IN THE MATTER OF

PRISON POLICY IN RELATION TO TRANS-IDENTIFYING MALE PRISONERS IN LIGHT OF THE SUPREME COURT'S JUDGMENT IN FOR WOMEN SCOTLAND

OPINION

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Introduction

1. We are instructed to advise on the implications of the Supreme Court's judgment in For Women Scotland Ltd v Scottish Ministers [2025] ICR 899 ('FWS') for prison policy in relation to the accommodation and treatment of trans-identifying male prisoners.

2. In particular, we are asked to advise on:

   2.1. Whether, and if so in what circumstances, it may be lawful for trans-identifying male prisoners to be accommodated in women's prisons; and

   2.2. Whether the current policy of His Majesty's Prison and Probation Service ('HMPPS') in relation to the accommodation and treatment of trans-identifying male prisoners is lawful.

Terminology

3. In this Opinion, references to 'sex' and related terms such as 'man' or 'woman' are to the protected characteristic of sex under the Equality Act 2010 ('EA 2010'), s11. Pursuant to the Supreme Court's decision in FWS, that means biological sex.

4. References to 'gender identity' and related terms such as 'trans' or 'trans-identifying' are to the protected characteristic of gender reassignment under EA 2010, s7 – i.e. to the characteristic of proposing to undergo, undergoing or having undergone a process (or part of a process) for the purpose of reassigning sex by changing physiological or other attributes of sex.

5. We have chosen to adopt the term 'trans-identifying male prisoners' to refer to male prisoners with the protected characteristic of gender reassignment who identify as women, in preference to the term 'trans women prisoners'. We have done so in the interests of clarity because the latter term has the potential to obscure the analysis by failing to make clear that the prisoners in question are in fact, and for the purposes of the EA 2010, men. For the same reasons, we use pronouns which correspond with (biological) sex.

Summary of our views

6. In summary, it is our view that:

6.1. Pursuant to the EA 2010, read in light of the Supreme Court's decision in FWS, the only lawful basis on which prisons can be operated is with complete segregation of the sexes, based on biological sex. That is because separate-sex prisons are necessary to meet the rights and needs of women prisoners and can only be operated lawfully pursuant to the exception from the default requirement for formally equal treatment that is provided for separate-sex services under paragraph 26(2) of Schedule 3 to the EA 2010. Pursuant to the decision of the Supreme Court in FWS, it is clear that that exception permits only complete segregation of the sexes, based on biological sex, and cannot be relied on if some (trans-identifying) male prisoners are accommodated in a women's prison (or vice-versa).

6.2. Therefore, it is unlawful to accommodate any trans-identifying male prisoners in women's prisons. Doing so is likely to give rise to:

(a) Unlawful direct sex discrimination against other (non-trans) male prisoners who may prefer to be accommodated within a women's prison (for example, because they are vulnerable to violence and abuse in a men's prison and would feel safer in a women's prison); and

(b) Unlawful indirect sex discrimination and/or harassment related to sex against any women prisoners who feel that their dignity, privacy and/or sense of safety and security is undermined, or whose health and/or wellbeing is otherwise adversely affected, by being confined with a male prisoner. Such reactions are both likely and objectively reasonable given the overwhelming evidence that women prisoners, as a population, have a very high prevalence both of experience of male violence, including sexual violence, and of mental health problems.

6.3. The application of such a 'bright line' rule requiring the complete segregation of male and female prisoners is justified within the UK's margin of

appreciation for the purposes of Article 8 of the ECHR and, therefore, does not involve any unjustified breach of the rights of trans people under Article 8.

6.4. Consequently, HMPPS's current allocation policy relating to trans people is unlawful and likely to give rise to unlawful discrimination both against other (non-trans) men and women prisoners as outlined above, because it provides for the accommodation of some trans-identifying male prisoners in the women's estate based on case-by-case assessment. In our opinion, this conclusion applies both in respect of any trans-identifying male prisoners accommodated in the general women's estate and also in respect of those who are accommodated pursuant to the particular, partially-segregated, regime on E-Wing at HMP/ YOI Downview.

6.5. Certainly, the policy's treatment of possession (or otherwise) of a Gender Recognition Certificate ('GRC') as a relevant and distinguishing criterion is contrary to the analysis of the Supreme Court in FWS, which shows that there is no rational or justifiable basis for that approach: possession or otherwise of a certificate cannot rationally affect any analysis of the competing interests of either women prisoners or a trans-identifying male prisoner (cf FWS, §§213, 217-218).

6.6. Further, the approach to the case-by-case assessment required by the policy itself arguably gives rise to unlawful direct discrimination. That is because the approach for which the current policy provides involves taking account of the *individual* needs, circumstances, history and preferences of each trans-identifying male prisoner, but does not provide for the same in relation to each individual woman with whom he may be confined, instead considering the rights and interests of women prisoners only at a collective level. There is, therefore, a difference in treatment because of sex in the way in which the rights and interests of male and female prisoners, who may be confined together pursuant to particular allocation arrangements, are considered: the assessment is genuinely 'case-by-case' for male prisoners, but there is no genuine 'case-by-case' consideration of the needs, rights or interests of individual women prisoners. This asymmetrical nature of the assessment under the policy in our view arguably constitutes direct sex discrimination, in addition to and

irrespective of the inherent unlawfulness of accommodating trans-identifying male prisoners in women's prisons *per se*.

7. In our opinion, the foregoing conclusions are supported by the evidence to which we have been directed, which we have identified in the Appendix to this Opinion.

Summary of the Supreme Court's decision in *FWS*

8. Before we embark on our detailed consideration of prisons in particular, it is helpful to begin by summarising the core general conclusions of the Supreme Court in FWS which are relevant to the issues that we are asked to consider, in order to provide the general context for our analysis. Those core conclusions are as follows:

   8.1. The position at common law is that sex means biological sex and a person cannot change sex (FWS, §54).

   8.2. The Gender Recognition Act 2004 ('GRA') provides a framework for recognising a trans person's reassigned gender where they meet the conditions for, and obtain, a GRC (FWS, §§68-69).

   8.3. Pursuant to GRA, s9(1), the sex of someone who has obtained a GRC becomes their acquired gender for legal purposes, unless an exception applies (FWS, §94).

   8.4. In particular, under GRA, s9(3), there is a *'carve out'* from the rule that the sex of someone with a GRC becomes their acquired gender where there is contrary provision in the GRA itself or in any other enactment or subordinate legislation (FWS, §94). It is not necessary for this to be express: the 'carve out' under s9(3) will apply wherever the terms, context and purpose of another enactment show that a biological meaning of sex is intended, either because of a clear incompatibility or because its provisions would be rendered incoherent or unworkable if sex were treated as modified by a GRC for the legal purposes in question (FWS, §156).

   8.5. Under the EA 2010, a certified sex interpretation would render its provisions incoherent and unworkable, such that the 'carve out' under GRA, 9(3) applies

and references to 'sex', 'men' and 'women' are to biological sex wherever they appear in the EA 2010 (FWS, s264).

8.6. The protected characteristic of gender reassignment, as defined in EA 2010, s7, is distinct from sex (FWS, §167): there is no conflation of those separate characteristics under the EA 2010 (FWS, §198-199, 241-244) and neither possession of that characteristic, nor undergoing any process of gender reassignment entails a change of the person's sex for the purposes of the EA (FWS, §200). Moreover, *'a person with the protected characteristic of gender reassignment is [not] entitled on that basis alone to be treated as if their sex has changed for any legal purposes'* (FWS, §201).

8.7. One of the central reasons why a certified meaning of sex under the EA 2010 would produce incoherent and unworkable results is that whether or not someone has a GRC cannot provide a rational or coherent basis for distinguishing between the treatment of different persons with the protected characteristic of gender reassignment under the EA 2010. Persons who possess that characteristic include people who are proposing to undergo such a process as well as people at all stages of any such process, and in any event it is not necessary for any such process (or intended process) to include any particular physiological change or change in outward appearance. Similarly, there is no requirement for any particular modification to a person's appearance in order to obtain a GRC. This means that there is no obvious or outward means of distinguishing between people with the protected characteristic of gender reassignment who have and have not obtained a GRC, and the biological sex of any such persons may be readily perceivable whether they have obtained a GRC or not (FWS, §202).

Current policy and practice in relation to allocation of trans-identifying male prisoners within the prison estate

9. We begin by setting out our understanding of the current policy and practice in relation to the allocation of trans-identifying male prisoners, the lawfulness of which we are asked to consider.

10. The current policy in that regard is set out in an HMPPS policy entitled *'The Care and Management of Individuals who are Transgender'*, originally implemented on 31 October 2019 and re-issued in November 2024 ('the 2024 Allocation Policy').[1] On 15 May 2025, Lord Timpson informed the House of Lords that *'[f]ollowing the Supreme Court ruling in the For Women Scotland case, the Lord Chancellor has commissioned a review of transgender prisoner allocation policy*'. However, no updated policy has yet been produced to address the implications of FWS. It may be that HMPPS is awaiting approval of the anticipated new statutory EHRC Code of Practice for service providers and public authorities by Parliament before completing its review of the 2024 Allocation Policy: the EHRC provided that Code in draft to the Minister some considerable time ago; it has not yet been laid before Parliament but recent indications are that the Minister intends to do so after the Scottish Parliament elections. If HMPPS is indeed awaiting approval of the Code by Parliament, it should not be: whilst it will no doubt wish to ensure that its own policy is consistent with the Code, the decision of the Supreme Court in FWS is nevertheless binding with immediate effect and the Minister herself has publicly stated that service providers and public authorities should ensure that they are complying with the law and should not wait for the EHRC Code before doing so. In any event, for the purposes of this Opinion, we therefore proceed on the basis that the 2024 Allocation Policy continues to reflect current policy and practice.

11. The provisions of the 2024 Allocation Policy are detailed and not always as clear as might be hoped. The following is a summary of the key aspects of what we understand to be the effect of the 2024 Allocation Policy (references in square brackets within the following summary are to paragraphs in that Policy):

[1] We have also been provided with a Parole Board document entitled *Guidance on Prisoners who are Transgender*, which was issued in June 2025 and refers to being under review at that time. However, as this is a Parole Board document, it does not determine prison service policy in relation to the location of trans prisoners.

11.1. The primary focus of the 2024 Allocation Policy is on prisoners who express a consistent desire to live permanently in the opposite gender from their (biological) sex, who may or may not have had gender reassignment surgery and may or may not have obtained a GRC under the GRA [§1.3].

11.2. Initial allocation of trans-identifying male prisoners upon arrival into custody is as follows [§§4.6-4.10, 4.36 & Annex A]:

(a) If the individual has a conviction or current charge for a violent or sexual offence[2], or intact male genitalia, he will initially be allocated to the male estate if he does not have a GRC. If he does have a GRC, he will be allocated either to the male estate or, if a Complex Case Board (see further below) is convened and decides it is appropriate, he may be allocated to separate accommodation within the women's estate, which is provided on E Wing at HMP/YOI Downview and is considered further below.

(b) If the individual does not have a conviction or current charge for a violent or sexual offence and has undergone gender reassignment surgery, he will initially be allocated to the male estate if he does not have a GRC, or to the general women's estate[3] if he does have a GRC.

11.3. Within 14 days of a trans prisoner's arrival into custody, a Local Case Board ('LCB'), comprising local prison managers and others specified at [§4.38], will be held. This will consider (amongst other things) the ongoing allocation of the individual [§4.28]. Generally, if the individual agrees, the LCB will seek to manage trans-identifying male prisoners who do not have a conviction or current charge for a sexual or violent offence and have undergone

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[2] The specific offences which count for these purposes are listed in Annex D to the 2024 Allocation Policy.

[3] The term 'general women's estate' here is intended to refer to accommodation within an ordinary women's prison, as distinct from the specific accommodation for trans-identifying male prisoners with only limited integration with the general population of women prisoners on E-Wing at HMP/YOI Downview.

gender reassignment surgery within the male estate if they do not have a GRC, and within the general women's estate if they do have a GRC [§4.17]. Where a trans-identifying male prisoner has a conviction or current charge for a sexual or violent offence, and/or has intact male genitalia, the LCB will again seek to manage the individual within the male estate if he does not have a GRC [§4.17], but if he does have a GRC a separate Complex Case Board ('CCB') will be convened to consider his circumstances [§§4.10, 4.19, 4.36].

11.4. A CCB will also be convened if (amongst other things) the LCB considers that the allocation should be different from that indicated in the previous paragraph, or if allocation to the general women's estate is sought for a trans-identifying male prisoner with a conviction or current charge for a sexual or violent offence and/or intact male genitalia, or if there are particular risks to the individual, or if they present a particular risk to others arising from their current location [§§4.18, 4.42].

11.5. A CCB is chaired by a Prison Group Director with other members specified in [§4.45]. It will assess the respective risks posed to, and by, the individual and determine the appropriate allocation. This may result in any trans-identifying male prisoner being allocated to either the men's or the women's estate. However, in the case of a trans-identifying male prisoner who has a conviction or current charge for a sexual or violent offence and/or intact male genitalia, any recommendation by the CCB that such an individual should be allocated to the general women's estate (as opposed to the separate provision within the women's estate on E Wing at HMP/YOI Downview) must then be referred to the HMPPS Director General of Operations and the Secretary of State for Justice for a final decision [§§4.6-4.10, 4.19, 4.35, 4.46].

11.6. At any assessment by either an LCB or CCB, the trans-identifying male prisoner must be asked for his view on allocation [§4.17]. The 2024 Allocation Policy states that *'[a]ll assessments must be made on a case-by-case basis'* and the relevant Board must *'balance'* the risks to the welfare and rights of the trans-identifying male prisoner, and the welfare and rights of others in custody [§§4.20-4.23].

11.7. The specific factors which an LCB and/or CCB are directed to take into account in making that assessment are as follows [§4.24] (emphasis in original):

> '**Potential risks <u>to the individual</u> from others, or personal vulnerabilities of the individual, related to: (*indicates critical factors)**
>
> - *Mental health and personality disorder;
> - *History of self-harm;
> - *Anatomy, including risk of sexual or violent assault;
> - *Individual's testimony of a sense of vulnerability, e.g. in a male environment, in a particular prison, or from a particular prisoner or group of prisoners;
> - *Risk of suicide;
> - *Medication including the absence of medication and the impact of known side effects;
> - *History of being attacked, bullied or victimised;
> - *Intelligence/evidence of coercion, manipulation, or threats towards the individual Family circumstances/relationships;
> - Age;
> - Physical health; and
> - Learning disabilities or difficulties.
>
> **Potential risks <u>presented by</u> the individual to others in custody and an AP related to: (*indicates critical factors)**
>
> - *Offending history, including index offence, past convictions and intelligence of potential criminal activity- e.g. credible accusations;
> - *Anatomy, including considerations of physical strength and genitalia;
> - * Sexual behaviours and relationships within custodial/residential settings;
> - *Use of medication relating to gender reassignment; and use of medication generally;
> - *Past behaviour in custody, the community, in the care of the police, or in the care of prisoner escort services;
> - *Intelligence reports;
> - *Evidence of threats towards others;
> - *Mental health and personality disorder;

- Learning disabilities or difficulties; and
- Substance misuse.

Views/characteristics of the individual: (*indicates critical factors)

- *Birth sex, legal gender and presented gender;
- *Strength of confirmation of presented gender, including medical treatments and full evidence of gender identity (such as a birth certificate, or a GRC); and
- *View on establishment allocation, prison management and lifestyle.

12. In summary, therefore, although there are various default or presumptive positions, the 2024 Allocation Policy ultimately provides for a case-by-case assessment in relation to the allocation of each trans-identifying male prisoner to consider whether an exception should be made from the presumptive allocation for that individual. Those assessments could result in such prisoners being allocated to one of 3 locations, as follows:

12.1. The male estate – The presumption is that trans-identifying male prisoners who do not have a GRC will be allocated to the male estate, but exceptions may be made both to allocate those prisoners to other parts of the estate, or to allocate other prisoners for whom the presumption is different to the male estate.

12.2. The general women's estate – The presumption is that this will be the allocation for trans-identifying male prisoners who have a GRC, who do not have a conviction or current charge for a sexual or violent offence and who have undergone gender reassignment surgery. In addition, exceptions may be made to permit the allocation of any other trans-identifying male prisoners to the general women's estate, although if the individual has a conviction or current charge for a sexual or violent offence and/or intact male genitalia, then approval is required from the HMPPS Director General of Operations and the Secretary of State for Justice.

12.3. Separate accommodation within the women's estate on E Wing at HMP/ YOI Downview – The presumption appears to be that this will be the allocation for trans-identifying male prisoners with a GRC who have a conviction or

current charge for a sexual or violent offence and/or intact male genitalia, though again others may also be accommodated here if that is the conclusion of their individual case assessment. There is little information about the precise regime within this unit. Our understanding is that it was previously a maternity unit and can accommodate up to 16 prisoners, who sleep, wash, dress and engage in general association separately from the main population of women prisoners at HMP/ YOI Downview. However, some purposeful activities, education, faith services and social visits are undertaken by trans-identifying male prisoners on that unit alongside the general population of women prisoners at the prison, subject to general oversight by prison staff in the same way as for prisoners generally (representing a change from previous practice of requiring 1:1 supervision during activities undertaken alongside the general population of the prison)[4]. It is not clear, but seems likely, that there must be some sharing of facilities such as toilets in the context of those activities.

13. We would observe at this stage that although the 2024 Allocation Policy describes the exercise of assessing the appropriate allocation for a particular trans-identifying male prisoner as requiring the relevant Board to 'balance' the respective risks to the welfare and rights of that prisoner and others, it appears that there is an asymmetry to this exercise. In particular, the trans-identifying male prisoner is asked his view as to his preferred allocation and this is taken into account alongside his individual circumstances and characteristics; whereas there does not appear to be any *individual* assessment of the views or risks to specific women prisoners with whom that individual may come into contact if allocated either to the general women's estate or to E Wing at HMP/ YOI Downview. It does not appear that any of those women are asked their individual views about their preferences or the impact on them of being required to undertake activities in a prison environment with a prisoner whom they may recognise as male. Nor does it appear that their individual histories and/or vulnerabilities are taken into account as part of the 'balancing' of

[4] *Annual Report of the Independent Monitoring Board at HMP/ YOI Downview for reporting year 1 May 2024 to 30 April 2025,* September 2025, p18

risks to welfare or rights: the criteria to which the LCB and/or CCB are directed in making the assessment of the risks *'presented by'* the individual are focused on *his* history and propensities, not on the risks to the welfare or rights of individual women which may arise from contact – either in the general prison setting (including in intimate spaces) or for certain activities – with a (biological) man whom they may recognise as such, as part of a prison regime over which they have little control and within a prison environment that they cannot leave.

14. As the discussion of the characteristics of the population of women prisoners below indicates, women prisoners may be at risk of re-traumatisation, distress and other harm from being imprisoned alongside someone they may recognise as a man *even if* that individual himself behaves perfectly well. It does not appear that the risks to *individual* women prisoners based on their *particular* histories and vulnerabilities in that regard (or in any other respect) are identified or taken into account in the 'case-by-case' assessment conducted to determine the allocation of trans-identifying male prisoners. It therefore appears that the 'case-by-case' aspect of this assessment is focused on the individual trans-identifying man and his particular circumstances: there is no equivalent 'case-by-case' assessment of the impact on individual women prisoners who may be affected.

15. Finally, our attention has been drawn to recent press reports which suggest that the policy described above may not be applied to remand prisoners, with reports that at least one trans-identifying male prisoner with a history of violent sexual offending was accommodated on remand within the general women's estate without an assessment carried out, and/or ministerial authority being given, in accordance with the policy described above. If that is what has happened, that is in our view clearly contrary to the 2024 Allocation Policy itself – as well as being wholly unjustifiable – since the policy makes clear that it applies equally to remand prisoners.

Characteristics and needs of the relevant prison populations

16. Any analysis of how the law applies in relation to the treatment of trans-identifying male prisoners and their potential accommodation within women's prisons must be underpinned by a clear understanding of the characteristics and needs of the two populations affected by those issues, namely women prisoners and trans-identifying

male prisoners. In particular, it is necessary to understand both the needs and vulnerabilities of each of those groups, and how their characteristics may impact on each other, depending on where and how trans identifying male prisoners are accommodated within the overall prison estate.

17. In that regard, we will first consider the characteristics and needs of women prisoners because (as will be seen) it is those characteristics and needs which provide the justification for having separate women's prisons in the first place. Therefore, any impact on those underlying reasons for having separate women's prisons must be central to any analysis of the potential accommodation of trans-identifying male prisoners within women's prisons.

18. Second, we then identify the characteristics and needs of trans identifying male prisoners, both as regards their own needs and vulnerabilities, and in respect of their offending profile as a group and the risks that may arise from that profile.

19. Third, we consider the implications of the respective needs and characteristics of the two populations for the potential impact on, and/or risks to, women prisoners, if trans-identifying male prisoners are accommodated within the female estate.

The characteristics and needs of women prisoners and the need for separate accommodation

20. It is generally accepted, as an international legal norm, that male and female prisoners should be accommodated separately. By way of illustration, the UN's Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)[5], provide, at Rule 11:

[5] The Rules are not binding, but *'[t]hey seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management'*: see Preliminary Observation 1 of the Rules.

'The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus:

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate…'

21. Where prisons are required to hold both male and female inmates (albeit separately), Rule 81 provides for a clear demarcation in responsibility, stating:

'1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.

2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.

3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.'

22. Similarly to the United Nations' position, the European Prison Rules[6], which were updated on 1 July 2020, provide, at Rule 18.8-18.9:

'18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

…

[6] The European Prison Rules were originally adopted by the Council of Europe's Committee of Ministers on 11 January 2006. They were revised and re-adopted on 1 July 2020. The Committee of Ministers recommends that governments of member States *'be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation Rec(87)3 of the Committee of Ministers on the European Prison Rules'*.

b. male prisoners separately from females…

18.9 Exceptions can be made to the requirements for separate detention in terms of paragraph 18.8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.'

23. The need to accommodate male and female prisoners separately is re-enforced by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ('CPT')[7], in their 2018 report *Women in Prison*[8]:

'In the CPT's experience, although violence among women in prison can certainly occur, violence against women by men (and, more particularly, sexual harassment, including verbal abuse with sexual connotations) is a much more common phenomenon. Women in prison should, therefore, as a matter of principle, be held in accommodation which is physically separate from that occupied by any men being held at the same establishment.'

24. The principle of accommodating male and female prisoners separately is premised on the recognition that their needs and experiences are very different. That these differences exist is reflected throughout the evidence we considered.

25. By way of example, on 21 December 2010, the United Nations' General Assembly adopted Resolution 65/229 – *The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* ('the Bangkok Rules')[9]. The General Assembly considered that *'women prisoners are one of the*

[7] The CPT is responsible for visiting places of detention across the member states of the Council of Europe. CPT delegations have unlimited access to places of detention, and can move around such places without restriction.

[8] https://www.coe.int/en/web/cpt/women-in-prison

[9] https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

vulnerable groups that have specific needs and requirements'. The Preliminary Observations to the Bangkok Rules recognised that:

> 'The Standard Minimum Rules for the Treatment of Prisoners apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency.'

26. Similarly, the European Prison Rules recognised the need to formulate gender sensitive policies to meet the *'distinctive needs of women'*. Rule 34 provides:

> '34.1 Specific gender-sensitive policies shall be developed and positive measures shall be taken to meet the distinctive needs of women prisoners in the application of these rules.
>
> 34.2 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women, such as their physical, vocational, social and psychological needs, as well as caregiving responsibilities, when making decisions that affect any aspect of their detention.
>
> 34.3 Particular efforts shall be made to protect women prisoners from physical, mental or sexual abuse and give access to specialised services for women prisoners who have needs as referred to in Rule 25.4, including being informed of their right to seek recourse from judicial authorities, legal assistance, psychological support or counselling, and appropriate medical advice…'

27. Moreover, the CPT recorded, in its 2018 *Women in Prison* report[10]:

> '…Women usually make up a very small minority of the overall prison population, albeit a growing one in some countries. Importantly, they are characterised by having particular needs and vulnerabilities which differ from those of men. In combination with these differences, the fact that women are far fewer in number poses a variety of

[10] https://www.coe.int/en/web/cpt/women-in-prison

challenges for prison administrations, often resulting in less favourable treatment as compared to imprisoned men. This stems from the fact that prison rules and facilities have been developed for a prison population in which the male prisoner is considered to be the norm….

Women in prison constitute a group with distinctive needs, biological as well as gender specific. Some female prisoners also have particular vulnerabilities due to their social situation and cultural roles. There is a risk that the specific needs of women will be disregarded, especially as they are a minority category of prisoners. It is important that a number of factors are taken into account when dealing with women prisoners, notably any physical, sexual or psychological form of violence, including domestic violence, they might have suffered before the imprisonment, a high level of mental health-care needs, a high level of drug or alcohol dependency, specific (for example, reproductive) health-care needs, caretaking responsibilities for their children and/or their families, and the high likelihood of post-release victimisation and abandonment by their families.'

28. In addition to the international documents cited above, the differences in male and female prisoners' needs have been fully canvassed domestically over the past 20 years. In the seminal 2007 Corston report, Baroness Corston stated, at 2.1:

'I have been dismayed at the high prevalence of institutional misunderstanding within the criminal justice system of the things that matter to women and at the shocking level of unmet need. Yet the compelling body of research which has accumulated over many years consistently points to remedies. Much of this research was commissioned by government. There can be few topics that have been so exhaustively researched to such little practical effect as the plight of women in the criminal justice system. The volume of material might lead one to suppose that this is a highly controversial area, which might account in some way for the lack of progress and insight in the way women continue to be treated. This is not the case. There is a great deal of evidence of fundamental differences between male and female offenders, which I summarise here and will explore further in this chapter.

- Women and men are different. Equal treatment of men and women does not result in equal outcomes. Homes and children define many women's lives. To take this away from them when it may be all that they have causes huge damage to women….'

29. Following on from the Corston report, in 2018, the Government announced its Female Offender Strategy[11], with the aim to improve the outcomes for women in contact with the criminal justice system. The strategy recognised that:

> 'Outcomes for women in custody can be worse than for men: for example, the rate of self-harm is nearly five times as high in women's prisons. This disparity is highly troubling and it is right to seek to create equal opportunity for men and women in the CJS to rehabilitate themselves. Baroness Corston's seminal report, A review of women with particular vulnerabilities in the Criminal Justice System (2007), highlighted that the factors that can lead men and women to commit crime, and to reoffend, can vary significantly, as can the way men and women respond to interventions. Our own evidence review suggests that ensuring interventions are tailored appropriately to the particular needs of women can be more effective than applying a generic approach to men and women alike.'

30. The Government's Female Offender Strategy Delivery Plan 2022-2025[12] recognised that (p9):

> 'Women in contact with the criminal justice system are amongst the most vulnerable in society. Many experience trauma, domestic abuse, mental health problems or have a history of alcohol and drug misuse. Prisoners with disabilities are overrepresented amongst the female offender population, and whilst most girls in care and care leavers do not become involved with criminal activity, they also remain overrepresented in the criminal justice system. Female offenders are also more likely than male offenders to be the main carer for dependent children.
>
> Evidence shows that sex shapes experiences of custody and justice. Factors that can lead men and women to commit crime, and to reoffend, can vary significantly, as can the way men and women respond to interventions designed to address their offending behaviour. There is evidence that an approach that takes account of the different needs

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[11] https://assets.publishing.service.gov.uk/media/5b3349c4e5274a55d7a54abe/female-offender-strategy.pdf

[12] https://assets.publishing.service.gov.uk/media/63d78f63e90e0773e01f8960/female-offender-strategy:delivery-plan-2022-25.pdf

and backgrounds of women, including those of ethnic minority women who are overrepresented in the criminal justice system, is most effective in addressing their offending behaviour.'

31. Female prisoners' vulnerability is illustrated by the following statistics:

31.1. Victims of violence and sexual abuse prior to incarceration – Female inmates are likely to have been subjected to violence prior to their incarceration. The figures are stark: almost 60% of women who offend have experienced domestic abuse[13]. Female prisoners are twice as likely to report experience of abuse during childhood (53% versus 27% of male prisoners). Female prisoners who report having experienced abuse as a child are more likely to report suffering sexual abuse (67%) than male prisoners who have experienced abuse (24%)[14].

31.2. Mental health – 76% percent of women in prison report having mental health problems compared to 51% of men[15]. In the 12 months to March 2025, the rate of self-harm was more than 8 times higher in female establishments than male establishments (5,906 incidents per 1,000 prisoners in the female estate compared with 684 incidents per 1,000 prisoners in the male estate)[16]. According to HM Inspectorate for Prisons, the number of incidents of self-harm

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[13] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

[14] Ministry of Justice's Female Offender Strategy Delivery Plan – Equalities statement: https://assets.publishing.service.gov.uk/media/63d3c55de90e0773d99d5986/equalities-statement-female-offender-delivery-plan.pdf

[15] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

[16]Ministry of Justice's Safety in Custody Statistics, published 31 July 2025: https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-june-2025/safety-in-custody-statistics-england-and-wales-deaths-in-prison-custody-to-september-2025-assaults-and-self-harm-to-june-2025

in women's prisons *'has increased by an astonishing rate over the last 10 years'*. The Inspectorate noted an increase from 1,545 to 5,624 incidents per 1000 prisoners between 2013 and 2023[17]. To compound the high rates of self-harm, almost double the proportion of women in prison feel suicidal compared to men (34% versus 17%)[18].

31.3. Physical health and addiction – Nearly twice the proportion of women enter prison with a drug and/or alcohol problem, compared to men (40% versus 22%)[19]. Furthermore, nearly two thirds of women in prison have a history that suggests brain injury, often the result of domestic abuse[20].

31.4. Sentence length – A greater proportion of female offenders are sentenced for offences that tend to receive shorter sentences. In 2023, the average custodial sentence length for female offenders was 12.2 months compared 21.8 months for male offenders[21]. 62% of women are sentenced to six months or less, compared with 46% of men[22].

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[17] HM Inspectorate for Prisons' Time to care: what helps women cope in prison?, published in February 2025: https://hmiprisons.justiceinspectorates.gov.uk/hmipris_reports/time-to-care-what-helps-women-cope-in-prison/

[18] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

[19] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

[20] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

[21] Statistics on Women and the Criminal Justice System 2023, published on 30 January 2025: https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2023/statistics-on-women-and-the-criminal-justice-system-2023-html

[22] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

31.5. While in custody, women are also more likely than men to present with specific needs, including a higher prevalence of relationship needs (85% compared to 71%), accommodation (71% compared to 62%), drugs (53% compared to 49%), alcohol (29% compared to 20%) and employability needs (71% compared to 65%)[23].

31.6. Nearly 1 in 3 women in prison spent time in care as children[24].

31.7. Over half of women in prison are separated from children[25].

32. The wide range of material referred to above in our view supports three central propositions:

32.1. First, the needs and experiences of women prisoners – including their physical, social and psychological needs – differ fundamentally from those of male prisoners, meaning that they require different interventions and regimes tailored to those different needs and experiences.

32.2. Second, women prisoners are a particularly vulnerable group, with a high prevalence of experience of male violence, including sexual violence, as well as a high prevalence of mental health problems. Consequently, accommodation alongside men would risk adding to the trauma of women prisoners, particularly given the risk of further abuse – particularly sexual harassment, including verbal abuse with sexual connotations – by male prisoners.

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[23] Ministry of Justice's Female Offender Strategy Delivery Plan – Equalities statement: https://assets.publishing.service.gov.uk/media/63d3c55de90e0773d99d5986/equalities-statement-female-offender-delivery-plan.pdf

[24] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

[25] NHS England's – A review of health and social care in women's prisons, published on 23 November 2023: https://www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons/

32.3. Third, those differences are the main reasons why there is a clear international norm that women prisoners should be accommodated separately from male prisoners.

The characteristics and needs of trans-identifying male prisoners

33. It is difficult to obtain a clear picture of the population of transgender prisoners. Even the basic numbers are unclear. According to official statistics published on 27 November 2025[26], there were 339 known[27] transgender prisoners as at 31 March 2025. This represented an increase of 15% on the 2024 figure (despite the total prison population only increasing by 0.1% over the same period). Of those 339 known transgender prisoners, 276 reported their biological sex as male and 63 as female. Of the 276 biological men, 247 identified as women (and the remainder as non-binary or in some other way)[28]. These figures do not, however, include 9 prisoners who were known to have a Gender Recognition Certificate ('GRC'), in respect of whom there are no published data as to biological sex. Nevertheless,

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[26] HMPPS Offender Equalities Annual Report 2024-25: https://assets.publishing.service.gov.uk/media/6925ba5daca6213a492dd05b/HMPPS_Offender_Equalities_Annual_Report_2024-25.pdf

[27] The figures given are for prisoners who have identified themselves as transgender and who have had a Local Case Board to consider their location (see below). The report recognises that there may be other transgender prisoners who have not declared their transgender status, and that the prison population is dynamic meaning that transgender prisoners may have entered or left outside the data collection period.

[28] There is some discrepancy in the published figures, in that they state that 63 transgender prisoners reported their biological sex as female, but that 64 transgender prisoners identify as male. This implies that there is at least one person who identifies as transgender but is a biological male who also 'identifies' as male. But the definition of *'transgender males'* is said to be *'prisoners with a biological sex of Female who identify as Male'*. This does raise a question about the reliability of the data, including potentially as to whether the figure of 247 who are identified as being *'transgender females'* (i.e. prisoners with a biological sex of male who identify as female) is accurate. However, despite this question mark, it does at least appear clear that the significant majority of transgender prisoners are biological men who identify as women.

based on the published data as a whole, it is clear that the significant majority of transgender prisoners – in the region of 80% – are biological men who identify as women.

34. Of the 339 known transgender prisoners (without GRCs) as at March 2025:

    34.1. The great majority – 275 (81%) – were held in the male estate. Of these, most (245) were men who identify as women and the remainder were women who identify as men, or prisoners who identify as non-binary or in some other way;

    34.2. A minority – 64 (19%) – were held in women's establishments. Of these, most (61) were women who identify as men and the remainder were men who identify as women, or prisoners who identify as non-binary or in some other way.

35. Since the numbers of trans-identifying members of the opposite sex accommodated in each estate are not disaggregated, within the published data, from the numbers of transgender prisoners who identify as non-binary or in some other way, it is not possible to obtain a clear picture of the actual numbers of trans-identifying men who are accommodated in the women's estate, or vice-versa. This difficulty is compounded by the fact that there are no data in relation to the 9 prisoners who are known to have GRCs, as to whether they are accommodated in the estate corresponding to their biological sex or their acquired sex. Nevertheless, in broad terms it is clear that most transgender prisoners are accommodated in the estate which corresponds with their biological sex, but that a relatively small number of both trans-identifying male prisoners and trans-identifying female prisoners are accommodated in the estate for the sex with which they identify.

36. As to the offending patterns of the population of trans-identifying male prisoners, the evidence is limited due to unreliable[29] or incomplete data collection and

[29] Due, amongst other things, to a failure (replicated in slightly different ways in both the UK and Canada) to collect data which properly disaggregates biological sex, legally acquired sex, and gender identity.

publication both in the UK and in other comparable countries (such as Canada), and the relatively small size of the transgender prison populations in those countries generally. Nevertheless, from the material available to us it appears that it is possible to say with a reasonably high level of confidence that there is no evidence that trans-identifying male prisoners are, as a population, *less* prone to violent and/or sexual offending than male prisoners as a group generally (and some limited evidence that there may be a higher prevalence of such offending amongst trans-identifying male prisoners):

36.1. In R (FDJ) v Secretary of State for Justice [2021] EWHC 1746 (Admin), whilst noting the limitations of the data, Swift J was prepared to accept that *'the statistical evidence shows that the proportion of transgender prisoners who have been convicted of one or more sexual offences is substantially greater than the corresponding proportions of non-transgender men and women prisoners'*[30].

36.2. More recent data from Canada (which Professor Phoenix explains is comparable to the UK for these purposes[31]) similarly show a high level of incarceration for violent and/or sexual offending amongst trans-identifying male prisoners[32], and that the offending profiles of both trans-identifying male

[30] See also *Rights and Wrongs: How gender self-identification policy places women at risk in prison*, Professor Jo Phoenix (MLI, February 2023), p45: *'[N]early 60 percent of prisoners who were known transgender women were incarcerated for sexual violence as compared to only 1.8 percent of the general female prisoner population and 18 percent of the general male prison population. This pattern of disproportionately high rates of sexual offending among transgender women has remained stable for five years, even though the number of transgender prisoners has more than doubled.'*

[31] *Ibid.*, pp23-25.

[32] *Gender diverse prisoners and sex-based patterns of offending*, Professor Jo Phoenix (MLI, September 2023), p5.

prisoners and trans-identifying female prisoners *'more closely resemble their respective biological sexes'*[33].

36.3. Other more recent data from the UK again shows the same picture. On 24 November 2025, Rebecca Paul MP informed the House of Commons[34] that:

> 'In 2024, of the 245 transgender males—biological males with a trans identity—in prison, 151, or 62%, were convicted of a sexual offence. This is a far, far higher rate than that for the overall male prison population, which is only around 17%. And it is not a one-off either: a similar rate can be seen for 2023—a rate of 56%. So sexual offences are massively over-represented in this specific cohort of biological males.'

37. In short, therefore, the evidence tends to indicate that, at the population level, the propensity of trans-identifying male prisoners to violence and sexual abuse is no lower than the propensity of male prisoners in general.

38. Turning to the needs and vulnerabilities of trans-identifying male prisoners, there is some evidence that such prisoners may be vulnerable. The Prison and Probation Ombudsman's ('PPO') report, published in January 2017[35], noted that:

> 'Transgender prisoners are among the most vulnerable, with evident risks of suicide and self harm, as well as facing bullying and harassment.'

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[33] *Ibid.*, p8.

[34] Hansard debates for 24 November 2025: https://hansard.parliament.uk/Commons/2025-11-24/debates/39E38194-1453-4B00-B552-2549E0643A42/HMPDownviewFemalePrisoners?highlight=transgender%20prison#contribution-F3B6F479-13DA-4922-9B18-8C7029A20FC2

[35]The Prison and Probation Ombudsman's – Learning Lessons Bulletin – Transgender Prisoners: https://ppo.gov.uk/learning_research/learning-lessons-bulletin-issue-3-transgender-prisoners/

39. Quoting from a 2008 report, the PPO stated that *'[p]revious research has shown there is greater prevalence of mental health concerns and risk of suicide in the transgender population'*.

40. More recently, the CPT, in its report on Transgender Persons in Prison, published in April 2024[36] recorded that:

> 'It is well recognised that transgender – as well as all LGBTI persons in detention – are in an overall situation of vulnerability, at the risk of potential intimidation and abuse by other detained persons, as well as by prison staff. The placement of a transgender person in a prison section accommodating persons of a different gender from that with which they identify also inherently heightens the risk of violence and intimidation directed towards that individual.'

41. However, notwithstanding the above, we have been unable to identify data regarding transgender prisoners' vulnerability of equivalent robustness to the evidence available in respect of female prisoners. This may in part be because of the relatively small numbers of transgender prisoners currently held within the prison estate, together with a lack of research that is properly applicable to the transgender prison population in the UK: see in particular the work of Professor Phoenix explaining why the evidence of risks to trans-identifying male prisoners held in men's prisons is generally from the US and is not applicable to the very different circumstances in countries such as the UK and Canada, together with an absence of relevant evidence showing that being accommodated in a prison for the sex with which they identify materially *reduces* risks such as the risk of self-harm[37].

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[36] CPT's Prison Standard – Transgender Persons in Prison, published in April 2024: https://rm.coe.int/1680af7216

[37] See in particular *Rights and Wrongs: How gender self-identification policy places women at risk in prison* (MLI, February 2023), pp23-32.

Potential impact on women prisoners of being accommodated with trans-identifying male prisoners

42. As can be seen from the discussion of the current policy above, the possibility of trans-identifying male prisoners being accommodated in women's establishments is not an all-or-nothing matter. First, some but not all trans-identifying male prisoners may be accommodated within the women's estate, based on individual risk assessment. Second, even for those who are accommodated within the women's estate, there may be greater or lesser degrees of integration, so that contact with women prisoners may be limited for some trans-identifying male prisoners who are nevertheless accommodated within the women's estate (see for example the particular regime for trans-identifying male prisoners held on E-Wing at HMP/ YOI Downview).

43. Consequently, the potential risks to, and/or impact on, women prisoners of accommodating trans-identifying men within the women's estate need to be considered with a degree of nuance to reflect those different possibilities. In our view, it is most helpful, for the purpose of informing the ultimate analysis of the legal position, to consider the following different aspects of the potential impact on women prisoners:

    43.1. First, the risk that a trans-identifying male prisoner may actively engage in violence or sexual abuse (including verbal abuse with sexual connotations) against women prisoners;

    43.2. Second, the potential impact on women prisoners if required to share intimate spaces, such as toilets or washing facilities, with trans-identifying male prisoners; and

    43.3. Third, the potential impact on women prisoners if required to share non-intimate spaces with trans-identifying male prisoners, such as during association, exercise, work, education or other therapeutic or purposeful activity.

Risk of assault or abuse

44. As discussed above, the offending profile of trans-identifying male prisoners at the population level does not indicate any lower prevalence of violent and/or sexual offending than the male prison population generally (and if anything suggests that the prevalence of such offending may be higher). Therefore, there is no evidence that trans-identifying male prisoners, as a general population, present a lower risk of assault or abuse than male prisoners generally.

45. However, as already noted, the current policy in England and Wales is not to accommodate trans-identifying men generally within the women's estate, but to do so for a small number of such prisoners based on individual risk-assessment. Therefore, the real question so far as the risk of assault or abuse is concerned is not what the risk is at the population level, but whether that risk can be effectively managed by individual risk assessment.

46. There are, in our view, two aspects to this question. The first concerns the risk of physical sexual assault. The second concerns the risk of sexual harassment or abuse (including verbal abuse of a sexual nature), short of physical sexual assault.

47. As to the risk of physical sexual assault, clearly screening out trans-identifying prisoners who have a known history of such offending will reduce the risk. Equally, however, it is also clear that the absence of a history of such offending is no guarantee that someone will not engage in such conduct in the future. In general, men have a greater propensity to such offending than women, and (as noted above) there is no evidence that this propensity is lower for trans-identifying men. Therefore, it may be said in the abstract that there is no evidence that the risk presented by a trans-identifying male prisoner with no history of violent or sexual offending will be lower than the risk presented by any other male prisoner with no such history. What is less clear is how significant (or otherwise) that risk actually is.

48. The available evidence as to the actual level of sexual assaults perpetrated by trans-identifying male prisoners is limited. In June 2020, the Ministry of Justice

responded to a Freedom of Information Act request[38], in which the applicant had asked how many of the 97 sexual assaults that had been perpetrated in the female prison estate had been carried out by transgender prisoners. The Ministry of Justice responded in the following terms:

> 'In relation to the 97 sexual assaults in the female establishments between 1st Jan 2016 and 31st Dec 2019, 7 were incidents where prisoners who identify as transgender were involved. And of the 7 incidents, 6 were assaults where a transgender prisoner was the assailant or suspected assailant. In the 7th incident, the transgender prisoner had 'active involvement', which means they didn't necessarily start the assault.'

49. However, in 2019, the policy was changed so as to introduce a presumption that trans-identifying male prisoners with a history of violent or sexual offending would *not* be accommodated in the general women's estate (see above). Since 2019, the Government insists that there have been no assaults against women prisoners committed by trans-identifying male prisoners. In the aforementioned Parliamentary debate of 24 November 2025, Alex Davies-Jones MP assured the House that *'[t]here have been zero assaults and zero sexual assaults committed by transgender women in the women's estate since 2019'*[39].

50. Therefore, the available evidence, though limited, would tend to suggest that applying the presumption that trans-identifying prisoners with a history of violent or sexual offending should not be accommodated in the women's estate *may* be an effective means of managing the risk of physical sexual assault. However, there does of course remain a residual risk because the fact that a man does not have a conviction or charge for a violent sexual offence only reduces the risk: it does not mean that there is no risk that he will engage in such conduct in the future, and it

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[38] https://www.gov.uk/government/publications/foi-releases-for-june-2020

[39] Hansard debates for 24 November 2025: https://hansard.parliament.uk/Commons/2025-11-24/debates/39E38194-1453-4B00-B552-2549E0643A42/HMPDownviewFemalePrisoners?highlight=transgender%20prison#contribution-F3B6F479-13DA-4922-9B18-8C7029A20FC2

remains clear that the propensity of men for such conduct is much greater than that of women, with no evidence that the propensity is lower for trans-identifying men.

51. We turn next to the second aspect of the risk of active abuse by trans-identifying prisoners, namely the risk of sexual harassment or abuse including verbal abuse of a sexual nature. As noted above, the CPT has explicitly recognised the risk of such non-physical abuse by male prisoners in general as a reason for having separate women's prisons in the first place[40]. Such conduct is different from, and is not necessarily linked to, violent or other physical sexual offending: within society in general there are plenty of men who engage in verbal sexual harassment but who never engage in violent or physical sexual offending, and it is clear that men have a greater propensity to such behaviour than women, and that the experience of such behaviour is endemic for women[41]. Again, there is no evidence that the propensity of trans-identifying men to engage in such behaviour is any lower than that of men in general. Therefore, it may be said that, in general, a trans-identifying male prisoner without a history of violent or sexual offending poses as much risk as any other male prisoner of engaging in verbal sexual harassment or abuse. It is unclear whether there has been any effort by HMPPS to identify or record any instances of such behaviour by trans-identifying male prisoners accommodated in the women's estate, or to establish any evidence base for assessing this risk at all. The 2024 Allocation Policy does not appear to require any consideration of this risk, as distinct from the risk of physical violence and/or sexual abuse.

52. In summary, therefore, whilst the evidence indicates that at the population level trans-identifying male prisoners pose (at least) as much risk of violent and/or sexual abuse as male prisoners in general, the evidence in relation to such prisoners who do not have a history of violent or sexual offending is less clear. On the evidence presently available, it appears that the risk of violent or other physical sexual assault

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[40] https://www.coe.int/en/web/cpt/women-in-prison

[41] See the expert report of Professor Phoenix to the employment tribunal in *Hutchinson & others v County Durham and Darlington NHS Foundation Trust*.

may be capable of being managed to some extent by screening out trans-identifying male prisoners with a history of such offending. However, it is not clear that there is any effective assessment of the extent of the residual risk of physical abuse, or any meaningful effort at all to assess or manage the risk of non-physical harassment or verbal abuse of a sexual nature.

Impact of being required to share intimate spaces

53. Although the risk of abuse of women prisoners by trans-identifying male prisoners may be the most 'headline-grabbing' of the possible consequences of accommodating such prisoners within the women's estate – and if that risk materialises it is obviously of great significance for any victims – that is not necessarily the most important risk overall. As discussed above, the main reasons for having separate women's prisons in the first place are the particular characteristics, needs and vulnerabilities of women prisoners as a group. Those are not confined to – or even primarily about – the risk of actual abuse, but are more to do with the specific needs of women prisoners and the ways in which those needs may be undermined if they are accommodated alongside men.

54. In particular, the high prevalence of the experience of male violence and abuse amongst women prisoners, coupled with the high levels of mental health problems, mean that women prisoners may be adversely affected by the presence of trans-identifying male prisoners within a women's prison, irrespective of any actual abuse by those prisoners. In that regard, as the Supreme Court noted in FWS (at §202), the biological sex of trans people may continue to be readily perceivable. The ability of different people to recognise the sex of any particular trans person will also vary. Therefore, if any trans-identifying man is accommodated in a women's prison, there will always be a risk (perhaps a likelihood) that some of the women in that prison will recognise that he is male.

55. The potential adverse impact on women prisoners arising from the accommodation of such prisoners within the general female estate is perhaps most apparent in intimate settings. Even for the general population outside prison settings, there is good evidence that there is an overwhelmingly greater prevalence of male violence and sexual offending against women and girls than vice-versa, that those

experiences are endemic to women's lives, and that asymmetric modesty norms (including norms based on religious belief[42]) persist, all of which mean that women are more likely to experience fear, distress and/or humiliation if required to use intimate spaces such as toilets or changing rooms in which they know and/or recognise that some biological men are or may be present[43], compared with men who are required to use such spaces in which they know or recognise that some biological women are or may be present. These are reasons for separate men's and women's toilet and changing facilities generally.

56. Within the prison setting, the characteristics of women prisoners identified above make the likely adverse impact on their privacy, dignity and sense of security from the presence of any man in any intimate settings all the more acute. The experience of male violence and abuse is even greater for women prisoners than for women in general. They also have no choice about the intimate spaces they are required use: women prisoners may be confined to a dormitory in which they shower, use the toilet and sleep. They cannot simply walk away. In its Female Offender Strategy Delivery Plan for 2022-25, the Government accepted that the *'[e]vidence shows that ensuring safety is essential to prisoners being able to address their offending need'*, and that *'[w]e know that the physical conditions in which women live can have a significant impact on outcomes, and that women in particular need to feel safe in order to engage effectively with the often-complex issues underlying their offending behaviour, including mental health, domestic and sexual abuse, and substance misuse.'*

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[42] See in respect of the particular impact on women with certain religious beliefs, Professor Phoenix's account of the potential for having been confined with male prisoners to increase the social ostracisation that such women face: *Rights and Wrongs: How gender self-identification policy places women at risk in prison* (MLI, February 2023), pp40-42.

[43] See again the expert report of Professor Phoenix which was accepted by the employment tribunal in reaching a conclusion to this effect in *Hutchinson & others v County Durham and Darlington NHS Foundation Trust*, 2501192/2024 & others, 14 January 2026, at §§412-416.

57. In FDJ, Holroyde LJ similarly accepted the potential adverse impact on women prisoners if required to share intimate spaces with a recognisably male trans-identifying prisoner. He said, at §76:

> 'I fully understand the concerns advanced on behalf of the claimant. Many people may think it incongruous and inappropriate that a prisoner of masculine physique and with male genitalia should be accommodated in a female prison in any circumstances. More importantly for the claimant's case, I readily accept that a substantial proportion of women prisoners have been the victims of sexual assaults and/or domestic violence. I also readily accept the proposition (for which Ms Hogarth provides evidence) that some, and perhaps many, women prisoners may suffer fear and acute anxiety if required to share prison accommodation and facilities with a transgender women who has male genitalia, and that their fear and anxiety may be increased if that transgender woman has been convicted of sexual or violent offences against women.'

58. These potential adverse impacts were echoed by Swift J, at §100:

> '…Like Holroyde LJ, I accept the psychological impact on non-transgender women prisoners held in prisons with transgender women is likely, in many instances, to be significant…'

59. In summary, therefore, there is in our view good evidence that accommodating trans-identifying male prisoners within the general women's estate, so that women prisoners are required to use intimate spaces alongside such prisoners, is likely to have a significant adverse impact on the privacy, dignity and sense of security of many women prisoners, and that this in turn is liable to harm their psychological wellbeing and their ability to engage effectively with the prison regime and the often complex issues underlying their offending.

Impact of being required to share non-intimate settings

60. There is also evidence that the mere presence of trans-identifying male prisoners in women's prisons – even in non-intimate settings such as association, exercise, work, education or other therapeutic or purposeful activity – can have an adverse impact on women prisoners, in particular on their psychological wellbeing and their ability to engage with the prison regime and with the reasons for their offending behaviour. For example:

60.1. In a foreword to a paper by Professor Phoenix, *Rights and Wrongs: How gender self-identification policy places women at risk in prison* (MLI, February 2023), Patricia Craven (a former prison governor for 28 years) gives an account (at p 8 of the paper) of how women prisoners may respond to the presence of a male prisoner within the prison setting in general (not limited to intimate spaces):

> 'In my experience, the dynamic of a female-only environment changes dramatically even when only one male is present. Some women vie for male attention but many more shun it. Their behaviour changes. They exclude themselves from the very activities that make the dull daily prison routine bearable and are intended to aid their mental and physical health: showers, exercise, work or education, association. They retreat to their cells. I have known women who have experienced a lifetime of male violence and sexual abuse, those who have endured coercive control, to be rendered mute by the presence of just one man.'

60.2. In that paper itself, Professor Phoenix notes (at p40) that the *'mere presence'* of male offenders may have a re-traumatising effect on women prisoners who have experienced male violence including sexual violence:

> 'There is a growing evidence base that takes the form of testimonials, but to date there has been no large-scale attempt to understand the effect of placing anatomical males who identify as women in women's prisons from the perspective of the women, or the prison officers. A former governor of a female prison (Rhona Hotchkiss) attests to the retraumatizing effect of placing transgender prisoners in female prisons. In a personal communication with this author, and in written evidence in a judicial review, Hotchkiss states that the mere presence of male offenders amongst a population that has disproportionately suffered male violence causes retraumatization, particularly if these individuals are also present in any prison programs designed for the women to address the male violence they have experienced.'

60.3. The former governor referred to by Professor Phoenix in that passage, Rhona Hotchkiss, provided an affidavit for the purposes of a recent judicial review challenge by For Women Scotland in relation to current prisons policy

in Scotland[44]. That evidence tends to support the view that the impact on women prisoners of the presence of trans-identifying men is not limited to intimate settings but can occur in the context of any setting or activity where women are confined with *'males they do not trust and, in some instances, actively fear*' (see in particular, §§9-10 of that statement).

61. In summary, on this aspect, the evidence tends to support the proposition that there is a risk to women prisoners' psychological wellbeing and engagement in important aspects of prison life from the mere presence of trans-identifying male prisoners.

Sex and gender in law: an overview

62. It is sometimes overlooked that the Supreme Court's decision in FWS is as much about the meaning and effect of the GRA as the EA 2010. The effect of the Court's decision in relation to the GRA is important because that provides the over-arching framework in relation to sex and gender in law and, in particular, sets clear limits on the ability of courts or tribunals to decide that a trans person should be treated in accordance with their target sex outside the scope of that framework.

63. The key relevant points relating to that general framework, for the purposes of the issues that it will be necessary to examine concerning the treatment of women prisoners and trans-identifying male prisoners, are as follows:

63.1. At common law, sex means biological sex (Bellinger v Bellinger [2003] 2 AC 467, HL, §§11-12 *per* Lord Nicholls; Chief Constable of West Yorkshire Police v A [2005] 1 AC 51, HL, §3 *per* Lord Bingham; §30 *per* Baroness Hale; FWS, §54).

63.2. In Bellinger, the House of Lords held – following the judgment of the Strasbourg Court in Goodwin v UK (2002) 35 EHRR 18 – that the absence of any possible legal recognition for the marriage of a post-operative transsexual

[44] https://forwomen.scot/wp-content/uploads/FWS-Affidavit-of-Rhona-Hotchkiss-unsworn-15Dec2025.pdf

in their acquired gender was incompatible with Articles 8 and 12 of the ECHR. However, the House also held that it was not open to the court (pursuant to the interpretation obligations under section 3 of the Human Rights Act 1998 ('HRA 1998')) to read down the legislation: since both *'the circumstances of transsexual people vary widely'* and *'the distinction between male and female is material in widely differing contexts'*, *'[t]he criteria appropriate for recognising self-perceived gender in one context… may not be appropriate in another'*, questions of demarcation as to when, and for what purposes, a trans person should be treated in accordance with the sex with which they identify are *'pre-eminently a matter for Parliament'* and are *'altogether ill-suited for determination by courts and court procedures'* (§§32, 34-49 *per* Lord Nicholls).

63.3. Following Goodwin and Bellinger, and prior to the enactment of the GRA, the courts did occasionally indicate a willingness to grapple with questions of demarcation where it was necessary to do so in order to address the practical application of specific statutory provisions in the field of discrimination law (see CC West Yorkshire v A, §§11-12 *per* Lord Bingham; §60 *per* Baroness Hale; and Croft v Royal Mail Group plc [2003] ICR 1425, CA, §39 & 47 *per* Pill LJ). However, in doing so they expressly indicated that the GRA, once enacted, would be determinative of the circumstances in which trans people are to be treated in accordance with their target sex for any relevant legal purpose and would supersede any such judicial determinations (CC West Yorkshire v A, §§42, 60 *per* Baroness Hale; Croft, §39 *per* Pill). Indeed, it is clear that both CC West Yorkshire v A and Croft are no longer good law: pursuant to the scheme of the GRA, and contrary to the decision in CC West Yorkshire v A, for the purpose of legislation governing intimate searches sex will have a biological meaning pursuant to s9(3) of the GRA (see FWS, §159); and the premise on which the Court of Appeal proceeded in Croft – namely that the definition of gender reassignment under what was then the Sex Discrimination Act 1975 entailed a change in 'sex' at some point in the process of transition (see §§37, 39 & 47 *per* Pill LJ) – clearly cannot stand in light of FWS (see in particular, §200; and see also in support of the proposition that Croft is no longer good law: R (Good Law Project & others) v Commission for

Equality and Human Rights [2026] EWHC 279 (Admin) ('GLP'), §§47-50 *per* Swift J).

63.4. Therefore, since its enactment, the GRA *'lays down a comprehensive scheme for recognising the reassigned gender of a trans person in defined circumstances'* (Chief Constable of West Yorkshire Police v A & another [2005] 1 AC 51, SC, §42 *per* Baroness Hale). In FWS, the Supreme Court reiterated the dicta in Bellinger (cited above) which make clear that the courts are not equipped or constitutionally competent to determine questions of demarcation and noted that it is the GRA which provides a *'framework for recognising a person's reassigned gender'* (§§66-68). That framework includes both setting down the criteria and mechanism by which a trans person can obtain legal recognition of their acquired gender by obtaining a GRC, and provision for the consequences of obtaining such recognition, including providing exceptions where possession of a GRC is *not* to be treated as changing a person's sex for relevant legal purposes (see in particular FWS, §§69, 75-77 & 94). Consequently, that scheme now constitutes a comprehensive and exhaustive scheme for determining both (a) the circumstances in which a trans person is entitled to be treated in accordance with their acquired gender for *any* legal purpose (i.e. by obtaining a GRC); and (b) the legal purposes for which they are, and are not, to be treated in accordance with their acquired gender.

63.5. In particular, pursuant to GRA, s9(3), sex will mean biological sex such that a trans person with a GRC is nevertheless to be treated in accordance with their biological sex for the relevant legal purpose, wherever the terms, context and purpose of another enactment show that a biological meaning of sex is intended, either because of a clear incompatibility or because its provisions would be rendered incoherent or unworkable if sex were treated as modified by a GRC for the legal purposes in question (FWS, §156).

63.6. In summary, therefore, pursuant to the scheme of the GRA and the legal context and principles outlined above, there are only two possibilities as to how a person's sex is to be determined for any legal purpose where sex is relevant to how they are to be treated: either (a) GRA, s9(1) applies and a person's sex

is their biological sex unless they have a GRC, in which case it is their acquired sex; or (b) the exception under GRA, s9(3) applies (or another specific exception applies) and a person's sex is simply their biological sex irrespective of whether they have a GRC. Pursuant to the limits on the proper functions of the courts articulated in Bellinger and reaffirmed in FWS (§66), it is not now open to a court or tribunal – still less an individual service provider or public authority – to decide that trans people, or any particular trans person or group of trans people, are to be treated in accordance with the sex with which they identify on some alternative and unlegislated-for basis: such questions of demarcation engage difficult questions of social policy involving competing rights and interests on which (as is well-known) there is no democratic consensus, and the courts are neither equipped nor constitutionally competent to determine such questions outside the comprehensive scheme which Parliament has enacted.

General legal framework for prisons and the treatment of prisoners

64. Before addressing the particular implications of the EA 2010 in relation to the accommodation and treatment of prisoners by reference to sex and/or gender identity, it is relevant first to identify the general legal framework applicable to prisons and prisoners, within which the implications of the EA 2010 then fall to be considered.

65. Pursuant to section 12(1) of the Prison Act 1952, *'A prisoner, whether sentenced to imprisonment or committed to prison or remand or pending trial or otherwise, may be lawfully confined in any prison.'*

66. There is an expectation that female prisoners will be held separately to males: Rule 12(1) of the Prison Rules 1999 provides:

> 'Women prisoners shall normally be kept separate from male prisoners.'

67. However, as recognised by the Divisional Court in FDJ, at §9, the terms of that rule are not mandatory[45]:

> 'There is no statutory requirement that male and female prisoners be accommodated in different establishments, but rule 12(1) of the Prison Rules 1999 (SI 1999/728) provides that: "Women prisoners shall normally be kept separate from male prisoners."'

68. Instead, the Secretary of State has a 'discretion' concerning the segregation of prisoners. In R (on the application of B) v Secretary of State for Justice [2010] 2 All ER 151, Admin, David Elvin QC (sitting as a Judge of the High Court) held, at §10:

> 'It is also common ground that, while the Secretary of State has a discretion with regard to the segregation of male and female prisoners under r.12(1) of the Prison Rules, in practice segregation of the sexes within the prison estate does occur. It is also undisputed that there are only two instances when (transgender considerations apart) women would be accommodated within a male prison: in cases where the requirement for security is so high that it cannot be met within the female prison estate or for temporary purposes e.g. transfer or holding during a court appearance. Neither of these cases is relevant here.'

69. Given the reasons for separate women's prisons discussed above, it is our view that the terms *'women prisoners'* and *'male prisoners'* in rule 12 of the Prison Rules 1999 are likely to have a biological meaning such that the exception in GRA, s9(3) will apply. That is because the reasons for separate sex prisons discussed above are inherently tied to biological sex, do not on the evidence cease to apply where someone identifies as the opposite sex, and are certainly not rationally connected with whether or not someone possesses a GRC.

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[45] This represented a change from the previous iterations of the Prison Rules: rule 9 of the Prison Rules 1964 provided that women prisoners *'shall'* be kept *'entirely separate'* from male prisoners, and that in a prison used for both, the parts used for each sex *'shall'* be *'entirely separate'*.

70. However, the point is in any event probably moot because, as noted, the rule is not absolute and is subject to a residual discretion. Therefore, even if we are right and the references to women and male prisoners are to biological sex, rule 12 by itself would not prevent the accommodation of some trans-identifying male prisoners in the women's estate, or vice-versa, if there were a proper (i.e. lawful and rational) basis for doing so. Conversely, even if we are wrong and sex in rule 12 is to be given a 'certified sex' reading pursuant to GRA, s9(1), it would equally not, by itself, prevent some or all trans people with a GRC and an acquired sex of female being accommodated in the male estate, or vice-versa, again if there were a proper (lawful and rational) basis for doing so.

71. In short, therefore, there is nothing in the general legal framework governing the treatment of prisoners, or rule 12 of the Prison Rules 1999 in particular, which either mandates or precludes the accommodation of some or all trans-identifying male prisoners in women's prisons. Consequently, whether that is lawful (and if so in what circumstances) will, in our view, be determined in practice by the EA 2010, which for the reasons which follow applies to prisons and governs the lawful provision of separate sex facilities.

Application of the EA 2010 to prisons and the treatment of prisoners

72. EA 2010, s29(2) makes it unlawful for a person concerned with the provision of a service to the public or a section of the public, whether or not for payment, to discriminate (amongst other things) as to the terms on which the service is provided, or by subjecting a person to whom the service is provided to any detriment. It is not clear whether prisoners constitute a *'section of the public'* for these purposes, but this does not matter because, in addition, s29(6) makes it unlawful for a person to discriminate in the exercise of a public function that is not the provision of a service to the public or a section of the public. Further, as will be seen, the relevant exceptions for separate sex services under paragraph 26 of Schedule 3 to the EA 2010 are not restricted to services which are provided to the *'public or a section of the public'*: for those purposes the provision of a service includes the provision of a service in the exercise of a public function, whether or not that service is provided to the public or a section of the public (s31(3)).

73. A public function for these purposes is any function of a public nature within the meaning of section 6(3) of the HRA 1998 (EA 2010, s31(4)). There is no doubt that the functions involved in running prisons – including establishing the basis for and/or providing prison accommodation and the associated regime for prisoners – are public functions for these purposes (Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank & another [2004] 1 AC 456, HL, §9 *per* Lord Nicholls). Therefore, it is clear that, in providing prisons, both HMPPS and other prison operators are providing a service in the exercise of their public functions to which both the prohibition on discrimination under s29 and the possible exceptions under paragraph 26 of Schedule 3 apply (whether or not prisoners are to be regarded as a *'section of the public'*).

74. Therefore, any person providing prison accommodation and the associated regime to prisoners will be under a duty, subject to any exception, not to discriminate against or harass prisoners. In addition, any person involved in establishing the basis on which prisons and the associated regime operate will be under a duty, again subject to any exception, not to discriminate in the exercise of that public function (cf R (Coll) v Secretary of State for Justice [2017] 1 WLR 2093, SC, §23 *per* Baroness Hale DPSC).

The basis for separate sex prisons under the EA 2010

75. It is not possible to analyse the implications of the EA 2010 for the treatment of trans-identifying male prisoners without first identifying the basis on which separate women's and men's prisons may be lawfully provided under the EA 2010 in the first place, because (as will be seen) the critical issue when it comes to analysing whether (and if so in what circumstances) it may be lawful to accommodate trans-identifying male prisoners within a women's prison is the impact that doing so would have on that legal basis for providing separate women's and men's prisons in the first place. It is, therefore, necessary to start by identifying the basis, under the EA 2010, for providing separate-sex prisons.

The position aside from any exception

76. It is necessary first to consider whether the provision of separate prisons for men and women would be lawful, aside from any exception, and if so on what basis. To

state the obvious, unless such provision would otherwise be unlawful, no exception would be needed in order to provide a legal basis for it under the EA 2010. Analysis of the interrelationship between the main types of potential prohibited conduct aside from any exception will also help to identify how that position will then be altered by any available exception.

77. The main forms of prohibited conduct which it is relevant to consider are direct discrimination (s13), indirect discrimination (s14) and harassment (s26).

Direct sex discrimination (EA 2010, s13)

78. Direct discrimination is defined in EA 2010, s13 as occurring where, because of a protected characteristic, a duty-bearer treats someone less favourably than the duty-bearer treats or would treat others. For these purposes:

    78.1. The comparison must be between individuals in materially the same circumstances (s23(1)).

    78.2. The material circumstances are those which, aside from the protected characteristic in question, the duty-bearer either does or would take into account in determining the treatment of either the claimant or a comparator (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL, §§135-136 *per* Lord Rodger; Macdonald v Ministry of Defence [2003] ICR 937, HL, §§64-65 *per* Lord Hope, §155 *per* Lord Rodger).

    78.3. Segregated provision will generally involve less favourable treatment of some or all of those excluded from each separate provision, unless it can be said that there are *no* circumstances in which *any* individual might reasonably regard him- or herself as being subject to a detriment by reason of being excluded from the services or facilities provided for the opposite sex and/or being unable to share those facilities with members of that sex (R (Coll), §34 *per* Baroness Hale DPSC; R (Al Hijrah School) v Chief Inspector of Education, Children's Services and Skills [2018] 1 WLR 1471, CA, §§63-68 *per* Sir Terence Etherton MR & Beatson LJ).

78.4. Therefore, generally single or separate sex provision will inherently involve unlawful direct sex discrimination because it will inherently involve differential treatment, expressly because of sex, amounting to less favourable treatment of at least some people by reason of being excluded from the services or facilities provided for the opposite sex.

79. In the case of separate-sex prisons, it is in our view beyond doubt that such provision will inevitably involve less favourable treatment of many (if not all) prisoners excluded from prisons provided for the opposite sex. In particular, many male prisoners who are vulnerable within the male estate – e.g. some gay male prisoners, some sex offenders, former police or prison officers, etc – might well (reasonably) consider themselves to be safer if accommodated in the women's estate. Other prisoners (of either sex) are likely to desire the company of members of the opposite sex and/or the opportunities for wider social, romantic and/or sexual relationships that might afford.

80. The foregoing analysis would also apply even if some trans people were to be treated as members of the sex with which they identify and accommodated within prisons provided for members of that sex: there would still be less favourable treatment, because of sex, of non-trans members of the opposite sex who continue to be segregated based on their sex (Preddy v Bull [2013] 1 WLR 3741, §§23-31 *per* Baroness Hale; Coll, §§28-31 *per* Baroness Hale; GLP, §58 *per* Swift J).

81. Consequently, aside from any exception, the provision of separate-sex prisons would, in our view, necessarily entail unlawful direct sex discrimination against members of each sex excluded from prisons provided for the opposite sex (whether or not some trans people are accommodated in accordance with their target sex).

Indirect sex discrimination (EA 2010, s19)

82. Indirect discrimination under EA 2010, s19 occurs where a duty-bearer applies a provision, criterion or practice ('PCP') and:

82.1. He applies or would apply that PCP equally to everyone whether or not they share the protected characteristic in question;

82.2. The PCP puts, or would put, people who share the relevant protected characteristic at a particular disadvantage compared with people who do not – The question in that regard is whether members of one sex are disproportionately disadvantaged by the PCP in question. This does not require that every member of that sex suffer the disadvantage (that would be direct sex discrimination), but that members of that sex are *more likely* to be put at a disadvantage than members of the opposite sex (see Essop & others v Home Office [2017] ICR 640, SC, §27 *per* Baroness Hale DPSC);

82.3. The claimant is, or would be, put at that disadvantage; and

82.4. The alleged discriminator cannot show that the PCP is a proportionate means of achieving a legitimate aim – The test in that regard is whether the PCP is appropriate and reasonably necessary to achieve the relevant objective and whether, weighing the importance of the objective against the discriminatory effects of the PCP, the former outweighs the latter (Chief Constable of West Yorkshire Police v Homer [2012] ICR 704, SC §§20-25 *per* Baroness Hale DPSC).

83. In the case of prison provision, if prisons were *not* segregated by sex at all, but were fully mixed-sex, the requirement for prisoners to be accommodated with members of the opposite sex would constitute a PCP applied equally to everyone. Moreover, that PCP would place women prisoners at a particular disadvantage compared with male prisoners because the particular needs and vulnerabilities of women prisoners (considered in detail above) would be compromised by their being imprisoned alongside men – in particular, because of the trauma that would be triggered for many women prisoners due to the high prevalence of experiences of male physical and sexual violence within that population. In addition, women prisoners would be likely to be at a greater risk of harm from male prisoners than vice-versa by reason of the greater propensity of male prisoners to violent and sexual offending, particularly against women (cf R (Coll), §38 *per* Baroness Hale DPSC). Finally, the different types of regime and different interventions required by women prisoners would be compromised by mixed-provision in which male prisoners would be in the overwhelming majority (cf R (Coll), §2 *per* Baroness Hale DPSC).

84. However, since separate or segregated provision necessarily involves direct sex discrimination (see above), in the absence of an exception, mixed-sex provision would always be justified as the only way of avoiding direct sex discrimination, despite the clear disadvantages to many women prisoners that this would entail. This reflects the fact that the general 'default' position under the EA 2010 is to require formally equal treatment.

85. An exception for direct sex discrimination is therefore needed in order to permit separate-sex provision to meet the different needs of each sex and to avoid the clear disadvantages to women prisoners that would otherwise arise from the obligation to avoid direct sex discrimination. Moreover, it follows from the discussion above that, if such an exception *is* available, failure to make use of it is in turn likely to constitute unlawful indirect sex discrimination against women prisoners because it is difficult to see how a duty-bearer could justify failing to make use of such an exception in order to address the disadvantages to women prisoners that would arise from fully mixed-sex provision.

Harassment related to sex (EA 2010, s26(1))

86. Harassment related to sex under EA 2010, s26(1) occurs where a duty-bearer engages in unwanted conduct *'related to sex'* which has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading or offensive environment for that person. The test for whether the treatment has such an effect has both a subjective aspect and an objective aspect: not only must the person actually have the subjective experience of the prescribed effect, but it must also be objectively reasonable to regard the treatment as having that effect. In that regard, if the treatment in question is expressly permitted (or required) under the EA 2010 itself and is implemented in a professional and reasonable manner, then it is unlikely to be objectively reasonable for such treatment to be regarded as having the prescribed effect (even if it is understandable that some people may subjectively experience that effect) (see Pemberton v Inwood [2018] ICR 1291, CA, §§88-89 *per* Underhill LJ).

87. In the context of prisons, determining the basis on which the sexes are accommodated – whether on a mixed-sex or sex-segregated basis – is clearly

conduct *'related to sex'*. Moreover, in light of the evidence considered above, it is clear that if prisons were operated on a fully mixed-sex basis, many women prisoners would regard that as unwanted conduct and would be likely to have a subjective reaction to being required to share both intimate and non-intimate prison spaces with male prisoners that would be likely to fall within the prescribed effect for the purposes of EA 2010, s26, by violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. However, in the absence of an exception, operating prisons on a fully mixed-sex basis would, in effect, be required by the EA 2010 as the only way of avoiding direct sex discrimination (see above) and it would therefore not be objectively reasonable to regard doing so as having the prescribed effect.

88. This analysis therefore again illustrates that an exception is needed in order to permit sex segregation in order to meet the needs of women prisoners. Moreover, if there *is* an applicable exception, it follows from the foregoing analysis that failing to make use of that exception and instead operating prisons on a fully mixed-sex basis would be likely to result in unlawful harassment related to sex against many (if not most or all) women prisoners.

Conclusion on the position aside from any exception

89. In summary, therefore, since the default position under the EA 2010 is to require formally equal treatment, in the absence of an exception, the only lawful option would be fully undifferentiated, mixed-sex prison provision because segregating the sexes (whether or not some trans people were treated in accordance with their target sex) would inherently involve unlawful direct sex discrimination. Since it is clear from the evidence considered above, that fully mixed-sex provision would in practice result in significant disadvantages to women prisoners, it follows both that an exception is required in order to meet their needs, and that if such an exception applies, failing to make use of it would be likely to result in unlawful indirect sex discrimination and/or harassment related to sex against many (if not most or all) women prisoners.

90. The critical questions for the purposes of determining what is, and is not, lawful regarding the treatment of trans prisoners are therefore:

90.1. What is the basis for the exception that permits separate-sex prison provision? and

90.2. Is it possible to rely on that exception even if some trans people are accommodated within women's prisons?

Exception for separate-sex provision (Sched. 3, §26)

91. The relevant exception is to be found in paragraph 26(2) of Schedule 3. Paragraph 26 as a whole provides as follows:

> **26 Separate services for the sexes**
>
> (1) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services for persons of each sex if—
>
> (a) a joint service for persons of both sexes would be less effective, and
>
> (b) the limited provision is a proportionate means of achieving a legitimate aim.
>
> (2) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services differently for persons of each sex if—
>
> (a) a joint service for persons of both sexes would be less effective,
>
> (b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex, and
>
> (c) the limited provision is a proportionate means of achieving a legitimate aim.
>
> (3) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

92. Where the specified conditions are met, paragraph 26(1) permits 'separate but equal' provision; whereas paragraph 26(2) permits 'separate and different' provision (R (Coll), §35 *per* Baroness Hale DPSC). (There are further exceptions for single-sex services provided for members of one sex only under paragraph 27.) As already noted above, the effect of paragraph 26(3) is that the exceptions are

available not only for a duty-bearer who directly provides a service but also for a duty-bearer who exercises public functions in relation to a service, including establishing, commissioning or regulating the service (R (Coll), §36 *per* Baroness Hale DPSC). If the conditions are met, the exceptions are therefore available in relation to the establishment, regulation and provision of separate women's and men's prisons.

93. It is the exception for 'separate and different' provision under paragraph 26(2) which is relevant for prison provision because it is clear that there are fewer women prisoners and therefore fewer women's prisons, and their needs are different (R (Coll), §37 *per* Baroness Hale DPSC). The conditions for that exception to apply are, in our view, clearly met:

93.1. A joint service for persons of both sexes would be less effective for essentially three reasons, already identified in summary in the context of considering potential indirect sex discrimination in relation to mixed-sex prisons (above):

(a) First, requiring women prisoners *'with their many vulnerabilities'*[46] to share prisons with male prisoners would be likely to re-traumatise many women prisoners, given the high prevalence of the experiences of male physical and sexual violence within the population of women prisoners. This risk may be particularly acute in settings where privacy and dignity are inherently important, such as toilet, washing or changing areas. But even in the context of general association or other rehabilitative or purposeful activities, the evidence suggests that requiring women who have significant experience of male physical or sexual violence to carry out such activities as part of a prison regime, in a setting which they cannot leave, may have re-traumatising or other harmful effects. Importantly,

[46] R (Coll), §38 *per* Baroness Hale DPSC.

these risks do not necessarily depend on the particular actions of the male prisoners themselves.

(b) Second, male prisoners *'by definition present a high or very high risk of harm'*[47] to women prisoners, if they are accommodated together, by reason of the general offending profile of male prisoners.

(c) Third, since it is well-recognised that the needs of women prisoners differ considerably from male prisoners as regards the prison regime and associated interventions, they could not be effectively met without separate provision (see R (Coll), §2 *per* Baroness Hale DPSC).

93.2. Since the population of women prisoners is very much smaller than that of male prisoners, it would not be reasonably practicable to provide prisons otherwise than as a separate service provided differently, because the numbers of women in each prison would be so comparatively small that it would be impractical to operate a separate regime dedicated to their (different) needs (cf again R (Coll), §38 *per* Baroness Hale DPSC). Moreover, the general international (legal) norm of sex segregation in prison provision means that joint accommodation is not in any event practical or permissible.

93.3. The provision of separate sex prisons is, therefore, a proportionate means of achieving the legitimate aims of meeting the different needs of women prisoners, protecting them from the greater active risk posed by male prisoners, and (importantly) protecting them from the risks to their health and welfare that would arise if they were imprisoned alongside men (irrespective of the actions of the men themselves), given the prevalence of experiences of male physical and sexual violence, together with the high level of mental health problems, amongst the population of women prisoners. For women with certain religious beliefs which prevent them sharing certain spaces with men, there is also the aim of protecting their right to observe those beliefs.

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[47] Ibid.

Summary in relation to the legal basis for separate-sex prisons

94. The legal basis under the EA 2010 for separate provision of women's and men's prisons is therefore the exception under paragraph 26(2) of Schedule 3. That exception is needed because, without it, the provision of separate-sex prisons would involve unlawful direct sex discrimination. Moreover, for the reasons discussed above, *failure* to provide separate-sex prisons under that exception would be likely to involve unlawful indirect sex discrimination and/or harassment related to sex against many (if not most or all) women prisoners. In short: not only does the exception permit separate-sex prisons, but failure to provide them would probably involve unlawful indirect sex discrimination and/or harassment related to sex against women prisoners.

Treatment of trans-identifying male prisoners under the EA 2010

95. The central question which then arises in relation to the treatment of trans-identifying male prisoners under the EA 2010 is what impact (if any) the allocation of such prisoners to women's prisons would have on the legal basis for providing separate-sex prisons in the first place.

96. This requires consideration of the following:

    96.1. The impact of accommodating trans-identifying male prisoners in the women's estate on the ability of HMPPS (or any other relevant duty-bearer) to rely on the exception under paragraph 26(2) of Schedule 3 to the EA 2010;

    96.2. If accommodating trans-identifying male prisoners in the women's estate would mean that exception is not available, whether those arrangements would therefore entail unlawful discrimination under the EA 2010;

    96.3. Conversely, whether not accommodating any trans-identifying male prisoners in the women's estate would potentially result in unlawful treatment of *those* prisoners under the EA 2010; and

    96.4. If the effect is that it is *prima facie* unlawful, applying the EA 2010 in light of the Supreme Court's decision in FWS, to accommodate trans-identifying male prisoners in the women's estate in any circumstances, whether

that is compatible with the ECHR rights of trans prisoners and, if not, whether a different approach is possible and required pursuant to the HRA 1998.

Impact of accommodating trans-identifying male prisoners in the women's estate on the exception under EA 2010, Sched. 3, §26(2)

97. The exception under paragraph 26(2) of Schedule 3 permits the provision of *'separate services for persons of each sex'*. The Supreme Court ruled in FWS that sex means biological sex. Applying that interpretation to the statutory language of paragraph 26(2), the meaning and effect is, in our view, unambiguous: the exception permits separate services *'for persons of each* sex', that is, for women as a group to the exclusion of all men, and for men as a group to the exclusion of all women (see also EA 2010, s11(b); FWS, §171). Services which are provided for (a) women and some (trans-identifying) men, and (b) men and some (trans-identifying) women cannot sensibly be described as services for persons of each sex, because each service would then be a (partially) mixed-sex service for some persons of both sexes. Consequently, it is in our view clear that if one or more male prisoners (whatever their gender identity) are allocated to the general women's estate, any prison(s) within which they are accommodated will no longer constitute a separate service for women, but will be a partially mixed service which does not fall within the exception under paragraph 26 of Schedule 3.

98. We are reinforced in that view by the decision of Swift J in GLP: he held that it was *'an inevitable consequence of the conclusion of the Supreme Court'* in FWS that a single-sex service (in that case, he was concerned with toilets but the point is of general application) will cease to be single-sex if trans people are permitted to use it other than in accordance with their biological sex (§53).

99. We should, however, note two points for completeness. The first point is that it has been suggested by some lawyers that exceptions could be made to admit some trans people into a single or separate sex service without it ceasing to be such a service for the purposes of paragraphs 26 or 27 of Schedule 3 to the EA 2010: for example, a submission to that effect, suggesting that *'derogations'* from the single-sex nature of a service may be possible so as to admit some trans people of the opposite sex without it ceasing to be a single or separate sex service for the purposes of the EA

2010, was made on behalf of the Minister for Women and Equalities in GLP (see §54). Therefore, there is some possibility that the appellate courts might in due course adopt such an approach. However, the submission was rejected by Swift J in GLP as being *'not easy to follow'* (§56) and, in our view, there are two fundamental problems with it:

99.1. First, it is contrary to the clear reasoning of the Supreme Court in FWS, which held (at §211[48]) that the purpose of the exceptions under paragraphs 26 and 27 of Schedule 3 of the EA 2010 is

> '…to allow for the exclusion of those with the protected characteristic of gender reassignment, regardless of the possession of a GRC, in order to maintain the provision of single or separate services for women and men as distinct groups in appropriate circumstances. **These provisions are directed at maintaining the availability of separate or single spaces or services for women (or men) as a group** – for example changing rooms, homeless hostels, segregated swimming areas (that might be essential for religious reasons or desirable for the protection of a woman's safety, or the autonomy or privacy and dignity of the two sexes) or medical or counselling services provided only to women (or men) for example cervical cancer screening for women or prostate cancer screening for men, or counselling for women only as victims of rape or domestic violence.' (emphasis added)

99.2. Second, the proposition that it may be possible to 'derogate' from single-sex provision under paragraphs 26-27 of Schedule 3 to the EA 2010 in relation to a particular trans person, or group of trans people, would mean deciding that such trans people should, for this particular legal purpose, be treated in accordance with their target sex on a basis that is different from, and outside the scope of, the framework of the GRA, and would necessarily raise questions of demarcation as to *which* trans people should be subject to such 'derogation' and how its application should be determined. For reasons discussed in relation to the general framework concerning sex and gender in UK law (above), that

[48] And see also §221.

is not in our view permissible because the courts are not equipped or constitutionally competent to determine such questions – particularly in view of the Supreme Court's clear ruling in FWS that it is fundamental to the operation of the EA 2010 that sex has both a consistent and biological meaning throughout that Act.

100. The second point which we should note for completeness is that in FDJ, the Divisional Court held that the definition of the exceptions for separate and single sex services under Schedule 3 of the EA 2010 did not prevent the accommodation of trans-identifying male prisoners in the women's estate on a case-by-case basis (§88 *per* Holroyde LJ). However, in our view, that can no longer be regarded as good law in light of FWS. In particular, the Claimant in FDJ *conceded* that it was not possible to exclude all trans-identifying male prisoners from women's prisons (§83) and the point is not, therefore, binding. More importantly, the reasoning of Holroyde LJ proceeds on the premise that the Schedule 3 exceptions require, or at least permit, a case-by-case consideration; whereas it is clear from the reasoning of the Supreme Court in FWS (see in particular the passage quoted at paragraph 99.1 above) that the exceptions are concerned with the differential treatment of men and women at the *group* level: where the conditions are met, the exceptions permit the exclusion of *all* members of the opposite sex without any need for (or possibility of) further case-by-case assessment (FWS, §§211 & 221).

101. Therefore, in our opinion, the effect of accommodating trans-identifying male prisoners within a women's prison is that it will cease to be a separate sex service for the purposes of paragraph 26 of Schedule 3 to the EA 2010, and consequently that it will not be possible to rely on that exception. Where only *part* of the regime is provided on a mixed-sex basis – as in relation to the accommodation of trans-identifying male prisoners on E Wing at HMP/ YOI Downview, where those prisoners are separated from the general population of women prisoners for much of the time, but parts of the regime are provided jointly – the most likely conclusion in our view is nevertheless that the service (or at least the parts of it which are operated jointly) is no longer *'separate… for persons of each sex'* because it is provided, in part, on a mixed-sex basis.

Does accommodating trans-identifying male prisoners in the women's estate result in unlawful discrimination?

Direct sex discrimination (EA 2010, s13)

102. So far as direct sex discrimination is concerned, if prisons are generally segregated by sex but with an exception made for some trans-identifying prisoners to be accommodated in prisons provided for members of the sex with which they identify, then whether or not someone is trans will be a material circumstance because it is a characteristic that is taken into account (along with other criteria considered as part of the assessment) in determining allocation (see paragraph 78.2 above). This means that, for the purposes of direct *sex* discrimination, the relevant comparator for a non-trans member of one sex will be a non-trans member of the opposite sex – i.e. the relevant comparator for a non-trans man will be a non-trans woman (and vice-versa).

103. Consequently, operating prisons on the basis that men and women are generally segregated, but with an exception made for some trans-identifying people, will still inherently involve segregating non-trans men and women exclusively because of sex, and will therefore necessarily entail direct sex discrimination (see paragraph 80 above and GLP, §58 *per* Swift J).

104. Therefore, since it is not possible (for the reasons set out in the preceding section above) to rely on the exception under paragraph 26 of Schedule 3[49], it will follow

[49] In our view, there is no other applicable exception. Some lawyers have suggested that it may be possible to rely in the alternative on positive action provisions under EA 2010, s158 to support the provision of 'trans inclusive' separate or single sex services on the basis that they constitute joint positive action based on sex and gender reassignment. The point has not yet been tested in the courts and there is, therefore, some possibility that this approach might be upheld. However, in our view that is unlikely, in summary because (i) the conflation of positive action in respect of distinct protected characteristics with conflicting rights and interests would be contrary to FWS; (ii) use of the positive action to circumvent the specific regime governing single and separate sex services under paragraphs 26-27 of Schedule 3 is not in our view impermissible; (iii) positive action to admit trans-identifying men to a women's service (or vice-versa) could not in any event provide the basis for excluding of non-trans men

that the provision of prisons on the basis that they are largely segregated by sex, but with an exception for some trans-identifying people, will be inherently unlawful because it will necessarily entail unlawful direct sex discrimination as a result of the segregation of non-trans prisoners on the basis of sex.

Indirect sex discrimination (EA 2010, s19)

105. As to indirect sex discrimination, the accommodation of trans-identifying male prisoners in women's prisoners (subject to case-by-case assessment) is, in our view, likely to constitute a PCP that puts women prisoners at a particular disadvantage because – *even if* there is a case-by-case balancing of the competing risks, rights and interests – the characteristics of women prisoners as a population mean that they will still be put at additional risk and disadvantage compared with any impact on male prisoners that might arise from accommodating trans-identifying women prisoners in the male estate (see the discussion of the evidence in relation to the impact of accommodating trans-identifying male prisoners above).

106. In our view, it is unlikely that this PCP could be justified, for three main reasons. **First**, since provision of partially mixed-sex prisons in this way would inherently entail unlawful direct sex discrimination, it follows that it cannot be justified because it is in any event inherently unlawful under the EA 2010: a PCP which inherently entails unlawful conduct cannot be a proportionate means of achieving any legitimate aim for the purposes of the justification test under s19(2)(d).

107. **Second**, in our view, provision on that basis also inherently undermines the purposes of having separate-sex provision in the first place:

107.1. Even though the evidence suggests that the risks of physical assault may be reduced by case-by-case assessment based on offending history, it is not clear that this is also true of verbal abuse, including verbal sexual abuse and harassment (see paragraph 51 above). Further, since there is no evidence that

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from that service; and (iv) on the contrary, doing so would be likely to undermine the basis for having single or separate sex services in the first place (see further below).

trans-identifying men have a lower general propensity to violence and abuse (including sexual violence and abuse) than men in general, there will still be a heightened risk even in the absence of a history of violent or sexual offending, (see paragraph 50 above). In any event, that risk will not differ as between trans-identifying male prisoners and other male prisoners who do not have a history of violent or sexual offending. Therefore, to the extent that one reason for separate-sex prisons is to protect women from the greater propensity to violence and/or sexual abuse (including verbal abuse) of male prisoners *in general* (not just those who have a specific history of such offending), those reasons do not cease to apply simply because a male prisoner identifies as trans.

107.2. More importantly, as discussed above, whilst the risk of assault or abuse may be the most 'headline grabbing' risk, a key reason for having separate sex prisons is the risk to the health and welfare of women prisoners arising from the impact *on them* of being accommodated alongside prisoners whom they recognise as male, irrespective of the specific actions of those prisoners. As the Supreme Court recognised in FWS, the biological sex of a trans-identifying man may still be readily perceivable (§202). Moreover, as we have already observed (paragraph 54 above), the ability of different people to recognise the sex of any particular trans person will also vary. Therefore, if any trans-identifying man is accommodated in a women's prison, there will always be a risk (we think a likelihood) that some of the women in that prison will recognise that he is male. This means that the objective of protecting women prisoners from the risks to their health and welfare from being confined alongside men – including in particular the risks of re-traumatisation and other harm that arise irrespective of the actions of the men – will be inherently undermined by the accommodation of any trans-identifying male prisoner in a women's prison. That will especially be the case where any trans-identifying male prisoner is allocated to the general women's estate, because that will entail sharing intimate spaces, but the evidence tends to support the same conclusion even where contact is limited to non-intimate settings (see paragraphs 60-61 above).

107.3. Finally, the rights of any women whose religious beliefs prevent them from sharing certain spaces with biological men will necessarily be

undermined if required to share such spaces with a trans-identifying male prisoner, and so the objective of protecting those rights will inherently be undermined by any such practice.

107.4. In short, therefore, the grounds which justify the exclusion of male prisoners from women's prisons in the first place do not cease to apply in the case of trans-identifying male prisoners, and so will inevitably be undermined by the accommodation of such prisoners in women's prisons. This conclusion applies most strongly where trans-identifying male prisoners are allocated to the general women's estate, but in our view it also applies in the context of the regime (as we understand it) for prisoners on E-Wing at HMP/ YOI Downview: it seems likely that there must be some sharing of toilet facilities in relation to activities that are undertaken alongside the general population of women prisoners at that prison, but in any event as we have identified there are risks to the health and welfare of women prisoners from being required to share even non-intimate prison settings with prisoners whom they may recognise to be male. Moreover, it appears that the trans-identifying male prisoners allocated to E-Wing at Downview are most likely to be prisoners with a conviction or current charge for a sexual or violent offence and/or intact male genitalia who are now subject to no more than basic levels of supervision whilst undertaking activities alongside women prisoners (see paragraph 12.3 above), which in our view gives rise to clear risks to those women.

108. **Third**, if some trans-identifying male prisoners are allocated to the women's estate, it then becomes very difficult to maintain a rational basis or justification for not accommodating other male prisoners (both trans and non-trans):

108.1. As the Supreme Court held in FWS (§§211-221), the conditions for relying on the separate and single sex exceptions under paragraphs 26-27 of Schedule 3 to the EA 2010 require that it be a proportionate means of achieving a legitimate aim to exclude *all* men. Therefore, where those conditions are met, they will justify a 'bright line' rule excluding *all* men, including all trans-identifying men (irrespective of whether they have a GRC).

108.2. Conversely, if the 'bright line' rule is breached to make an exception for some trans-identifying men, that will make it difficult then to justify maintaining it for others to whom similar considerations apply. Indeed, since it is clear that the overwhelming majority of trans-identifying men are accommodated in the men's estate, it follows that the true reason for accommodating some trans-identifying men in the women's estate cannot be the fact that they are trans by itself, but must be some other reason. For example, if an exception is made for a trans-identifying male prisoner because he is vulnerable to harm from others and/or self-harm on the male estate, and assessed as not presenting an active risk to women prisoners, then those (not his trans status *per se*) are the real reasons for allocating him to the women's estate. But in that case, why not make the same exception for (say) a vulnerable gay male prisoner who is similarly vulnerable to harm from others and/or self-harm in the male estate and does not present an active risk to women prisoners? Both the vulnerable trans-identifying male prisoner and the vulnerable gay prisoner may be readily identifiable as male and present the same risks to women prisoners. Since the real reason for allocating the trans prisoner to the women's estate is his vulnerability, why not do the same for the gay prisoner?

108.3. This breakdown of the distinctions once the 'bright line' rule is breached mirrors the Supreme Court's analysis in support of its core conclusion that the separate and single sex exceptions can only coherently be operated on the basis of biological sex (FWS, §213), and reinforces our conclusion that it is difficult if not impossible to justify a policy of accommodating some trans-identifying male prisoners in the women's estate consistently with the reasons for having single sex prisons in the first place, or with the Supreme Court's analysis of the meaning and effect of the statutory exceptions for separate sex services.

109. For those reasons, in our opinion the policy of accommodating some trans-identifying male prisoners either in the general women's estate or on E-Wing at HMP/ YOI Downview is unlikely to be justified and is likely to give rise to unlawful indirect sex discrimination against any female prisoner who is adversely affected by being confined alongside such prisoners.

110. In addition, there is a further feature of the way in which the current 2024 Allocation Poilcy operates that, in our view, is likely to reduce the justifiability of that policy still further. That is the fact that the assessments which determine the allocation of trans-identifying male prisoners focus on the individual features and characteristics of the particular trans-identifying prisoner, without an equivalent focus on the *individual* circumstances of particular women prisoners with whom he may come into contact (see our observations at paragraphs 13-14 above). That approach is, in our view, unlikely to be sufficient properly to 'balance' the respective risks and is therefore unlikely to satisfy the proportionality test under EA 2010, s19(2)(d). Indeed, it is arguably unlawful in itself because it constitutes direct sex discrimination against women prisoners:

110.1. Since different people inevitably have different abilities to perceive (biological) sex, it is in practice impossible for an individual or panel making an assessment of how well a particular trans-identifying man 'passes' to know whether others will share their perception, particularly if those others are women who may, as a result of their experiences, be particularly vigilant in relation to what they may (reasonably) perceive as risk from men. The 2024 Allocation Policy makes no provision for the assessment and management of the risks to vulnerable women prisoners, arising not from any active threat posed by any particular trans-identifying male prisoner, but from the simple fact of being forced to occupy a prison setting that they cannot leave with someone they may perceive as a man.

110.2. It may be that it would be impractical to do so, particularly given (a) the number of women prisoners likely to be involved, the short sentences that they generally serve, and consequently the constantly changing population in any women's prison; and (b) the impracticability of changing the allocation of a trans-identifying male prisoner contingent on the changing population of a women's prison. If taking account of the individual circumstances of women prisoners is indeed impractical for those reasons, that would further reinforce the need for a 'bright line' rule in order to ensure that the rights and needs of women prisoners, which provide the rationale and justification for having separate women's prisons in the first place, are adequately protected. But in

any event, the current policy makes no provision for any such case-by-case assessment of the individual risks to, or needs of, women prisoners who may be confined for any purpose with any trans-identifying man allocated to a women's prison.

110.3. In our view, all of these considerations further illustrate why, if there is a good justification for generally excluding men from women's services in the first place (and vice versa), a 'bright line' rule to that effect is required because, as soon as the bright line is breached, it becomes impossible to maintain an approach which protects the underlying basis for segregation in the first place. In any event, the absence of any attempt under the current 2024 Allocation Policy to carry out an individual case-by-case assessment of the needs of each woman prisoner who may come into contact with a trans-identifying man allocated to a women's prison means, in our view, that the purported 'balancing' exercise carried out under that policy is asymmetrical does not in practice fairly or adequately take account of the *individual* circumstances of women prisoners, or 'balance' their *individual* needs against those of any trans-identifying man who may be allocated to a women's prison.

110.4. Indeed, there is in our view a strong argument that the asymmetrical nature of the assessments carried out in relation to the accommodation of trans-identifying male prisoners in women's prisoners itself constitutes unlawful *direct* sex discrimination against women prisoners. Although the point is capable of dispute, it is arguable that, for these purposes – i.e. the assessment of the impact on the needs and rights of prisoners who may be affected by particular proposed accommodation arrangements – both the particular trans-identifying man and the women prisoners with whom he may be confined are in materially the same circumstances, since they are all prisoners affected by the particular proposed accommodation arrangements. Therefore, since the policy requires the male prisoner's individual history, circumstances and preferences to be taken into account, but does not require similar individual assessment of the needs, histories and preferences of any of the women prisoners, that arguably in itself constitutes unlawful direct discrimination.

111. For all of the foregoing reasons, we consider that 'derogating' from the separate-sex nature of prison provision for some trans-identifying male prisoners is unlikely to be justifiable in light of the adverse impact on the rights and needs of women prisoners, particularly because of the asymmetrical basis of assessment carried out under the current policy – even if doing so did not necessarily entail unlawful direct discrimination in any event (which, in our view, it does).

112. Finally, we should again note for completeness that in FDJ, the Divisional Court rejected an argument that accommodating some trans-identifying men within the women's estate on a case-by-case basis would necessarily constitute unlawful indirect sex discrimination: although the Court accepted that such a policy or practice may put women prisoners at a particular disadvantage (see §§76-77 *per* Holroyde LJ, §100 *per* Swift J), it held that, on the assumption that the case-by-case 'balancing' exercise was carried out properly, the policy could be justified (§91 *per* Holroyde LJ; §100 *per* Swift J). However, in our view, it is again necessary to revisit the question in light of FWS and we consider that the decision of the Divisional Court in FDJ cannot now survive. There are two key points in that regard:

112.1. First, the Divisional Court did not properly frame its analysis by reference to the Schedule 3 exceptions (see paragraph 100 above). Once it is recognised that operating segregated prisons *at all* depends on doing so within paragraph 26 of Schedule 3, and that this means operating them based on biological sex, then it necessarily follows that the disadvantage to women of accommodating some trans-identifying men within the women's estate cannot be justified because it invalidates the ability to rely on the Schedule 3 exception and is inherently unlawful.

112.2. Second, by failing to locate its analysis properly within the Schedule 3 exceptions, the Divisional Court failed to recognise that a case-by-case analysis is neither required nor permitted: once the conditions for a Schedule 3 exception are met, as the Supreme Court held (FWS, §§211 & 221), *all* men (irrespective of their gender identity) may be excluded from the women's estate; to reintroduce exceptions to that general rule on a 'case-by-case' is, in effect, to engage in a process of deciding that some trans-identifying male

prisoners should be treated in accordance with the sex with which they identify, but on a basis that is outside the scheme of both the GRA and the EA 2010. Again, for the reasons given in the context of the general framework governing sex and gender in UK law (above), that is not in our view permissible. Therefore, in our opinion FDJ can no longer be regarded as good law on either the Schedule 3 exceptions, or indirect sex discrimination.

Harassment relating to sex (EA 2010, s26(1))

113. In addition to indirect sex discrimination, the accommodation of trans-identifying male prisoners in the women's estate is also in our view likely to give rise to unlawful harassment related to sex essentially for the same reasons discussed above in relation to generally mixed-sex prisons (see paragraphs 86-88). In summary:

113.1. Decisions about whether male and female prisoners should be accommodated together or separately are plainly conduct *'related to sex'*.

113.2. Confinement alongside a trans-identifying male prisoner is likely to cause many women prisoners to experience fear, re-traumatisation or an affront to their dignity and sense of safety, thereby undermining their dignity or creating an intimidating, hostile, degrading or offensive environment.

113.3. Since (i) the likelihood of such a reaction is both understandable and eminently foreseeable given the well-known characteristics of women prisoners; (ii) the exception under paragraph 26 of Schedule 3 to the EA 2010 would not only permit genuinely single-sex provision but does not apply once some (trans-identifying) male prisoners are accommodated in women's prisons; and (iii) the asymmetrical nature of assessment under the current policy does not even enable proper account to be taken of the individual needs, circumstances, histories or preferences of women prisoners, it is likely in our view to be objectively reasonable to regard the accommodation of a trans-identifying male prisoner in a women's prison as having the prescribed effect.

113.4. Therefore, in our opinion, it is likely that doing so will constitute unlawful harassment related to sex against any female prisoner for whom

confinement with a trans-identifying man is unwanted and has the effect of undermining her dignity or creating an intimidating, hostile, degrading or offensive environment.

Conclusion on discrimination arising from the accommodation of trans-identifying male prisoners in women's prisons

114. For the reasons set out above, in our opinion, accommodating a trans-identifying prisoner in a women's prison will mean that the exception under paragraph 26 of Schedule 3 to the EA 2010 can no longer be relied on, and is likely to give rise both to unlawful direct sex discrimination against (non-trans) men who might otherwise prefer to be accommodated in a women's prison and to unlawful indirect sex discrimination and/or harassment related to sex against any women prisoners who feel that their dignity, privacy or sense of safety and security are undermined, or who experience re-traumatisation as a result of their past experience of male violence and/or sexual abuse, or whose health and wellbeing is otherwise undermined by being confined with a prisoner whom they recognise to be male.

Could not accommodating any trans-identifying male prisoners in the women's estate result in unlawful gender-reassignment discrimination?

115. The effect of the analysis so far has focused on the likelihood of unlawful discrimination or harassment against others arising from the accommodation of trans-identifying male prisoners in women's prisons. It is also necessary to consider how those conclusions interrelate with the protections for trans-identifying male prisoners themselves against *gender reassignment* discrimination under the EA 2010: if the conclusion (above) that it is inherently unlawful to accommodate trans-identifying male prisoners in women's prisons could *also* result in unlawful gender reassignment discrimination, that result would reveal an inherent inconsistency in the operation of the EA 2010 which would need to be resolved. In our view, however, there is no such inherent inconsistency.

116. So far as direct gender reassignment discrimination is concerned, since sex is by definition a material circumstance in relation to the provision of separate men's and women's prisons based on (biological) sex, the relevant comparator for a trans-identifying member of one sex will be a non-trans member of the *same* sex – i.e.

the relevant comparator for a trans-identifying man will be a non-trans man (see paragraph 78.2 above; and see also FWS, §34 *per* Lord Hodge DPSC, Lady Rose and Lady Simler JJSC). Consequently, since all male prisoners would be treated equally under such arrangements, there would be no unlawful direct gender reassignment discrimination – i.e. the relevant comparators for a trans-identifying male prisoner would be other (non-trans) male prisoner, all of whom would be treated in the same way. In any event, the reason for the difference in treatment would be sex not gender reassignment – i.e. all trans-identifying male prisoners would be accommodated in men's prisons not because they are trans, but because they are men.

117. So far as indirect gender reassignment discrimination is concerned, the provision of men's and women's prisons based on (biological) sex would constitute a relevant PCP and have the potential to put trans-identifying male prisoners at a particular disadvantage by requiring them to be allocated to a men's prison which they may see as inconsistent with their gender identity and/or where they may face greater risks/ difficulties than most other men (see paragraph 82.2 above). However, in our view, those arrangements will nevertheless necessarily be justified for two reasons:

117.1. First, they will be justified as a proportionate means of achieving the aim of avoiding unlawful sex discrimination: since Parliament has decided, in the terms of paragraph 26 of Schedule 3 of the EA 2010, that the exception for segregated provision only applies for wholly separate-sex provision, meaning that partially-separate provision will still inherently involve unlawful direct sex discrimination against (non-trans) members of both sexes who are excluded from the opposite sex provision, it necessarily follows that operating the provision in a way that is consistent with the available exception is a proportionate means of avoiding unlawful direct sex discrimination.

117.2. Second, on the basis that the exclusion of *all* male prisoners from women's prisons (and vice-versa) is justified under the test in paragraph 26(2) of Schedule 3, that 'bright line' justification applies equally to trans-identifying male prisoners (see the discussion above in respect of indirect sex

discrimination against women prisoners arising from the accommodation of trans-identifying male prisoners in women's prisons).

118. Finally, so far as harassment relating to gender-reassignment is concerned, the decision whether (or not) to accommodate trans-identifying male prisoners in women's prisons is plainly conduct relating to gender reassignment. It may also cause such prisoners subjectively to feel that their dignity is undermined or that it creates a hostile, degrading, intimidating or offensive environment. However, since sex segregation on the basis of biological sex is permitted and justified as the (only) way of protecting the rights and needs of women prisoners pursuant to paragraph 26 of Schedule 3 to the EA 2010, it will not be objectively reasonable to regard it has having the prescribed effect (see paragraph 86 above and Pemberton v Inwood, §§88-89 *per* Underhill LJ).

119. In summary, therefore, accommodating all trans-identifying male prisoners in men's prisons will not, in our opinion, give rise to an unlawful discrimination or harassment against those prisoners.

Human rights considerations

120. Thus far, we have been considering the meaning and effect of the EA 2010 based on its ordinary and natural meaning in light of the Supreme Court's decision in FWS that sex under that Act means biological sex. We now consider whether there are any human rights considerations which might require consideration of a different approach pursuant to HRA 1998, ss3 and 6, which require, respectively, legislation to be read and given effect, so far as possible, compatibly with ECHR rights and make it unlawful for public bodies to act in contravention of those rights (save where required to do so by primary legislation).

121. It is necessary to begin consideration of this issue by identifying the relevant rights of trans people, and their limits. The European Court of Human Rights has recognised that the right to respect for private and family life under ECHR, Art. 8 encompasses a right to gender identity and personal development. Consequently, member states have a positive obligation to provide quick, transparent and accessible procedures for giving *some* legal recognition to the new gender identity of trans people who have adopted a social role in the opposite sex, without imposing

conditions (such as a requirement to undergo surgery with a high risk of sterilisation) that would require the person to relinquish other fundamental rights. In that regard, the margin of appreciation is a narrow one, though conditions such as the need to establish a relevant psychiatric diagnosis may be imposed (see e.g. AP, Garçon and Niçot v France, Cases 79885/12 52471/13 and 52596/13, 6 April 2017, §121-125; TH v Czech Republic, Case 33037/22, 12 June 2025, §§49-53).

122. However, the obligation to provide a mechanism for giving *some* legal recognition to a trans person's new gender identity does not mean that they have an unqualified right to be treated in all respects, or for all legal purposes, as being the sex with which they identify. Article 8 is a qualified right that may be subject to restrictions in accordance with the law, where they are necessary in a democratic society for (amongst other things) the protection of the rights and freedoms of others (see Art. 8(2)).

123. Thus, on the one hand, the European Court has held that failing to recognise a trans person's gender identity for the purposes of legal measures such as state pension age or social security would place that person in an unsatisfactory 'intermediate zone' in which there is 'discordance' with their social role such that, where such recognition would *not* engage the rights of others, or any other significant competing factors of public interest, failure to recognise a trans person's gender identity in those areas will breach Art. 8 (see e.g. Goodwin v UK (2002) 35 EHRR 18, §§76-77 & 89-93). The UK met its obligations in that regard by passing the GRA 2004 (Grant v UK (2007) 44 EHRR 1, §41).

124. On the other hand, the Court has repeatedly held that, where delineating the substantive consequences of legal recognition of a trans person's gender identify *does* require a balance to be struck between competing private and public interests, or between competing Convention rights, a wide margin of appreciation applies. That is particularly so because the full substantive consequences of legal recognition for gender identity undoubtedly raise sensitive moral or ethical issues on which there is no consensus amongst members states (see e.g. Parry v UK, Case 42971/05, 28 November 2006, pp9-10 & 12-13; Hämäläinen v Finland, Case 37359/09, 16 July 2014, §§66-67 & 73-75; TH, §53).

125. Moreover, just as with justification under the EA 2010, it is a well-established principle of ECHR jurisprudence that *general* rules or measures may be justified, *'even if this might result in hard cases'* at an individual level. The key question will be whether a general measure is within the state's margin of appreciation in the particular area in question (see e.g. Parry v UK, pp12-13; Animal Defenders International v UK (2013) 57 EHRR 21, §§106-110; In re JR123 [2025] 2 WLR 435, SC, §§64-66 *per* Lord Sales JSC & Sir Declan Morgan).

126. Turning to the balance struck under the EA 2010 in relation to separate-sex prisons, as summarised above, the effect is that there is a 'bright line' rule that all men should be excluded from women's prisons, irrespective of their gender identity. In our view, that rule is justified within the UK's margin of appreciation as a proportionate means of achieving the legitimate aims of ensuring that the needs of women prisoners can be met and protecting women prisoners both from the risk that they may be actively harmed by male prisoners and that they may be re-traumatised or otherwise harmed by the impact on them of being confined in a prison setting with prisoners whom they recognise to be male. The 'bright line' nature of the rule is, in our view, justified by the particular characteristics and vulnerabilities of women prisoners as a group and the practical difficulty of conducting individual case-by-case assessments to identify and manage the relevant risks for every woman who might come into contact with a trans-identifying male prisoner accommodated within the women's estate – particularly in light of the short sentences served by most women prisoners and consequently the constantly changing population of women's prisons.

127. Conversely, it is apparent from the data in relation to the accommodation of trans-identifying male prisoners that there is no inherent difficulty in meeting their needs within the male estate, since the vast majority are in fact accommodated in men's prisons (see paragraphs 33-35 above)[50]. Indeed, the work of Professor

[50] There is, theoretically, a possibility that, in extreme circumstances, the measures necessary to protect a vulnerable trans-identifying prisoner in the male estate may entail a breach of Art. 3 ECHR, which is not susceptible to justification. However, such circumstances will be rare and the current policy of HMPPS already risks such breach because of the practical limitations on what is possible (see e.g. the

Phoenix suggests that there are other ways of addressing any risks or vulnerabilities of trans-identifying male prisoners within the male estate, together with an absence of evidence that those risks are materially reduced by being accommodated within the women's estate or even that some risks that may have been identified (such as suicide) are clearly linked with trans status as opposed to having other causes[51].

128. Therefore, in our view, a rule that no male prisoners (including trans-identifying male prisoners) can be accommodated within the women's estate does not breach the Art. 8 rights of trans-identifying male prisoners.

129. Further, even if we were wrong about that and allocating all trans-identifying male prisoners to the men's estate might give rise to an unjustified interference with the ECHR rights of some such prisoners, it is nevertheless not in our view possible to 'read down' paragraph 26 of Schedule 3 to the EA 2010 so as to permit a 'derogation' from its application based on biological sex having regard to the well-established limits on doing so (see Ghaidan v Godin-Mendoza [2004] 2 AC 557, SC, §33 *per* Lord Bingham) because (i) for reasons discussed in relation to the general legal framework concerning sex and gender above, the courts are not equipped or constitutionally competent to determine questions of demarcation

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recent case of Abu v Secretary of State for Justice where a prisoner with mental health issues was held in segregation). The exceptional possibility of such a breach does not, in our view, either affect the *general* analysis under the EA 2010 and the more generally applicable rights under Art. 8, or support the current *general* policy of conducting a case-by-case assessment of all trans-identifying male prisoners to consider whether to allocate them to the women's estate. The issue is one that would fall to be considered, if it were to arise, not based on the trans status of a prisoner *per se*, but on the very particular circumstances giving rise to a potential breach of Art. 3 and the lawful options available would then require careful consideration as in other cases (such as Abu) where this extreme type of circumstance may already arise. We are doubtful whether, even then, the options could properly include accommodating a male prisoner in the women's estate in breach of the EA 2010 and outside the regime of the GRA.

[51] *Rights and Wrongs: How gender self-identification policy places women at risk in prison* (MLI, February 2023), pp25-26, 30. See also §14 of the affidavit of Rhona Hotchkiss in the recent judicial review by For Women Scotland of the current policy in Scottish prisons.

outside the comprehensive scheme of the GRA; and (ii) the Supreme Court's decision in FWS makes clear that a consistent biological meaning of sex is fundamental to both to the EA 2010 and to the operation of the separate and single sex exceptions under paragraphs 26-27 of Schedule 3 to the EA 2010.

Conclusion on lawfulness of accommodating trans-identifying male prisoners in the women's estate

130. For the reasons set out above, it is our view that, in light of the Supreme Court's decision in FWS, the exception under paragraph 26(2) of Schedule 3 to the EA 2010, which permits the provision of separate-sex prisons, can only be relied on if they are operated on the basis of biological sex only. Therefore, since making an exception for some trans-identifying prisoners would nevertheless entail direct sex discrimination and would remove the ability of HMPPS to rely on the exception, it is not lawful under the EA 2010 to accommodate trans-identifying male prisoners in the women's estate in any circumstances. Consequently, doing so is likely to give rise to unlawful indirect sex discrimination and harassment related to sex against women prisoners.

131. It is also our view that this 'bright line' rule is justifiable, within the UK's margin of appreciation under the ECHR, as a proportionate means of achieving the legitimate aims of ensuring that the needs and rights of women prisoners can be met and protecting women prisoners both from the risk that they may be actively harmed by male prisoners and that they may be re-traumatised or otherwise harmed by being confined with prisoners whom they may recognise as male. In any event, it is not in our view permissible to 'read down' the EA 2010 pursuant to HRA 1998, s3, in order to permit the accommodation of trans-identifying male prisoners in women's prisons.

132. Finally, we should again note for completeness that the foregoing conclusions involve departing from previous case-law (pre-dating FWS) which indicated that the balance of the rights and interests of trans-identifying male prisoners and women prisoners *should* be considered on a case-by-case basis – in particular, FDJ and R (AB) v Secretary of State for Justice [2010] 2 All ER 151, Admin. We have already explained why, in our view, FDJ can no longer be regarded as good law in

light of FWS (see paragraphs 100 & 112 above). The point is, in our view, even stronger in relation to R (AB) because the impact of the EA 2010 was not considered at all in that case. Therefore, it cannot be regarded as authority for the proposition that a case-by-case assessment is required irrespective of the application of the EA 2010. Once it is recognised that the correct question is whether the 'bright line' rule of segregation based on biological sex alone that is, in effect, required pursuant to the EA 2010 read in light of the Supreme Court's judgment in FWS, is outside the UK's margin of appreciation (or is in any event properly capable of being 'read down'), then in our view the answer is given by the analysis set out above, and neither FDJ nor R (AB) can be regarded as constituting binding authority to the contrary, or as otherwise requiring a different conclusion.

Lawfulness of the current 2024 Allocation Policy

133. It follows from the foregoing analysis that, in our opinion, the current 2024 Allocation Policy is unlawful in the following principal respects:

133.1. Fundamentally, the policy is unlawful because it provides for the accommodation of some trans-identifying male prisoners in the women's estate and, for the reasons set out above, that is not in our view lawful. In our opinion, this conclusion applies both in respect of any trans-identifying male prisoners accommodated in the general women's estate and also in respect of those who are accommodated pursuant to the particular, partially-segregated, regime on E-Wing at HMP/ YOI Downview.

133.2. Certainly, the policy's treatment of possession (or otherwise) of a GRC as a relevant and distinguishing criterion cannot be sustained. The analysis of the Supreme Court in FWS shows that there is no rational or justifiable basis for that approach: possession or otherwise of a certificate cannot rationally affect any analysis of the competing interests of either women prisoners or a trans-identifying male prisoner (cf FWS, §§213, 217-218).

133.3. Further and in any event, the asymmetrical nature of ways in which the respective needs and interests of women prisoners and trans-identifying male prisoners are assessed under the policy arguably constitutes direct sex discrimination.

Conclusion

134. We have set out our overall conclusions in the summary of our views at the start of this Opinion. In short, it is our view that the current policy of accommodating some trans-identifying male prisoners in the women's estate – both in the general women's estate and pursuant to the partially-segregated regime on E-Wing at HMP/ YOI Downview – is unlawful and likely to give rise to unlawful indirect sex discrimination and/or harassment related to sex against any women who feel that their privacy and/or dignity are undermined, or whose health and/or wellbeing are otherwise adversely affected, by being confined with any trans-identifying male prisoner.

135. If there are any further matters arising, we hope our instructing solicitor will not hesitate to contact us.

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23 April 2026

Appendix: list of materials we have considered

i) HMPPS Offender Equalities Annual Report 2024-25, published by the Ministry of Justice on 27 November 2025;

ii) Expert report in the case of *Hutchinson et al v. County Durham and Darlington NHS Foundation Trust*, produced by Professor Phoenix on 29 September 2025;

iii) The annual report of the Independent Monitoring Board ('IMB') at HMP/YOI Downview, published by the IMB in September 2025;

iv) Safety in Custody statistics, published by the Ministry of Justice on 24 July 2025;

v) Guidance on Prisoners who are Transgender, published by the Parole Board in June 2025;

vi) *Time to Care: What helps women cope in prison*? published by HM Inspectorate of Prisons in February 2025;

vii) Statistics on Women and the Criminal Justice System 2023, published by the Ministry of Justice on 30 January 2025;

viii) The Care and Management of Individuals who are Transgender ('the 2024 Allocation Policy'), re-issued by the Ministry of Justice on 14 November 2024;

ix) The Care and Management of Individuals who are Transgender: Operational Guidance ('Operational Guidance'), published by HMPPS in November 2024;

x) The Placement of trans and non-binary people – A guide for prisons, published by Penal Reform International in June 2024;

xi) Transgender Persons in Prison – Prison Standard, published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') in April 2024;

xii) A review of health and social care in women's prisons, published by NHS England on 23 November 2023;

xiii) Gender diverse prisoner and sex-based patterns of offending, published by Professor Phoenix in September 2023;

xiv) *Rights and Wrongs – How gender self-identification policy places women at risk in prison*, published by Professor Phoenix in February 2023;

xv) The Government's Female Offender Strategy Delivery Plan 2022-25, published by the Ministry of Justice in January 2023;

xvi) The Government's Equalities Statement for the Female Offender Strategy Delivery Plan, published by the Ministry of Justice (undated but thought to be around 2022);

xvii) Witness statement in the case of R (on the application of FDJ) v The Secretary of State for Justice [2021] 1 WLR 5265, produced by Professor Phoenix on 17 February 2021;

xviii) Learning Lessons bulletin – Transgender prisoners, published by the Prisons and Probation Ombudsman in January 2017;

xix) The Government's Female Offender Strategy, published by the Ministry of Justice in June 2018;

xx) Women in Prison, published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') in January 2018;

xxi) The United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules'), adopted by the United Nations' General Assembly on 17 December 2015;

xxii) Women's Imprisonment; an Introduction to the Bangkok Rules, published by Professor Carlen in 2012;

xxiii) The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), adopted by the United Nations General Assembly on 21 December 2010 and the Commentary prepared by the United Nations Office on Drugs and Crime (UNODC);

xxiv) A report by Baroness Corston, following a *Review of Women with Particular Vulnerabilities in the Criminal Justice System* ('the Corston report'), published by the Home Office in March 2007

xxv) Affidavit of Rhona Hotchkiss (2026, unsigned), prepared for a judicial review challenge by For Women Scotland to current policy in relation to trans-identifying male prisoners in Scotland.

IN THE MATTER OF

BETWEEN

PRISON POLICY IN RELATION TO TRANS-IDENTIFYING MALE PRISONERS IN LIGHT OF THE SUPREME COURT'S JUDGMENT IN FOR WOMEN SCOTLAND

OPINION

Sinéad Lester
Broadfield Law UK LLP
One Bartholemew Close
London
EC1A 7BL

Ben Cooper KC
Old Square Chambers
10-11 Bedford Row
London
WC1R 4BU

Myles Grandison
Temple Garden Chambers
1 Harcourt Buildings
Temple
London
EC4Y 9DA