

Written evidence submitted by Women's Aid Federation [GRA2014]

Women's Aid Federation of England (WAFE) is the national charity working to end domestic abuse against women and children. We are a federation of nearly 170 organisations which provide just under 300 local lifesaving services to women and children across the country. Over the past 45 years, Women's Aid has been at the forefront of shaping and coordinating responses to domestic abuse through practice, research and policy. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs.

WAFE welcomes the opportunity to submit a response to the Women and Equalities Select Committee Inquiry on reform of the Gender Recognition Act. Since 1974, Women's Aid has been supporting domestic abuse services as part of a national network. Due to the disproportionate impact of domestic abuse on women, the focus of these services has been, and continues to be, on supporting women and children.

Domestic abuse is deeply rooted in patriarchy and is both a cause and consequence of women's inequality. We recognise that trans people experience gender-based violence as a result of these structures of inequality and that trans people face additional barriers, and intersecting forms of oppression, when trying to access the specialist support they need. There are currently only six voluntary services delivering LGBT+ specialist support in England.¹

Our response to this consultation is restricted to our areas of expertise - supporting women and children experiencing domestic abuse and ensuring that they can access the quality, specialist support services they need to escape and recover. Our response reflects and is informed by our role as a national charity, an employer, and a federation providing support for our members.

In September 2020 WAFE started a process of consultation with our member services on single-sex service provision and gender recognition. This was in response to the fact that, whilst the government is not reforming the current gender recognition assessment model, there remains a lack of clarity on the interaction between the 'single-sex exceptions' in the Equality Act work and the protected characteristic of gender reassignment. This consultation, which is being led by an external consultant, is still in progress but the views and experiences gathered from our member services throughout the process informs this response.

Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.

During the government's consultation on reform of the Gender Recognition Act (GRA), we welcomed the commitment to protect existing equality exceptions relating to single-sex services in the Equality Act. These exceptions enable domestic abuse organisations to run women-only services; on 1 May 2020, there were 222 domestic abuse service providers running 370 local services for women and children throughout England, including 263 refuge services.² Women-only spaces provide a physically and emotionally safe environment that is vital to survivors' recovery and empowerment

¹ Galop, Commissioning for Inclusion: Delivering Services for LGBT+ survivors of Domestic Abuse, 2020

² Data in England from Routes to Support, the UK wide directory of VAWG services and refuge vacancies run in partnership by Women's Aid Federation England, Welsh Women's Aid, Scottish Women's Aid and Women's Aid Northern Ireland

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after experiencing domestic and sexual violence and other forms of violence against women and girls (VAWG). Importantly, women-only services are well-practised at developing to meet need, creating services led' by and for' specific communities of women - such as, for example, Black and minoritised women, Deaf and disabled women, lesbian or bisexual women, older or younger women.

There remains a lack of clarity between how the Equality Act and GRA interact, specifically around how rights in relation to sex as a protected characteristic acquired with a Gender Recognition Certificate (GRC) ³ interact with exemptions allowing discrimination on the basis of gender reassignment.⁴ It is also not clear how a service provider could establish whether someone holds gender reassignment as a protected characteristic - as it is unlawful to ask to see a GRC. Clarity and consistency of definitions across connected legislation and supporting guidance is crucial for service providers.

Our consultation with member services has found that some providers are unclear about their legal rights in this area, and how technically they would be able to exclude those with the protected characteristic of gender reassignment where risk assessment and evidence demonstrates that doing so is required to ensure safe provision of single-sex services. They also noted that local commissioners have low levels of literacy about the differences between the protected characteristics of "sex" and "gender reassignment" and the interactions between the Equality Act and the GRA.

All the member services participating in our consultation expressed a desire to see trans survivors receiving the support they need, and many are actively working to deliver this. Many of our members have and continue to support trans survivors within their services, however no organisation had significant or extensive experience of doing so. This aligns with WAFE's national data on domestic abuse service provision, which shows that around 0.6% of service users in women's domestic abuse services in England in 2019-2020 identified as trans.⁵ Research demonstrates that trans survivors face numerous personal and structural barriers in accessing the support they need, contributing to the under-representation of trans survivors in both statutory and voluntary services⁶. Our consultation with members has also identified a number of specific issues affecting the ability of women's domestic abuse services to meet the needs of trans women experiencing domestic abuse, which are set out in further detail in the response to a later 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?

As the Women and Equalities Committee report on the Enforcing the Equality Act in 2019 concluded, reform is needed to ensure that both: commissioners understand requirements under the Public Sector Equality Duty to actively commission single-sex and specific services for survivors of domestic

³ Guidance for the Gender Recognition Act states: "where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman. (HM Courts and Tribunals Service, Gender Recognition Act - General Guide for All Users, T455)

⁴ The Equality Act provides exemptions to exclude those with the protected characteristic of gender reassignment where there is evidence that doing so is a proportionate means of achieving the legitimate aim of provision of single-sex services – with accompanying guidance provides an example of a 'group counselling session for female victims of sexual assault not allowing a 'male-to-female transsexual person' (Equality Act 2010, Explanatory Notes, Commentary on Sections, Part 16, Sch 3, Part 7: Separate and Single Services, Para 28)

⁵ Data based on 27,130 survivors (supported by 68 organisations running 101 domestic abuse services in England and using On Track during 2019-20)

⁶ Galop, Commissioning for Inclusion: Delivering Services for LGBT+ survivors of Domestic Abuse, 2020

abuse and other forms of VAWG; and providers are confident in how the exceptions in the Equality Act are implemented.⁷

Commissioning

Women-only services continue to face severe threats from 'gender-neutral' funding and commissioning trends that don't account for the gendered nature of domestic abuse and sexual violence. A combination of budget reductions and poor local commissioning processes has resulted in commissioners contracting generic domestic abuse provision for 'all victims' – without understanding the need for gender-specific services that meet the differencing support needs of women and children, male victims and those facing multiple forms of oppression. These problematic competitive procurement processes continue to have severely negative impacts on specialist women's services and services led 'by and for' Black and minoritised women, LGBT+ survivors and Deaf and disabled women.

We remain highly concerned that the provision of specialist domestic abuse services, who are expert in meeting specific support needs, is being undermined by public sector funders and commissioners who are failing to properly apply the public sector equality duty to decision making. We fully support the Women and Equalities Select Committee recommendation that Government Equalities Office issue a clear statement of the law on single-sex services to all Departments, including the requirement under the public sector equality duty for commissioners of services to actively consider commissioning specialist and single-sex services to meet particular needs.⁸

Service provision

There also remains a lack of clarity on whether and how providers can lawfully provide a different service to, or exclude, someone who has the protected characteristic of gender reassignment from a single-sex service. While some of our member services understood that when someone transitioned, their protected characteristic of sex also changed (trans men becoming protected as male, trans women becoming protected as female), others understood sex to be a fixed protected characteristic (with trans men remaining protected as female and trans women remaining protected as male). In practice this meant that there is a lack of clarity and confusion around how services deliver the single-sex exemption. A number of reasons for this were identified in our consultation with our members:

- In recent years, the differences between the terms "sex" and "gender" have been blurred, with many using the terms interchangeably, which has reduced literacy about the distinctions between sex and gender.
- Some member services faced requirements by local commissioners to accept trans women into their services in a 'blanket' way, in ways that undermine Equality Act single-sex exemptions enabling women-only services to offer a different service to, or exclude, trans people as a proportionate means of achieving a legitimate aim.
- The Equality and Human Rights Commission (EHRC) Code of Practice states that decisions around trans inclusion in single-sex services should be made on a case-by-case basis⁹. Some of our member services stated that they were responding to each trans person as an individual "case", whereas some services treated themselves as an individual service provider as a "case". There is also additional confusion as the Equality Act states that single

⁷ House of Commons Women and Equalities Committee, Enforcing the Equality Act: the Law and the role of the Equality and Human Rights Commission, July 2019

⁸ House of Commons Women and Equalities Committee, Enforcing the Equality Act: the Law and the role of the Equality and Human Rights Commission, July 2019

⁹ Equality and Human Rights Commission, Equality Act 2010 Code of Practice: Services, Public Functions and Associations

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sex exemptions need to be a “proportionate means of achieving a legitimate aim” and does not make reference to the ‘case by case’ determination. Expecting services – which are often small, specialist women’s charities - to navigate this confusion without clear guidance is unfair and exposes them to undue risk.

- There is also a lack of practical guidance for domestic and sexual abuse services within the EHRC Code of Practice. It is not clear under what circumstances it would be lawful for a single-sex service provider to choose whether or not they provide a different service to, or exclude, a trans person and in what cases this would be ‘proportionate’.
- The issues raised by members were also pertinent to the employment of staff in a women only environment and a lack of clarity over how schedule 9 (Part 1) of the Equality Act 2010 interacts with the requirements of the GRA.

Our member services noted that the lack of clarity, and the fact there is no case law in this area, puts them at risk of potential legal action or dispute. For women’s services who continue to face an ongoing funding crisis – and particularly services led ‘by and for’ Black and minoritised women – this is an area of real concern. We support the Women and Equalities Select Committee recommendation that, in the absence of case law the EHRC develop, and the Secretary of State lay before Parliament, a dedicated Code of Practice, to cover clearly how the Act allows separate services for men and women, and how and under what circumstances it is lawful to provide a different service to, or exclude, a person on the basis of gender reassignment.¹⁰

What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?

We restrict our response to this question on access to domestic abuse services.

There is extensive evidence to demonstrate that LGBT+ survivors face distinct systemic and personal barriers in accessing services, are underrepresented in accessing both voluntary and statutory services; and underreport domestic abuse.¹¹ Specialist services led ‘by and for’ LGBT+ survivors are critical in meeting the specific experiences and needs of trans survivors, but continue to face severe funding and commissioning challenges which mean they are largely unavailable and inaccessible to trans survivors in England.

The majority of member services surveyed through our consultation process were ‘trans responsive’ – meaning that wherever possible they try to respond to the needs of trans survivors, but this provision would be dependent on many factors, including whether they had appropriate refuge accommodation available and the needs of other women and children was using the service. Many of our members also recognised the unique importance of specialist LBGT+ provision in meeting specific experiences, support needs and experiences of oppression. This also accords with existing research with providers of women’s domestic and sexual violence services, that found that VAWG services take a personalised, client-centred approach to supporting trans women, as they do for all survivors, and support referral to specialist LGBT+ survivors where possible.¹²

Our consultation with members identifies other factors affecting trans survivors’ access to women’s domestic abuse services, summarised below.

¹⁰ House of Commons Women and Equalities Committee, Enforcing the Equality Act: the Law and the role of the Equality and Human Rights Commission, July 2019

¹¹ Galop, Commissioning for Inclusion: Delivering Services for LGBT+ survivors of Domestic Abuse, 2020

¹² NPF Synergy and Stonewall, Supporting trans women in domestic and sexual violence services, 2018

Specialism

Specialist women's domestic abuse services provide women and children with safety and tools for recovering from abusive men. They have been developed 'by and for' women in recognition that recovery from male violence, and rebuilding stability, resilience and autonomy for women survivors, is best facilitated in women-only spaces. The needs of survivors facing multiple forms of oppression - including race, sexual orientation, ability and age - are more effectively removed or reduced by services led by those facing those structural inequalities.¹³ Single-sex provision is integral to helping women and children recover from abuse, however, some members fed back that this fundamental element of the service may be traumatic or triggering to a trans person. However, some member services noted that a lack of understanding from commissioners around the expertise and specialism of women-only services led to unhelpful responses. This included accusations of transphobia, dismissal of concerns around how women-only services meet the complex support needs of traumatised women and children, and commissioners expecting them to commit disproportionate amounts of time and resources (given the low proportion of trans people using their service) on adapting their services to meet the needs of trans women in a context of an ongoing funding crisis.

Evidence base

As there is a very low proportion of trans survivors accessing women-only services, it remains challenging for services to better understand and meet the needs of trans people, within the context of a women only service, build an evidence base on quality and inclusive approaches, or to mitigate for the ways trans inclusion may affect other service users and staff. There is extensive best practice within specialist LGBT+ domestic abuse services about delivering inclusive services, but overall there remains a lack of evidence of how women-only services meet the specific support needs of trans survivors.

Resourcing

Specialist domestic abuse services continue to face severe funding challenges and are unable to meet demand from women and children who need to access support. 64% of referrals to refuge services, and 33% of referrals to community based services in England in 2018-19 were declined, and the COVID 19 pandemic continues to place severe pressure on the sector¹⁴. Reflecting national recommendations on the provision of services for trans survivors, some member services stated that additional resourcing is required to deliver high quality support services that meet their specific support needs and experiences. In particular, resourcing for additional training, supervision, and different models of provision – such as dispersed refuge accommodation – are required.

WAFE continues to recommend urgently that the government deliver a long-term and sustainable funding solution for all specialist VAWG services, including ring-fenced funding for services led 'by and for' LGBT+ survivors, Black and minoritised women and Deaf and disabled women. It is essential that a funding system ends current inequalities and ensures that all survivors - including those discriminated against on the basis of race, immigration status, disability, sexuality and gender identity – can access the specialist support they need. We fully support the work of Galop in developing and delivering LGBT+ specialist services and ensuring that they sustainable and accessible across the country, and to develop LGBT+ inclusive responses within other domestic abuse services. As a national federation, WAFE will continue to support our members to provide quality services to survivors and their children – this includes to respond to the needs of trans women who need their support where appropriate. We are committed to ensuring all survivors receive the support they need to live free from abuse.

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¹³ Women's Aid, National Quality Standards for services supporting women and children survivors of domestic violence, revised January 2018.

¹⁴ Women's Aid (2020) The Domestic Abuse Report 2020: The Annual Audit, Bristol: Women's Aid; Women's Aid. (2020) A Perfect Storm: The Impact of the Covid-19 Pandemic on Domestic Abuse Survivors and the Services Supporting Them. Bristol: Women's Aid