

Written evidence from Keep Prisons Single Sex (FOE0061)

1.0 This submission is written by Dr Kate Coleman, Director of Keep Prisons Single Sex. We are concerned that interference with freedom of speech compromises our ability to effectively campaign on behalf of women in prison.

2.0 Background:

2.1 Keep Prisons Single Sex campaigns for the rights of female offenders to be held in single-sex prisons. We consider this their right under the Equality Act (2010) (Schedule 3, paragraphs 26, 27 & 28, and Schedule 23, paragraph 3). Evidence collected by the MoJ and HMPPS demonstrates the necessity of single-sex provision for female offenders. E.g.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719771/guide-to-whole-system-approach.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721190/police-guidance-on-working-with-vulnerable-women-web.pdf

2.2 A secondary aim is that male offenders are not recorded as women/female and that convictions of males are not recorded as convictions of women/females. We consider this vital for accurate data collection.

2.3 This brings us into conflict with those who believe that the group ‘women’ is not defined as ‘adult human females’ but includes adult human males by way of self-declared gender identity and/or the legal mechanisms provided for in the Gender Recognition Act (2004)

2.4 We argue that legal recognition of acquired gender obtained under the Gender Recognition Act does not and was not intended to entail a change of sex either in fact, or for the purposes of the Equality Act. We reject that ‘woman’ can also refer to adult human males and assert that ‘male’ and ‘woman’ are mutually exclusive terms. Who is ‘right’ is irrelevant to this consultation. However, this is a legitimate debate which we do not engage in vexatiously.

3.0 Restriction on Freedom of Expression:

3.1 ‘Our’ position stating the immutable reality of sex is perceived by a vocal minority to be hateful. Those expressing ‘our’ view or discussing the impact of the ‘gender identity’ position on women’s rights and safeguarding are frequently denounced as hateful.

3.2 These charges of hate are frequently uncritically accepted at an organisational level. The following is a non-exhaustive list of actions taken against those expressing ‘hateful’ opinions:

- No-platforming (e.g. Linda Bellos, Germaine Greer, Professor Selina Todd):
<https://www.thetimes.co.uk/article/bristol-university-students-ban-transphobic-feminists-73d0pmrx7>
<https://www.bbc.co.uk/news/uk-england-oxfordshire-51737206>
- Academic papers being refused publication or withdrawn from peer-reviewed journals (e.g. paper by Stephen Gliske withdrawn; Professor Kathleen Stock refused publication):
<https://retractionwatch.com/2020/04/30/journal-retracts-paper-on-gender-dysphoria-after-900-critics-petition/>
<https://www.theguardian.com/education/2020/jan/14/sacked-silenced-academics-say-they-are-blocked-from-exploring-trans-issues>
- Universities blocking research or censoring academics (e.g. James Caspian’s research into transgender regret blocked by Bath University; Alistair Bonnington censored by Open University):
<https://www.bbc.co.uk/news/uk-41384473>
https://www.dailymail.co.uk/news/article-9021739/amp/Open-University-student-silenced-support-JK-Rowling.html?__twitter_impression=true
- Threats of violence on social media (e.g. threats received by JK Rowling in response to her statements supporting single-sex spaces for women):
https://www.dailymail.co.uk/news/article-8777531/JK-Rowling-receives-support-Ian-McEwan-Griff-Rhys-Jones-amid-transphobia-row.html?ito=amp_twitter_share-bottom
- Loss of or threats to employment (e.g. Kevin Price forced to resign as college porter because he would not agree that transwomen are women):
<https://www.dailymail.co.uk/news/article-8883575/Cambridge-students-demand-transphobic-Labour-politician-loses-college-porter-job.html>
- Removal of paid-for posters (e.g. poster: woman = adult human female; poster: I (heart) JKR):
<https://www.dailymail.co.uk/news/article-6208347/Feminist-bloggers-billboard-defining-woman-adult-human-female-removed.html>
<https://www.edinburghlive.co.uk/news/edinburgh-news/love-jk-rowling-poster-removed-18686005>
- Loss of business (e.g. Etsy removes ‘hateful’ products/seller accounts):
<https://www.dailymail.co.uk/news/article-8819877/Etsy-bans-sellers-heart-JK-Rowling->

items-promoting-products-F-JK-Rowling-slogan.html#:~:text=Etsy%20bans%20craft%2Dmaker%20from,slogan%20'F***%20JK%20Rowling'&text=Online%20marketplace%20Etsy%20has%20banned,that%20it%20'promotes%20hatred'.

- Impact on professional activities (e.g. author Amanda Craig removed from judging panel after signing a letter supporting JK Rowling, journalist Suzanne Moore faced a campaign of intimidation at the Guardian):
<https://www.thebookseller.com/news/mslexia-asks-amanda-craig-step-down-judge-over-concern-rowling-letter-threatens-climate>
<https://unherd.com/thepost/suzanne-moore-i-felt-absolutely-betrayed/>
- Impact on political career (e.g. Rosie Duffield MP faced abuse and a campaign to have the whip withdrawn):
<https://www.thetimes.co.uk/article/rosie-duffield-it-feels-like-gilead-where-women-arent-allowed-to-ask-questions-2gvv39g96>

3.3 We consider that this constitutes a chilling effect on freedom of expression and indirect interference with Article 10 rights: individuals who witness the consequences of expressing these opinions engage in self-censorship.

3.4 These consequences are disproportionately aimed at women. Evidence also indicates that these are disproportionately aimed at individuals who reject the concept ‘male women’, ‘man’ more usually being allowed to refer to ‘adult human male’. E.g. public health initiatives concerning conditions affecting men use ‘man’ or ‘male’ without censure. Those concerning health conditions affecting women use phrases including ‘birthing parent’, ‘chest-feeding parent’, ‘people who have a cervix’, ‘people who menstruate’:

<https://prostatecanceruk.org/prostate-information/are-you-at-risk>

<https://www.telegraph.co.uk/news/2018/06/14/cancer-research-removes-word-women-smear-campaign-amid-transgender/>

3.5 We consider that this indirect interference is disproportionately targeted at discussion of female bodies and issues affecting women and girls.

4.0 The role of the police: hate crimes

4.1 We believe that the police are too quick to assume a hate crime may have been committed in respect of expression, taking an investigative approach that is inappropriately heavy-handed. E.g.

<https://www.telegraph.co.uk/news/2019/10/14/police-response-transphobic-stickers-branded-extraordinary/>

<https://www.spectator.co.uk/article/a-transphobic-crime-wave-has-hit-oxford>

<https://www.mirror.co.uk/news/uk-news/mum-hate-crime-probe-after-22563314>

<https://www.spectator.co.uk/article/why-are-the-police-stopping-a-74-year-old-tweeting-about-transgenderism-5-february-2019>

<https://www.spectator.co.uk/article/a-collapsed-case-shows-the-perils-of-policing-transphobia->

4.2 We consider that police actions constitute both a direct interference with the right to freedom of expression and an indirect interference through a chilling effect. We also believe that police actions contribute towards creating a climate in which it is acceptable, even desirable, to restrict freedom of expression.

5.0 The role of the police: non-crime hate incidents

5.1 The College of Policing guidance on non-crime hate incidents is here:

<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/hate-crime/responding-to-non-crime-hate-incidents/>

5.2 A non-crime hate incident is: any non-crime incident perceived by the victim or another individual to be motivated by hostility or prejudice based on a person's actual/perceived race, religion, sexual orientation, disability or a person who is/is perceived as transgender. Hostility includes: ill-will, ill-feeling, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike.

5.3 Assessment of hostility lies solely with the individual who makes the report: this individual does not have to justify or provide evidence of their belief that the incident is motivated by hostility or prejudice. Police officers should not directly challenge this perception.

5.4 We consider that the definition of hate incident is too broad, the proof too subjective and the bar too low. Non-crime hate incidents may appear on a DBS check: their impact on an individual's life may be significant. Recording non-crime hate incidents represents a significant departure from due process, transparency and accountability:

- Where intention is defined solely in terms of perception of another, this is a departure from *mens rea*.
- The 'accused' has no opportunity to present a defence.

- There is no cross-examination of witness(es) hence no challenge to the reporting individual's perceptions: it is a hate incident because that person says so.
- The 'accused' is not informed that a non-crime hate incident has been recorded against them.
- There is no right of appeal.
- Whilst convictions may become spent, it appears that there is no equivalent in respect of non-crime hate incidents which remain 'live' indefinitely.

5.5 We consider that this constitutes both direct interference with Article 10 rights and indirect interference through the chilling effect on freedom of expression.

6.0 Non-crime hate incidents recorded against children

6.1 Non-crime hate incidents are recorded against children. Here, additional concerns arise as there appears to be no equivalent to the age of criminal responsibility.

6.2 We refer to Miss B, a 14 year old girl seeking to bring a Judicial Review of the College of Policing guidance referred to above. She argues that this guidance creates a chilling affect on her ability to raise legitimate views on transgender issues.

<https://www.thetimes.co.uk/article/girl-14-takes-on-police-over-pupils-right-to-free-speech-v9ht8pwck>

6.3 Here we refer to the (now withdrawn) schools project pack *Lesbian, Gay, Bisexual Trans+ Bullying and Hate Crime* designed for use with children aged 11 and over. As this has been withdrawn, we shall not review in detail. However, we note:

- This pack was produced in collaboration with the Crown Prosecution Service. We consider this an inappropriate role for the CPS which in itself creates a chilling effect.
- 'Hateful' incidents include omissions: e.g. the decision not to exclude a 'male girl' from a female-only activity (e.g. a sleepover) by reason of that individual's sex; same-sex attracted children who do not date 'male girls' (for lesbians) and 'female boys' (for gay boys).
- We note that a specific example in the pack concerns toilets and indicates that girls objecting to a 'male woman' or 'male girl' in their single-sex toilets will be accused of hate.
- Referring to a 'male girl' as male when asserting legitimate rights to single-sex spaces is likely to constitute hate.

- This creates a climate where children are encouraged to monitor and inform on one another.

7.0 Conclusion:

7.1 We are concerned at what we perceive to be a marked societal shift from a position where freedom of speech is cherished as fundamental to democracy to one where those expressing the ‘wrong’ opinions are censored and ‘punished’.

7.2 We consider police actions in respect of hate crime and non-hate crime incidents encourage and reinforce this.

7.3 This chilling effect inhibits our ability to campaign effectively on behalf of women in prison and to engage in legitimate debate.

9/12/2021