

**Women and Equalities Committee: Reform of the Gender Recognition Act  
Evidence submitted by Dr Michael Biggs, November 2020**

**1. Introduction**

1.1 I am Associate Professor of Sociology at the University of Oxford and Fellow of St Cross College, studying social movements and political sociology. Recently my research has investigated the extraordinary success of the transgender movement in replacing biological sex by gender identity, in institutional policies and discursive norms. One aspect of my research focuses on prisons in England and Wales.

1.2 My evidence focuses on the following question:

- 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?

It is also relevant to this question on the Gender Recognition Act:

- What else should the Government have included in its proposals, if anything?

1.3 Over the last two decades, there has been an inexorable trend in the prison system to make it easier for transgender males—i.e. males who claim to be women or who enjoy the accoutrements of femininity—to enter women’s prisons. Under the current rules (Ministry of Justice 2019a), any male who obtains a gender recognition certificate is automatically transferred to the women’s estate. Other males can request transfer, which will be considered on a case-by-case basis. These regulations ensure that any amendments to the Gender Recognition Act 2004 will directly impact female prisoners.

1.4 The direction of policy over the last two decades has been guided by the belief that the overriding priority of the prison system is to validate gender identities. I will argue that the priority should be to maintain the safety and dignity of all prisoners, which requires females to have single-sex facilities.

1.5 For clarity, my evidence uses the words ‘male’ and ‘female’ to refer to males and females, respectively, regardless of declared identity, preferred clothing, or acquisition of a gender recognition certificate.

**2. Separation of female prisoners**

2.1. ‘The women felons should be quite separate from the men’ urged the famous eighteenth-century prison reformer, John Howard (1777, p. 44). This separation is a cornerstone of human rights, as declared by the United Nations (1957) in its Standard Minimum Rules for the Treatment of Prisoners: ‘Men and women shall so far as possible be detained in separate institution; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.’

2.2 There are sound reasons for separation by sex. The vast majority of prisoners are male. In England and Wales, there are 21 male prisoners for every female (Ministry of Justice 2020). The two populations are also quite different. A far higher proportion of prisoners in the men's estate are convicted of sexual offences: 19% compared to 4%. Put another way, 98.5% of sexual offenders in prison are male. Conversely, female prisoners are more likely to be victims of sexual offences. In the prisons of England and Wales, 36% of female inmates recall being sexually abused as children, compared to 6% of males (Williams, Papadopoulou, and Booth 2012).

### **3. Patterns of offending among transgender males**

3.1 There is no evidence that transgender males are less violent or sexually predatory than males overall.

3.2. Males are more likely to commit murder than be murdered, while females are more often victims than perpetrators. In Britain since 2010, 13 transgender males have committed murder, while 7 have been the victims of murder. This replicates the overall male pattern.

3.2 There is evidence that transgender male prisoners are more likely to be sexually predatory than male prisoners overall. Of the 125 transgender prisoners counted by the prison service in 2017, 60 had been convicted of sexual offences, including 27 convicted of rape (BBC News 2018). In the overall prison population, by comparison, 19% of males had been convicted of sexual crimes (Ministry of Justice 2018b). In other words, those male prisoners who identified as transgender were more than twice as likely to have committed a sexual offence.

3.2 Transgender males are a diverse grouping. While some are homosexuals who gravitate towards femininity, some are autogynephiles—sexually aroused by the idea of being a woman. In the general population, men who are sexually aroused by dressing in feminine clothing tend to be aroused by masochism, exhibitionism, and voyeurism (e.g., Långström and Zucker 2005). Of course the vast majority of these men—just like men overall—are law-abiding, but the minority who are incarcerated will have an obvious sexual motivation to transfer to the women's estate. Two examples will suffice.

3.3 One inmate referred to the Gender Identity Clinic (now part of the Tavistock and Portman NHS Foundation Trust) in 2011 has been in and out of prison for three decades for offences such as sexually assaulting a 12-year-old girl and downloading images of children being sexually abused. The prisoner wanted cross-sex hormones and surgery so that 'he would not need to resort to his offending in order to vicariously experience womanhood' (KK 2019, para 26). According to Dr Stuart Lorimer (consultant psychiatrist at the Clinic), 'it is by no means straightforward teasing out the gender identity factors from a sort of fetishization of pre-teen girlhood and a degree of sexual masochism' (para 30). The Gender Identity Clinic did not support this particular inmate's application for a gender recognition certificate. But he can seek a recommendation from another medical professional to obtain a certificate and thereby transfer to the women's estate.

3.4. Mary Dean was given an indeterminate sentence in 2009 for 24 offences including aggravated burglary—Dean broke in to houses in order to ejaculate in women’s and girls’ underwear—voyeurism, and assaulting a police officer. Dean was the subject of a sympathetic article in the *Observer* (originally omitting the details of his offences) and a petition demanding transfer to the women’s estate (Townsend 2018). Dean has been diagnosed with gender dysphoria, and therefore meets one of the criteria for a gender recognition certificate which would enable transfer to the women’s estate.

#### **4. Transgender males transferred to the women’s estate**

4.1 The following is a partial list of males transferred to the women’s estate from 1999 onwards. It is essential to detail their crimes in order to appreciate the irrationality of policy decisions that forced women to be incarcerated with them.

4.2 John Pilley was sentenced to life for kidnapping a woman at knifepoint. In prison he took the name Jane Anne and in 1999 won the right to genital surgery which—under the prevailing rules—enabled transfer to a women’s prison, HMP Holloway. Pilley subsequently renounced his feminine identity and required a phalloplasty in order to return to a men’s prison (Ford 2006).

4.3 Douglas Wakefield was sentenced to life for beating and stabbing his uncle to death. In prison he strangled and beat to death another inmate, and attempted to kill a warden. Wakefield took the name Tai. Genital surgery subsequently enabled Wakefield to relocate to a women’s prison, HMP New Hall (Francis 2013).

4.4 Mark Jones was convicted of manslaughter for strangling his boyfriend. A few days after release from prison, Jones attempted to rape a woman who worked in a shop selling transgender accoutrements. Jones, now using the name Karen, was sentenced to life imprisonment. Jones obtained a gender recognition certificate. Due to a change of policy by the Gender Identity Clinic, it would not approve genital surgery until Jones had experienced ‘life as a woman’ in a women’s prison. A judicial review ordered Jones to be transferred to the women’s estate. One of the reasons given by the judge was that Jones was so ‘narcissistic, compulsive, aggressive, violent and sadistic’—to quote the consultant forensic psychologist—that Jones would be harder to manage if thwarted (AB 2009, para 63). Jones was transferred to HMP Holloway. After release from prison, Jones was invited to Parliament by Lord Patel of Bradford to speak on ‘raising awareness of transgender issues in the criminal justice system’ (Hall and Fielding 2018). The speech did not mention Jones’ crimes.

4.5 Martin Ponting was sentenced to life for raping two girls. He took the name Jessica Winfield, and in 2017 was moved to a women’s prison, HMP Bronzefield. Winfield was placed in segregation allegedly for making unwanted sexual advances, though this was denied by other sources (Eleftheriou-Smith 2017).

4.6 Karen White was charged in 2017 with multiple counts of raping a woman, along with burglary and stabbing a man, and was then remanded to a women’s prison, HMP New Hall.

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White was legally male and had previously served eighteen months in prison for sexually assaulting a child; HMP New Hall houses a mother-and-baby unit. In prison, White sexually assaulted four women (Evans, McCann, and Rudgard 2018). White was subsequently sentenced to life imprisonment. A therapist with access to White's record discerned 'a history of seeking access to mixed and women's institutions to find and abuse vulnerable people', including a psychiatric hospital where he raped a young woman (Gilligan 2018).

4.7 Kayleigh Woods was sentenced to life for torturing a woman to death. Although still legally male, Woods was transferred to a women's prison, HMP Eastwood Parks, in 2017. After being discovered having sex with another inmate, Woods was transferred back to the men's estate (Sims and Wells 2019). It is worth pointing out that even when consensual, heterosexual sex in prison is problematic because of the possibility of conception. A child born in prison whose parents are serving long-term sentences will grow up with serious disadvantages, and it is bad policy to engineer this risk.

### 5. Women and Equalities Committee's inquiry, 2015–16

5.1 The previous Women and Equalities Committee's inquiry concluded that 'There is a clear risk of harm (including violence, sexual assault, self-harming and suicide) where trans prisoners are not located in a prison or other setting appropriate to their acquired / affirmed gender' (2016, p. 86). The Committee heard no evidence that transgender males are at greater risks of harm than other potentially vulnerable groups like gay men or disabled men.

5.2 The previous Committee ignored the clear risk of harm to female inmates, despite detailed written evidence from women's groups and clinicians. Some of this evidence is excerpted here so that this Committee will not repeat the mistake.

5.3 The British Psychological Society (2015) described 'a number of cases where men convicted of sex crimes have falsely claimed to be transgender females'. Several motivations were specified: 'demonstrating reduced risk and so gaining parole; ... explaining their sex offending aside from sexual gratification (e.g. wanting to "examine" young females); ... separating their sex offending self (male) from their future self (female); ... seeking better access to females and young children through presenting in an apparently female way'.

5.4 The British Association of Gender Specialists (2015)—presided over by Dr James Barrett, who also heads the Gender Identity Clinic—described 'the ever-increasing tide of referrals of patients in prison serving long or indeterminate sentences for serious sexual offences'. Some prisoners were motivated to 'pretend transsexual status' for the same reasons laid out by the British Psychological Society. For one particular individual, there was 'a plethora of prison intelligence information suggesting that the driving force was a desire to make subsequent sexual offending very much easier'.

5.5. The first witness called by the Women and Equalities Committee in 2016 was Jess Bradley, representing Action for Trans Health. Bradley was subsequently employed by the National Union of Students (NUS) as the first full-time Transgender Students Officer.

Bradley was suspended after allegations of exhibitionism, including masturbating in various public locations and at the NUS office (Day 2018). The results of the investigation were never reported; Bradley did not resume employment at NUS.

5.6. The previous Women and Equalities Committee called no witnesses to speak to the effects on female prisoners of being incarcerated with males.

## **6. Public opinion**

6.1 The current policy which allows males to transfer to the women's estate has no popular support. Only 12% of British adults believe that a male who identifies as a woman yet retains his penis and testicles should be imprisoned in a women's prison (Populus 2018). The proportion would be even lower if respondents were asked about a male who had committed sexual offences against women.

6.2 While most transgender activists insist that institutions must accept all assertions of gender identity, some transgender people with experience of prison are less credulous. Stephanie Lloyd was incarcerated for three months in 1989 for selling unlicensed erotic transgender videos, served in a women's prison because Lloyd had undergone genital surgery. Lloyd subsequently declared: 'I am extremely suspicious of inmates who "suddenly" decide they want to become a woman when they are in prison' (Daubney 2014). (Lloyd owned the shop in which Jones attempted to commit rape.) A transgender inmate in HMP Littlehey criticized 'trans-imposters who give real transgender people a bad name' (Anonymous 2016). Furthermore, some transgender campaigners appreciate the detrimental effect of current policy on female prisoners. Debbie Hayton (2019), for example, argues that 'Prisons are segregated according to biological sex for good reasons, and feelings are a poor reason for breaking that policy'.

## **7. Quantitative estimates**

7.1 The effect on women incarcerated with such violent and sexually predatory males cannot be ascertained fully. The prison service ensures that offenses committed by males with a gender recognition certificate are attributed to women, thus eliminating much of the information that would reveal the policy's disparate effect on women.

7.2 Since 2010, out of 124 sexual assaults reported in the women's estate, 7 were committed by transgender males (lacking a gender recognition certificate), or 5.6% of the total (Brown 2020). Over this period, transgender prisoners (lacking a gender recognition certificate) comprised no more than 0.43% of the total number in the women's estate.<sup>1</sup> Therefore

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<sup>1</sup> The number of inmates in women's prisons is about 4,000. The number of these who identify as transgender was 42 in 2018 and 34 in 2019 (Ministry of Justice 2018a; 2019b); erring on the higher side, I estimate 10 in 2015, 20 in 2016, and 30 in 2017.

transgender prisoners were far more likely to commit sexual assault—about 17 times more likely.

7.3 Although transgender prisoners are responsible for only a small fraction of sexual assaults, the most relaxed policy of transferring males who lacked a gender recognition certificate lasted only from 2016 (precipitated in part by the Women and Equalities Committee’s advocacy) to 2019 (when White’s sexual assaults were revealed). If the Gender Recognition Act 2004 is amended to make it even easier to obtain a gender recognition certificate, then many more males will enter the women’s estate—and sexual assaults will increase accordingly.

7.4 The vast majority of transgender males are still held in men’s prisons—nine out of ten according to the latest statistics (Ministry of Justice 2019b, p. 15). Stonewall (2018) estimates that 1% of the population is transgender. If 1% of male prisoners move into the women’s estate, then 18% of prisoners in the women’s estate will be male. But even that underestimates the potential scale of transformation. The incentives for heterosexual men to transfer to a women’s prison are obvious. It would take only 4.5% of male prisoners to identify as transgender for males to become the majority in women’s prisons. If that seems fanciful, note that 10% (out of 287) male inmates who are ‘Gypsy, Roma, or Irish Traveller’ now identify as transgender (HM Chief Inspector of Prisons 2019, p. 103).

## **8. Recommendations**

8.1 The Women and Equalities Committee must demand that prison regulations be revised to exclude all male prisoners from the women’s estate—including males who have acquired a gender recognition certificate. The Equality Act 2010 explicitly provides for single-sex accommodation, and the need for this provision is more justified for prisons than any other setting.

8.2 The Committee must demand that the prison service provide safe and humane facilities for transgender males—either within the men’s estate or in specialized units—equal to those provided for other males.

8.3 The Committee should recommend the government amend the Gender Recognition Act 2004 to prevent anyone who is convicted of a sexual crime from acquiring a gender recognition certificate, and likewise to nullify the certificate of anyone who is subsequently convicted of a sexual crime. The fact that someone like Jones could acquire the legal status of ‘woman’ after trying to rape a woman defies reason, and is an insult to women—and to law-abiding transgender people.

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