist BME refuge. We expect our whole refuge sector to be able to respond to their needs, whether or not they choose to go to a specialist service. We will develop more specialist provision for survivors with different gender identities, because that is what I see. From my own experience of the younger generation, the world is changing, but we also have to find a way of services being responsive across the board.

It comes back to what I also wanted to say, which is that what we spend the majority of our time helping our members with is not individual problematic referrals; it is the resourcing, funding and the commissioning that is not honouring the public sector equality duty. In all these years, I have only known of one case where the public sector equality duty was used. Actually, it was before the Equality Act. It was the Ealing case where Southall Black Sisters challenged the decommissioning of their provision. That was on the basis that what Ealing wanted to fund was a generic all-women service, and they won a battle to retain their funding for a specialist BME women service because of the additional impacts on BME women of both racism and violence against women and girls.

Chair: I am conscious of trying to keep to Tonia's line of questioning.

Janet McDermott: We do not have the resources to fight these cases. We have never tested the decommissioning of women-only specialist services in favour of generic services for all survivors. My reading of the public sector equality duty and the Equality Act is that because women suffer disproportionately from domestic violence, sexual violence and violence against women and girls, it is certainly legitimate to have women-only services for them. Also those services should be protected and there should be a duty to provide that as the only safe space for many women. That is where I feel the Equality Act is not being used—in the local authority, police and health commissioning—in the way that it could be to protect those spaces.



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Karen Ingala Smith: I just wanted to come back on the idea that lesbians are not at risk of men's violence. If we look at sexual violence, lesbians are at risk of corrective rape, coerced sex and forced marriage if they are not able to live their lives as lesbians. More recently, there is the cotton ceiling, which again is rape. Look at homicides of lesbians by intimate partners. I have been monitoring women killed by men since 2012 in a project, Counting Dead Women, and I am also a partner for the Femicide Census. I am aware of two lesbians who have been killed, both by men, one by her ex-partner in what you might call not unusual circumstances. As you will know, a lot of women are killed after they have left a violent relationship. One lesbian was killed by the ex-male partner of her new female partner. Again, it is about male entitlement, control and access to women. The idea that lesbians are only at risk of violence from women is a bit of a myth.

Diana James: I would agree with that.

Q514 **Tonia Antoniazzi:** Going back to my question about single-sex services, does your organisation have a policy?

Diana James: We have a women's refuge and a men's refuge. What policy do you mean?

Tonia Antoniazzi: I mean a policy in terms of the exceptions under the Equality Act, which I started questioning on a while ago.

Diana James: Before we wandered off a bit.

Chair: It is about the single-sex services exemption under the Equality Act.

Q515 **Tonia Antoniazzi:** Do you have a formal policy?

Diana James: We are currently redeveloping our policies at the moment. As far as we are concerned, into the women's refuge, at this time, post-operative transgender women are completely accepted, as our service users, as staff and as volunteers. That is the question. We have to do it by what someone says. We do not ask also for a gender recognition certificate, because so many transgender women either cannot afford or, for their own political reasons, decide not to get one. We do not ask for that either, but for those other ones, we have a specialist separate annex unit, which we can put a pre-operative transgender woman into, which has the same support level as all the rest.

There are also transgender men; some people still think that a transgender man is a woman who is confused and not a man, but that person is a man.

Q516 **Chair:** As a national organisation, you are saying you do not have a policy on applying single-sex services exemptions.

Diana James: We are not a national organisation.



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Q517 **Jess Phillips:** Are you federated to Women's Aid?

Diana James: Yes, we are a member, but, as my colleague said, we run independently within an umbrella. We do not get edicts coming down from on high telling us exactly what to do. It is an ethos rather than a strict guideline.

Q518 **Tonia Antoniazzi:** Will you be developing these policies?

Diana James: We will be, but I cannot say what those policies will be until they are written.

Q519 **Tonia Antoniazzi:** Will you be looking to Women's Aid for guidance, with all the work that they have done?

Diana James: Of course. We will be looking to all sorts of different organisations for guidance. We are not going into this with the thought of, "This is what we are going to do". We are going into this with the thought of, "What would be the best for the refuge, for us and for the service that we want to provide?" We will be going to Women's Aid, to Galop and other organisations to get their input. Within the refuge, we all receive LGBT training as volunteers and as staff, so we do get that training as part of the whole training.

Q520 **Chair:** Is there not a requirement, in terms of the funding that you receive from, presumably, local authority funding, to have a policy in place for dealing with single-sex service exemptions under the Equality Act?

Diana James: I would not know. I would have to get back to you.

Janet McDermott: A lot of members would not have a specific policy related to the Equality Act, but the existence of the Equality Act gives a confidence and presumption to services that they are doing the right thing in delivering women-only provision and that the law is behind them. Most of our members have something in the objects of their charity that their services are specific. It is usually quite old-fashioned wording about women and children being maltreated and in distress. It is often quite archaic, but they will have that wording and they will have confidence, because of the Equality Act, that the law allows them to have those objects that are gender-specific.

Diana James: It is our 40th birthday this year. Our refuge has been running for 40 years and to keep a refuge funded and going for 40 years is pretty good going.

Q521 **Sarah Champion:** Diana, previously on this question you said that whilst it is single sex now, you think in the future that refuges should be inclusive.

Diana James: No, I do not think it should be inclusive as in men and women in the same refuge. It should be inclusive as in inclusive of LGBT, so inclusive of trans women. What that level of trans-ness will be and



whether there needs to be something in between or whatever, we do not know, because we have not decided that yet. But there should be a women's refuge and a men's refuge.

Q522 Sarah Champion: I took that distinction. Not speaking on behalf of your refuge but speaking in terms of your opinion, as someone who goes out campaigning and speaking to the police and other authorities around LGBT issues, in an ideal world what would that inclusivity look like and be, and why do you think that should be the way forward?

Diana James: My personal opinion is that inclusive is a good way to go if you have the right policies and if you have the money to train your staff and volunteers. You need to have that and you need, when someone comes into the refuge, to be able to lay out the policies: "These are the sort of people we take into the refuge. This is what we expect of the behaviour of the people". Pretty much, we go through that, but to have it on that level, we are going to need funding. This is going to be expensive for us, in time and effort.

Q523 Sarah Champion: I am not hearing the voices of the survivors and their views, wants and perceptions.

Diana James: A trans woman wants to go into a women's refuge.

Q524 Sarah Champion: I am talking about all the people accessing it.

Diana James: That varies between individuals. You cannot say, "This is the way you should think. This is the way you should speak". Refuges have to be inclusive of all women or all men within their unit.

Karen Ingala Smith: That is not true. If a refuge admits women and males who identify as transgender, then it is, as a matter of fact, admitting women and men. The Gender Recognition Act has created a legal fiction where a person can, in a range of circumstances, be treated as if they were a person born in the opposite sex. That does not mean that they have actually changed sex. They will always remain of the sex that they were born. If you are saying you have inclusive refuges, then you have refuges where men and women are housed together.

I also want to talk about the issue of proportionality. I agree with what Diana said, that we are talking about small numbers—please do not laugh while I am talking—of men who identify as transgender, but we are talking about huge numbers of women in the refuges and they may be affected by that one transgender person in the refuge.

When we have created refuges, we have created what are now termed "trauma-informed services". We did not have that language back then, but that is what we were doing, developing an understanding of the neurological, psychological, biological and social effects of trauma, and that has been built into the fabric of developing refuges. Women who have experienced men's violence often have a trauma response to a male, maybe not always and sometimes for a short time or sometimes



periodically, when something triggers them. You cannot educate women out of trauma-informed responses and if that woman has a trauma-informed response to a male-bodied person, that is not her fault. She deserves a safe space, a trauma-informed space and that is often a women-only space.

Q525 Chair: We should move on to Angela's questions next, but it is fascinating hearing the two very different views being presented here. To a great extent, what Diana is saying is that if you are transparent about what you are doing, what people will expect and the approach of the organisation, that is one approach, whereas, Karen, you are saying that your feeling is that you could never make that work even if you were very transparent with the people who use your service. It is fascinating to hear the very different approach, but also slightly concerning that we have two very different approaches there, which are both receiving public funding. Perhaps I might even ask Janet to reflect on that, being somebody who said that there is not one model of being a woman. I wrote it down because I thought it was absolutely right. Can you help us unpick?

Janet McDermott: It is very challenging for the federation, because we have very diverse practice and very diverse understandings. I hear Karen saying that it is impossible to change your gender.

Karen Ingala Smith: I did not say that. I said it is impossible to change your sex.

Janet McDermott: To change your sex, okay, and for you protecting single-sex spaces is paramount, whereas we tend to use the language of "women-only spaces". I do not know if we have backed ourselves into a corner, but then we have a problem, as the national federation, as to how we define who is a woman who can access that women-only space that we are defending. We have the challenges to the women-only spaces themselves from patriarchy and from commissioners who do not believe they should exist and do not think they are legitimate in themselves. We also have the challenges as to how we are defining who a woman is and who has the right to say who a woman is as well, which is a whole other question.

Chair: I am glad you feel that there is a problem there. Angela, do you want to come in, because I think your questions would help move it forward in a bit more detail?

Q526 Angela Crawley: I appreciate this is quite an emotive topic, and I want to bring it back specifically to the practice of applying those services. My first question is, specifically, whether you have had any problems or complaints when applying your specific approach in practice. If so, have these been from people who were seeking the support of that service?

Janet McDermott: We tend to get complaints fairly regularly from survivors about the practice of a member service. We have not had any



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complaints in relation to the Equality Act or to access to women-only spaces.

Q527 **Angela Crawley:** Have you or any members of your federation that you know of ever turned someone away because they were trans?

Janet McDermott: I think Karen has given an instance, but I have not been aware of that myself. It was a staff member, so “no” is the answer to that.

Karen Ingala Smith: The person was disciplined because they were sexually harassing.

Diana James: As a small charity, we do not keep such detailed notes, but we have spoken to ex-members of staff and current members of staff who have been there for a long time, and we have never had an incident where we have needed to turn someone away because they were transgender. Sometimes you turn people away because either they do not fit in with the service that you are giving or because you feel that there is something not right and they do not pass through the policy and the protection systems.

Q528 **Angela Crawley:** But going back to the point, have you or any members of your team had any complaints from those seeking support from your service?

Diana James: No, we have not.

Q529 **Angela Crawley:** You have never turned anyone away. Karen, would you like to pick this up?

Karen Ingala Smith: It is a slightly different example but it also illustrates how complex the issue is. A woman contacted Nia because her abusive partner—and he was abusive anyway—was using transition as a control and abuse strategy as she was trying to leave him. Three other organisations had told this woman that she had to respect the choice of the partner she was trying to separate from. What they did not consider was that this man might be using transition as a coercive control strategy.

Q530 **Jess Phillips:** He was transgender.

Karen Ingala Smith: Yes, and when we asked further questions it was clear that that is what was going on. What we had there was a woman who was turned away from three women’s organisations; she was not turned away but it was made clear to her that they did not understand her situation, and so she came to Nia. She was not in our service area. She was nowhere that we were funded to provide services for, but there was no other organisation that should could turn to, and she knew that Nia publicly—

Q531 **Angela Crawley:** Can I bring you back to the specific question? That is an absolutely valid example of where you have had that experience in



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your service, but specifically have you had any problems or complaints about your approach and practice? Have you ever, or has a member of your team ever, had to personally turn away someone because they were trans?

Karen Ingala Smith: We have turned trans people away from the refuge for reasons other than because they were trans, and we have worked with trans people in community services.

Q532 **Angela Crawley:** Can I drill down on that? Specifically, was the decision making in any way different from a decision to turn away for another reason, such as their behaviour, in those instances? Did you make reference to the Equality Act when making your decision, and did that help?

Karen Ingala Smith: We did not need to, but we would have.

Q533 **Angela Crawley:** You would have, but you have not had to.

Karen Ingala Smith: No.

Q534 **Angela Crawley:** Have any service users or people seeking support ever made a formal complaint about the decision that you have perhaps taken in the past to include or exclude a trans woman from your service? Have any of your members faced complaints? Perhaps, Janet, you could answer that point. If so, how would you respond to that? Has anyone made a formal complaint specifically about the decision to include or exclude a member who is a trans woman from the service?

Janet McDermott: No, that has not come to us. Obviously, because our members are independent charities, most of the time they manage their own complaints processes. Our complaints process asks the complainant to go through the organisation's process first and then, if they are not happy with the outcome, they can come to us. We are a second-stage complaint process, or a second tier, so if it is about a service the complaint will normally be dealt with through the service. Sometimes we do deal with complaints directly. It is usually when there is a complaint about staff or the CEO, and then we will investigate that directly. That kind of complaint has not come through to us.

Q535 **Angela Crawley:** Karen mentioned earlier that this has all become quite a contentious topic these days, since the gender recognition consultation, so I am curious. In Karen's case, you have turned individuals away who have presented as trans, not because they were trans but because of other factors. Diana, you said you have never turned anyone away who may have presented as trans.

Diana James: We do not know. They might not have presented to us as trans and they may have been turned away for other reasons, but not for that particular reason.

Q536 **Angela Crawley:** I am trying to get to the nub of this issue. Is there an issue with protections in the Equality Act? Karen, you said you have not



had to use the Equality Act. Janet, you said that you are not aware of anyone having had to exercise such a complaint, so why has this become such a contentious topic at all?

Janet McDermott: We have had one member who, in direct response to me coming to the Committee, has shared some information about an incident. For a lot of our members, the nature of refuge provision has changed quite a lot, and although there is still a body of the traditional shared accommodation that refuges were, a lot of the new-build properties have self-contained flats or units with communal spaces for group work and social engagement. I am not exactly sure what the nature of the service was, but one of our members has said that there was some concern in one of their services from other residents—I imagine it was accommodation, but maybe self-contained units with some communal space—about one of the residents. The resident was a trans woman who other residents felt had a male presentation or was causing concern and the kind of distress that Karen is talking about, in the sense that women feel they have come to a women-only space for a bit of a refuge away from a very traumatising experience of male violence.

What was not clear to me in that example, to be honest, was what this was about, because what is a female presentation and what is a male presentation? As a lesbian myself, I know many lesbians who sometimes have difficulty accessing ladies toilets or are read as men on an initial encounter. Was it that the woman had disclosed her own trans status as a trans woman or that somebody else had disclosed that status and then it had caused a ripple? I do not know the ins and outs of it, but that has not come as a complaint and the Equality Act was not used in that instance. It was resolved through group work and house meetings and working with the population in that service at that time.

I am not saying that it has not happened or that it would not happen or it will not come in as a formal complaint in the future, but that is the only instance and that has only been brought to my attention because we informed the members that I was coming to this Committee and asked if there was any feedback that people wanted to put in.

Q537 **Chair:** For context, how many members do you have?

Janet McDermott: 180.

Chair: So it is one out of 180. Diana, you wanted to come in.

Diana James: This is slightly more anecdotal. We were talking about presentation for women. My partner is another woman, and entering restrooms and that sort of thing there is no issue, but my partner, who is a cis MOC, which is masculine of centre in presentation, has been challenged four times so far this year, when entering a space, just because she wears jeans, leather jacket and a pair of boots. She is just a feminist woman with short hair and stuff and gets challenged. That has been happening more and more often, and that is part of what we have



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been seeing with what has been happening in the press, which has, sadly, created more of an issue than certainly we see. We do not see the issues that seem to be in other places.

Q538 Angela Crawley: That is basically my point. I am not understanding where this huge rise in sentiment has come from. I have a panel of experts in front of me and I am hearing no examples of where the protections that are in the Equality Act have, in any way, been enacted or have had occasion to be enacted. Where an individual has presented in a way that was unacceptable they have been turned away, but I am not hearing any specific instances of where you have had to turn someone away specifically because they were trans.

Janet McDermott: Some of it has come through social media, through conversations, debates and so on across the women's movement, which has brought this to organisations' attention and certainly raised a lot of anxieties. As I said at the beginning, certainly what they are asking us for is just clear guidance. They want to know that the protections for women-only spaces are going to be preserved, that nothing is going to change in terms of the exemptions that are already in the Act, and that, if anything else changes or any other legislation comes in, they will get clear guidance so they will not have to be responding to test cases. The worst thing for anybody, including survivors, is for things to end up in court that do not need to, because of a lack of training, guidance or clarity.

Karen Ingala Smith: I have a comment on women-only spaces. That phrase is meaningless if we cannot even agree what a woman is. In our policy, we are very clear that we define what a woman is. It is absolutely right that there are many ways of being a woman, but there is one thing that women share in common; we are adult human females and we define that in our policy. That was before that term became the political buzz phrase that it is, but we are very clear about that.

Q539 Chair: You have raised a really interesting point. Janet, as a national organisation, you must be thinking about how you are going to address Karen's problem there. Are you undertaking a process to try to provide some help, guidance and clarity, because that might help to alleviate some of that anxiety we are seeing played out in social media?

Janet McDermott: Yes. We are drawing on the work that has already been done. We tend to be a bit behind some of our sister federations sometimes. Scottish Women's Aid has done quite a big piece of work, in 2015, with LGBT Scotland, to draw up some guidance for their members. We also have our parallel second-tier bodies, including particularly Imkaan, Rape Crisis England and Wales and Stonewall, that we are in conversations with to try to get some consistency. Particularly for the women's sector, between Imkaan, Respect, Rape Crisis England and Wales and ourselves, we have already mapped our quality standards and have a shared core document that tracks across the whole violence against women and girls sector quality standards. Because it is a



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mapping document, it is really a skeleton; it does not have a lot of detail in it.

We want to ensure that we continue that spirit of a shared voice and a shared understanding. That is taking some time. Women's Aid is drafting guidance at the moment, which we are going to take to our national conference in July to get some more feedback from members.

Q540 Sarah Champion: What is that guidance on?

Janet McDermott: What our members have been asking for specifically is guidance on how they respond to referrals of trans women accessing women-only services. That is the guidance we have been concentrating on, but in the process of writing that we have realised that we might as well say something about trans men or women who are accessing services who are in transition to become men. We might as well cover the employment issues as well, and we need to address something around the fluidity of gender identities that young people are experimenting with at the moment and where that is going to lead, in terms of what "non-binary" means in terms of women-only services. All of this is also in the face of huge challenges from commissioners to just be delivering services to all victims.

Q541 Sarah Champion: I would like to pull back and be very geeky on detail now, specifically around guidance and commissioning, which I think you raised, Karen. I completely agree that there is a lot of anxiety around this topic at the moment. I am not sure that the reality of it is playing out, so let us park the anxiety and look at some of the facts. The equalities law, as it stands, is very clear on single-sex spaces and on exemptions. Specifically for Women's Aid, you are an umbrella organisation and will give advice and guidance to your members. In relation to that specific bit of the Equality Act, what guidance are you giving to your members if they come to you? Is it part of a pack that they get when they sign up around the Equality Act?

Janet McDermott: It will be a guidance document, I suppose.

Q542 Sarah Champion: Is that something you could let the Committee have a copy of?

Janet McDermott: Yes. It is in draft form at the moment, as I said.

Q543 Sarah Champion: You do not have it now.

Janet McDermott: We do not, no.

Q544 Sarah Champion: It has been 10 years since the Equality Act came out and you do not have guidance for your members on it.

Janet McDermott: This is not specifically about the Equality Act.

Q545 Sarah Champion: I am specifically asking about the Equality Act because your members operate under the exemptions that are within it, which they will then have to share with commissioners, for example, or



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someone at the door who wants to come in.

Janet McDermott: We have guidance around the Equality Act as a whole.

Q546 **Sarah Champion:** No, I am not talking about that. My specific question is whether you give guidance to your members about how they are able, within the law, to operate under the exemptions within the Equality Act.

Janet McDermott: We do, but I do not think we have it written down.

Q547 **Sarah Champion:** So you do not.

Janet McDermott: We do not. We advise regularly on employment issues.

Q548 **Sarah Champion:** Yes, I got that. Do you consider that to be an omission, 10 years on, and that you are leaving your members exposed because of that omission?

Janet McDermott: Yes, that is a fair point. It is a reflection of the fact that it has not come up until very recently, but yes, I do.

Q549 **Sarah Champion:** I find it very challenging to believe that it has not come up in 10 years.

Janet McDermott: I am trying to understand what exactly—

Q550 **Sarah Champion:** Say I am running a refuge. I set it up 30 years ago. I have come from personal experience and a lack of support. I sign up under the Women's Aid umbrella to get the insurance, the guidance, the protection, to feel part of unity and to be part of the movement. I have my local authority coming to me and saying, "Because you are a single-sex space, we do not think you comply with the Equality Act. Therefore, we are going for this generic refuge that Virgin Care is providing, because they are cheaper and they can offer it to everyone and we do not know why we need a single-sex space". On my own, I would be going to Women's Aid and saying, "Please help. How do I combat this? I am just small. I do not have a lawyer".

Janet McDermott: Yes.

Q551 **Sarah Champion:** You have not had that happen at all.

Janet McDermott: Until we got some funding from Lloyds Bank Foundation in 2015 to have a sustainability team, we had one membership and information officer. We did not have a membership team to support our members with these issues, because we are also a very small charity. In fact, we are smaller than many of our members. We have always given advice and guidance on what the Equality Act can offer, but what we have also had to say is that it has never been tested. That is what I was saying earlier. Apart from the one case that Southall Black Sisters took against the local authority around their decommissioning of services, no organisation, including ourselves as the



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national body, has been able to afford to take a case to judicial review where a women-only service has been decommissioned.

Q552 **Sarah Champion:** Do you think that that needs to happen? Is it something that the Equality and Human Rights Acts should be doing?

Janet McDermott: I was hoping that Government would approach it from the other side, which is to embed it in their national statement of expectations, in their Domestic Abuse Bill, in the remit of the Domestic Abuse Commissioner and so on. The Government have their own violence against women and girls strategy, which acknowledges the need for women-only services.

Q553 **Sarah Champion:** Should the Government be providing much clearer guidance around this?

Janet McDermott: Yes, much clearer guidance and much clearer accountability. Part of the dilemma that we are in with the localisation of services is having that national scrutiny and national accountability, because our services are a national network. They are not just catering to local women and, a lot of the time, they are taking referrals across the country, but there is not that kind of enforcement.

Q554 **Sarah Champion:** Karen, you have been chomping on the bit on this.

Chair: I was going to say that Karen needs to come in.

Karen Ingala Smith: I am actively listening. We did not go to Women's Aid when we were developing our policy. We had to go to an independent solicitor. The difficulty is not so much the Equality Act but the agreement of what a woman is and we do not think Women's Aid have been very clear about that at all. For us, as members and, for many years, proud members, we think that is a problem.

Q555 **Sarah Champion:** Are the Government being clear about it? Do you need Women's Aid to hold your hand or would you go to legislation?

Karen Ingala Smith: The Equality Act, as it stands, is clear. The guidance makes it more difficult to understand.

Q556 **Sarah Champion:** The Government's guidance makes it more difficult to understand.

Karen Ingala Smith: Yes, because of the Gender Recognition Act consultation, which I recognise is a different issue. Those two pieces of legislation automatically will have an impact on each other. Because of that, there was concern about how the Equality Act exemptions will be able to be applied. It is that friction between those separate but connected pieces of legislation that causes that problem.

Q557 **Sarah Champion:** You rightly brought up commissioners. A lot of refugees, if not almost all of them, will be getting some form of funding from the local authority.



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Karen Ingala Smith: Yes, and I gave two examples—and I want that to be very clear—where commissioners have said things that would have a negative impact on my small organisation.

Q558 **Sarah Champion:** Yes, and those examples you shared are ones that I have heard across the country. Should there be, from Government, guidance specifically to commissioners of refuges to make this field a lot clearer?

Karen Ingala Smith: In an ideal world, it is more than guidance.

Q559 **Sarah Champion:** What would it be?

Karen Ingala Smith: I would like them to be directed, but I know that that is against the localism agenda.

Q560 **Sarah Champion:** What would the direction be?

Karen Ingala Smith: That single-sex services need to be protected and that means women-only services for domestic and sexual violence survivors.

Q561 **Chair:** Can I ask a question on detail? Karen, you said earlier that the Government guidance makes it difficult to understand. Specifically, what bit of the Government guidance?

Karen Ingala Smith: There were three bits in the guidance that I found difficult. One is that the guidance points towards a case-by-case analysis. If you look at the Equality Act itself, it does not do that, so that is a contradiction.

I do not know where this piece of guidance comes from, so I need to double-check whether it is from the Government. I believe it is. It says that service providers can treat a person who identifies as transgender differently according to whether or not they are indistinguishable from members of the opposite sex. That is a really dangerous precedent. I do not think we should be judging transgender people on whether they are indistinguishable or not.

Q562 **Chair:** You are saying that might not be in the guidance.

Karen Ingala Smith: I need to double-check whether that is the Government guidance. I do not want to say anything that is not accurate.

The issue of proportionately is difficult as well. Does “proportionality” mean there is a very small number of trans people so this is not going to be a problem, or does it mean that if any single woman is not able to access services because she does not want a service where men are present, or she leaves a service because she does not feel safe there, she is proportionately not important and disregarded? Our interpretation of “proportionality” is we do not want one single woman to feel unsafe from accessing our services because males do.

Chair: That is incredibly helpful, thank you.



Q563 **Sarah Champion:** You have given a couple of examples of where things are not happening. Is there any other way that you think you can get the legal clarity that refuges need to be confident in their ways of operating?

Janet McDermott: A lot of our members are clear that they do have an exemption that allows them both to exclude men and to refuse a service to a transgender survivor, on the basis that it is a proportionate means to achieve a legitimate aim. They understand that that is there, but there is also a desire to be inclusive in many services, and member organisations are finding many routes to that, which include having self-contained provision or dispersed accommodation but also having specialist workers. As I said earlier, there are very few whole specialist services, but there are quite a lot of member organisations that have a post dedicated to working with lesbian, gay, bisexual and trans survivors. They will be setting up a mini project or a mini service within a bigger organisation.

It is about ensuring that the guidance is clear about what the absolute limit of the law is, if you like, where members can feel they are on firm ground in limiting their service or limiting the referrals they take. It is also about delivering the spirit and making as much support available to as wide a group of survivors fleeing trauma as possible. That is where the resourcing comes in as well, because women's services have been expected to widen their doors to all survivors without enough attention being paid to whether there should be dedicated services for men that are not the responsibility of women's organisations to deliver.

Q564 **Sarah Champion:** Could we pick away at that? I think you were thinking it through as you were speaking, because you came at that from two different angles. You started by saying that a lot of women's refuges are looking at specialist provision, and you also said that they might feel they need to do that because of pressures about justifying a single-sex space. We are in a time of very restrictive funding. Is it an external pressure, an almost rearguard defence that women's organisations are doing, trying to make themselves inclusive to bat away this thing from commissioners that they should not be a single-sex space? Most refuges, if not all, were set up by women for women, and you set up a BAME organisation specifically, so should we be looking for inclusion in these spaces—I go back to the point that I asked Diana earlier on—or is it okay not to?

Janet McDermott: Legally, it is okay to restrict those services to the women they were originally set up for and we want to support the protection of those services, because they are not meeting all the need already. There is greater need than those services can meet, so we do not want to lose more bed spaces for women survivors when we do not have enough already. That is one of our priorities, but at the same time, we have a more diverse survivor group both asking for services and wanting to set up their own services, but wanting to do that within the umbrella of the sector. That is our dilemma: how to support that greater inclusivity without it taking resources away from the overstretched services for women survivors that we are trying to protect at the same time. I do not know if that is helpful.



Q565 **Chair:** That is extremely helpful. Does anybody else want to add to that before we close?

Diana James: There must be single-sex services; it is just we have to decide what single sex is. That is where the nub of the problem lies: what is a single sex? We are coming at it from diverse ends and we are not 100% going to reach agreement on it, because we are too far away.

Discussing this with younger feminists, who tend to be younger feminist women, they are seeing things in a completely different way from how my generation sees things. Their feminist views are completely different from the ones that I grew up with and they see it as non-binary, those viewpoints not seeing the same barriers that we see. Personally, my feeling is we have to have single-sex refuges. We cannot have a combined male and female refuge. It is the decision about what is male and what is female that is becoming more and more of an issue, as has been discussed.

Q566 **Chair:** Can I close by asking one final question? What would be the best way to get clarity for this in a way that did not leave anybody feeling exposed in the services that they are providing? What would be the best way to provide that clarity so that you do not feel exposed in the service that you, as an individual organisation, have decided is the best way for you to respond to your local need?

Diana James: Legal clarity has to be completely there, so everybody knows where they are coming from legally. The guidance also has to be written clearly. The guidance has to include all the groups. You have to include people who are trans women who have been through or work in the refuge system, but you also need to include those people who have feelings that are diametrically opposed to that. It is going to be a really difficult way of doing it, but if we are going to come to some organisational and legal arrangement where this is going to work, there is not really a lot of choice. We have to come to an agreement.

Q567 **Chair:** So you need clarity that addresses each group explicitly and does not duck the issue, paraphrasing it.

Diana James: Yes.

Q568 **Chair:** Karen, you are nodding vigorously.

Karen Ingala Smith: I am agreeing with that. As I said earlier, the problem is that the Gender Recognition Act has created a legal fiction and we have to be very clear that gender and sex are not the same thing.

Q569 **Chair:** Going back to how we get that legal clarity, you were nodding vigorously when I surmised what Diana was saying: that we could have guidance that explicitly addresses this and particularly the different groups who might be accessing single-sex services. Would that be helpful?



Karen Ingala Smith: It is that the Gender Recognition Act needs to be unpacked and it needs to be legally clear that a person cannot change sex. The problem is that the mantra, "Trans women are women", is being used as if it is a literal truth and it is not a literal truth.

Q570 **Angela Crawley:** On that point, I hear what you are saying and there are people who have similar feelings to you, but if, for example, the Women's Aid Federation was to provide clear guidance, as referred to with Scottish Women's Aid, which states, "Women's services are for gender-based violence against women and that includes sexism, homophobia and transphobia", would you or organisations akin to your view take exception to that?

Karen Ingala Smith: Absolutely, we would.

Q571 **Angela Crawley:** May I ask why?

Karen Ingala Smith: Transphobia is not the same as male violence against women. I even object to the phrase "gender-based violence". Gender is a hierarchy, it is the way that sex inequality is maintained, it is a socialisation set of rules and it is enforced on young people, so I find that language very problematic.

We reject gender. We are of the female sex and we do not choose to identify into male violence, to being victims of rape and to being victims of intimate partner homicide. It is not about gender identity and gender; it is about sex and it is about male violence against women.

Janet McDermott: I use the term "patriarchy" as being the source of violence against women and girls but also being the source of homophobia and transphobia, because it is about a heteronormative model of an intimate partner relationship, which is in the interest of heterosexual men. I see that as the source of the oppression that women face but also the source of the oppression that lesbians and gay men face and that transgender people face. It is about anyone who challenges that patriarchal construct of what family is and what an intimate partner relationship is. That is how I see patriarchy. In that context, I believe that trans people are also victims of patriarchy, in terms of that broader spectrum of violence against women and girls, and certainly are victims of domestic violence and sexual violence.

While I believe we have to stay true to the core of the history of our sector, we have to have a response that is not based on policing people's sexual characteristics in order for them to access a service. This is one of the dilemmas that I feel our members are crying out for guidance on, because they are never going to be in the business of asking someone to undress in order to decide if they are eligible for a women-only service. We do have to respond to the permission, if you like, to identify as a gender without that being scrutinised in terms of only biology, because it is not only biology. You said yourself gender is a social construct, but when we set up women-only services we were not only basing those



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services on biology; we were basing them on the way patriarchy operates and those social constructs and that socialisation that gives that power to the male patriarch. It is more complicated than just saying, “These are single-sex services and we are determining that sex on the biology that someone is born with, regardless of what then happens to them”.

Karen Ingala Smith: It is for good reason, though. We talked about women being, by far, the greatest majority of victims of sexual and domestic violence, but it is males who are committing that violence. Males commit 78% of violent crime, 88% of intimate partner homicides, 90% of all murders and 98% of recorded sexual offences. Those crimes are committed by males. There is absolutely zero credible evidence to suggest that males who identify as transgender have any different rates of offending from males who do not. It is not based on a willy-nilly conception of biology; it is about keeping women safe.

Chair: Our debate this morning—and it has been somewhat of a debate—has demonstrated the huge complexity of these issues. The Equality Act is only one almost very small part of the problem. Can I thank you enormously for coming here today? You have demonstrated quite clearly that this debate can be held not only in an incredibly dignified fashion but in an extremely positive fashion as well. I only hope that those who are outside of this room can pay heed to that, because if we are going to improve the lives of the people we represent—and I hope I speak for all Committee members here—we have to have that debate and we have to hear the voices of all the people we represent, not only those who shout the loudest. On behalf of everybody, thank you for the tone of the debate this morning; it has been incredibly helpful. I am sure we will find it incredibly useful in developing our report as well.