

## Written evidence from the Centre for Crime and Justice Studies

### 1. About the Centre for Crime and Justice Studies

- 1.1. The Centre for Crime and Justice Studies (hereafter the Centre) was established in 1931. It is an independent educational charity that advances public understanding of crime and criminal justice. Through diverse, inclusive and durable collaborations, we work to advance knowledge of crime and criminal justice, to champion evidenced and just policy and practice, and to support good legislation.
- 1.2. This submission focuses on the question posed in the 'Wider issues' section of the call for evidence: "Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?". The particular focus of this submission is on women's prisons.
- 1.3. In 2014 the Centre began a collaboration with Lady Edwina Grosvenor to establish the One Small Thing project. Through One Small Thing we worked, over several years, across women's prisons and community settings promoting trauma-informed practice among prison officers and community-based staff. One Small Thing is now a separate organisation and has no formal connection with the Centre or this submission.
- 1.4. At the heart of trauma-informed practice is the recognition of the high rates of emotional trauma among prisoners, and of the importance of pursuing policies and practices grounded in compassion, understanding, the avoidance of retriggering past traumas, and effective safeguarding.
- 1.5. Having followed policy and practice developments for several years, the Centre became actively involved in the question of transgender prisoners in 2018, following the Karen White case. White, a male-born transgender prisoner, was placed in HMP New Hall (a women's prison) in September 2017. White is known to have sexually assaulted at least two female prisoners in HMP New Hall, with two other cases remaining on file. White was subsequently moved to a male prison.
- 1.6. The Centre hosted a private roundtable discussion, at the request of the Ministry of Justice, in May 2019. The meeting, attended by representatives of the Ministry and civil society organisations, discussed the revised policy framework for transgender prisoners then under development. The new framework went live in October 2019. While it is an improvement on the previous policy, including in relation to safeguarding, we remain concerned that it fails adequately to consider the needs and interests of female prisoners.

## 2. The importance of single-sex provision

- 2.1. We welcome the confirmation by the Minister for Women and Equalities on 22 September 2020, in response to the consultation on the Gender Recognition Act, that “The Equality Act 2010 clearly protects transgender people from discrimination” and that the “same act allows service providers to restrict access to single-sex spaces on the basis of biological sex if there is a clear justification”.<sup>1</sup>
- 2.2. We are also pleased that the Minister reaffirmed the importance of single-sex spaces, in response to questions in the House of Commons on 24 September, stating that “under the Equality Act 2010, service providers can restrict entry on the basis of biological sex. Of course, there are cases, such as women’s refuges and prisons, where that is an important issue”. The Minister went on to say that “The position is clear in the Equality Act that service providers can restrict the use of spaces on the basis of biological sex, and it is important that women’s spaces, which have been hard fought for over generations, are protected”.<sup>2</sup>
- 2.3. In our judgment, there are few better examples of the necessity of single-sex provision than in the case of women’s prisons. Most female prisoners have explicit and acknowledged experience of coercion, male and intimate partner violence against them, sexualised violence from an early age and persistently violent relationships over time with trusted male figures. In the context of single-sex prison environments, it is this particularity of women’s experience that is relevant. Placing female prisoners in the position of having to share their spaces with male prisoners places them at risk of retraumatisation and, in some cases, further abuse.
- 2.4. The value of single-sex spaces and provision for women in the criminal justice system is recognised by the Ministry of Justice. For instance, the *Managing Vulnerability: Women* fact pack, published by the Ministry in June 2018, recommends single-sex provision in community settings to provide safe spaces for women to share and heal. “Working with each woman to understand her individual situation”, it states, “may include... delivering trauma informed services in a women-only environment”.<sup>3</sup>
- 2.5. If prison is intended as part of a rehabilitative process in prisoners’ lives, the opportunity for vulnerable and emotionally overwhelmed women to experience relief from male violence in their chosen relationships must be understood as important. Women in prison are still subject to male staff and authoritarian regimes, designed, as *The Corston Report* acknowledged, for and by men.<sup>4</sup> Their

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<sup>1</sup> <https://questions-statements.parliament.uk/written-statements/detail/2020-09-22/hcws462>

<sup>2</sup> <https://bit.ly/3cxNNxh> and <https://bit.ly/2G7KEbE>

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721190/police-guidance-on-working-with-vulnerable-women-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721190/police-guidance-on-working-with-vulnerable-women-web.pdf)

<sup>4</sup> <https://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/corston-report/>

only reprieve may be to be able to share some private and community spaces with other women, rather than with male peers.

- 2.6. Despite the clear legal basis for single-sex provision, HM Prison Service currently operates women's prisons as mixed-sex institutions. Male prisoners who identify as women can and are housed in women's prisons. In the case of male prisoners with gender recognition certificates assigning their legal gender as women, placement in the women's estate is usually automatic. This so-called 'case-by-case' approach is an overly relaxed and reductive approach to an extremely demanding and high profile issue affecting many lives. It also flies in the face of the provisions of the Equality Act, explained by the Minister in September this year, which, rightly, allow for blanket exclusions.
- 2.7. It is important that the Ministry of Justice understands the ramifications of the legal framework and is able to implement robust, fair and transparent practices in respect of it, based on objective criteria, taking into account the majority of the female prison population as a key stakeholder. Relaxing the criteria for gender recognition – for instance, through the introduction of a statutory declaration system – would likely lead to an increase in the number of male prisoners being housed in women's prisons.
- 2.8. The prison service has a duty to provide fair, decent and respectful provision for trans prisoners. Given the current state of the prison system, in the case of male trans prisoners who identify as women, the Centre considers that this can best be achieved through the provision of accommodation that is separate from female prisoners. We support the further development of policy, practice and services based on respect for the needs and interests of transgender prisoners.
- 2.9. Given the confusion over implementation of the single-sex provisions in the Equality Act, we consider it incumbent on the Minister for Women and Equalities to ensure that clear statutory guidance, consistent with the Equality Act and her recent statements, is produced.
- 2.10. We would also urge the Committee to include a clear statement about the importance of single-sex provision and women's spaces, including in relation to women's prisons, in its report recommendations.

**November 2020**