

## **Women's Sex-Based Rights: what does (and should) the future hold?**

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I want to start by adding my thanks to those of the other speakers to Shereen, for having done so much to make this event happen.

I work with Lisa McKenzie and Kath Murray, who are both somewhere in the audience and may want to make themselves known. I say work – we do all this of course entirely unpaid, like so many other women at the moment. We have between us backgrounds in making, analysing, and communicating public policy.

Over the past few months we've come together to apply this to what we're calling the *unregulated* introduction of self-declared gender identity. That is, the way that public and third sector bodies have replaced sex with self-declared gender identity ahead of any change at all to the law.

I am going to draw on an article we have written on this, which being published this summer. In writing that we were able to draw on work done by other amazing women in Scotland, who it's a privilege to work with, some of whom are in the audience.

Our piece includes two detailed case studies, which are the census and prisons policy. This evening I'm just going to talk about prisons.

I'll start by making a general point, which is that in Scotland, as in the wider UK, we lock up too many people, too many women and too many men. Our prison population is drawn heavily from our most disadvantaged communities. And everyone in prison is vulnerable.

However women, who make up about 1 in 20 prisoners, are well-known to be

particularly vulnerable. This is not a controversial point. In April 2012 the Scottish Government published the report of its commission on women offenders (sometimes known as the Angiolini Report). This emphasised that women in prison are much more likely than those in the general population to have serious mental health problems and that ‘women offenders themselves are often victims of severe and repeated physical and sexual abuse’.

Less than two years later, the Scottish Prison Service published its *Gender Identity and Gender Reassignment Policy*. It was right for the prison service to develop such a policy. By then it was clear transgender prisoners could be very vulnerable and had specific needs. The problem emphatically is not with having a policy for this group but with the way it was done. Specifically, the failure to see the policy as having any possible impact on the female prison population, and to assess that impact, and to monitor it.

The policy is founded on treating people according to their self-declared gender identity, whether or not they have a GRC. The accommodation chosen should therefore, in the policy’s words, ‘reflect the gender in which the person in custody is currently living’.

The policy emphasises – the bit I am going to read out is in bold in the original - that “A male-to-female person in custody living permanently as a woman without genital surgery should be allocated to a female establishment. She should not be automatically regarded as posing a high sexual offence risk to other people in custody and should not be subject to any automatic restrictions of her association with other people.”

Decisions are still case by case, with provision for risk assessment. I’ll come back to that. However this new policy was clearly intended to mean that some people who would previously have been held in the men’s estate on the basis of their physical sex were now going to be held in the women’s estate. As we’ll see later, that was indeed pretty much its central purpose.

And yet when the prison service came to do an Equality Impact Assessment, it did not consider how it might affect the women in its care. An Equality Impact Assessment invites an organisation to consider which of the nine legally

protected characteristics under the Equality Act might be affected by any policy. In this case, the box for sex (misdescribed on the form as “gender”, as happens so often now) was left blank. And nowhere do the free text sections recognise women as a potentially affected group, either. No women’s groups were consulted, and in a list of evidence considered ‘relating to equality groups’, the Angiolini Report – at that point not yet two years old - is not even mentioned.

There was absolutely no recognition that the policy would have any effect on women in prison. None at all.

There were two vulnerable groups of prisoners that this policy should have been concerned with. One was prisoners with a transgender identity. The other was women. The policy development process looked only at the first and completely ignored the rights of the second.

How did we get there? The policy document carries two logos, that of the Scottish Prison Service and that of the Scottish Trans Alliance. When Susan Sinclair, an independent researcher who tweets as Scottish Women, looked at the meta data for the policy document she found the author was named as James Morton, director of the STA. That doesn’t mean that James wrote it without any input from anyone else but it does underline how this policy was the product of a very close partnership between the prison service and the STA.

In a book published last year James Morton commented,

‘We strategized – *we strategized* - that by working intensively with the Scottish Prison Service to support them to include trans women as women on a self-declaration basis within very challenging circumstances, we would be able to ensure that all other public services should be able to do likewise’.

James added, ‘the learning from our prison work has made it much easier to assist other Scottish public services, such as NHS wards and schools’. In other words, prisons – specifically *women’s* prisons - were targeted as a place to establish a policy bridgehead for self-declaration from which it could be rolled

out more generally. Not as a place cautiously to trial and assess it before taking it further, but just to get it in place before moving on to other providers.

As this was the test case, we might ask, what did happen? We now know from work published last week by Women and Girls Scotland that despite the individual risk assessment in every case, this policy has had a negative impact on women in prison.

The information comes from a senior, well-verified source in the prison service – a whistle blower, in effect. You can read the Women and Girls Scotland briefing for the detail, and you should, but a critical point the source makes is that this is not just about the individual incidents of sexual and physical aggression that have happened, but about the psychological effect on women prisoners, often already traumatised by male violence, of having to share their day to day intimate accommodation with people who from their appearance as well as their behaviour women can clearly recognise as male.

Just as the STA strategised, many other organisations have been persuaded to replace sex with self-declared identity. As with prisons this has happened without consultation with women affected or their representatives, and no or at best desultory formal assessment of impacts on women or girls. Often these policies are grounded in assertions about the law that are simply wrong.

In the longer piece we've written, Kath, Lisa and I argue that this is a clear example of the capture of the policy process by one set of interests to the exclusion of all others and as such represents a serious failure on the part of the public bodies concerned. It raises questions of course about the specific vulnerabilities of women's rights.

But it also reveals a more general vulnerability of our institutions to single-minded ideologically-driven lobbying. And those who can't bring themselves to care about the rights of women might at least try to care about that.