

12th April 2022

To whom it may concern,

We are a group of women who run Rape Crisis and sexual violence support services, women who run other specialist services for women and academics who specialise in the area of gender-based violence. We were keen to read the recent guidance published by the EHRC on equalities legislation and sex and gender provision.

Whilst some of the guidance was helpful and informative, we found that the guidance:

1. Makes unfounded generalisations about what survivors are likely to think, and encourages services to assume what survivors are likely to feel rather than asking them.
2. Makes assumptions about service delivery which are wrong and unhelpful
3. Frames the support needs of cis women as more important than the support needs of trans people
4. Does not acknowledge the additional discrimination trans people experience when accessing services
5. Offers suggestions which do not take into consideration the current reality of trans-led service delivery

1, Makes unfounded generalisations about what survivors are likely to think, and encourages services to assume what survivors are likely to feel rather than asking them.

The newly published EHRC guidance states:

“Example: A group counselling session is provided for female victims of sexual assault. The organisers do not allow trans women to attend as they judge that the clients who attend the group session are likely to be traumatised by the presence of a person who is biologically male.” (EHRC 2022, Schedule 3, Para 28)¹ We all run group services which are open to trans people and cis people.

¹ Equality and Human Rights Commission (4 April 2022), *Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment provisions. Gender Reassignment Provisions in the Equality Act*. Available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-provisions-equality-act> [accessed on 7th April 2022]

In our experience, it is very unusual for cis service users to object to trans women joining a support group. Recent research has found that:

“Most cis service users said they were happy for trans women to use their service, and also that they would welcome trans women joining their women-only groups. They clearly differentiated between the prospect of cis men joining their group (who would not be welcome) and trans women joining.”

It goes on to say:

“Most abuse support services in the UK have welcomed and supported trans women who are survivors of domestic and sexual violence for years. This is the case for both women-only and mixed gender services. There is no evidence that trans inclusion has negatively impacted, diminished or erased these services, or the women-only spaces within them. Both staff and cis service users are overwhelmingly positive about trans inclusion, and many had positive experiences of working with trans service users, who are not viewed as posing a threat.”²

The people who access services for recovery from sexual violence and abuse usually come with a level of trauma and complex feelings. Some people may feel unsure about trans people, having never knowingly met a trans person. However, to make the leap to say that staff are able to judge that a person experiencing trauma is ‘likely’ to be traumatised by the presence of a trans person is both judgemental and discriminatory, and has no place in modern service delivery.

2, Makes assumptions about service delivery which are wrong and unhelpful

The EHRC guidance states:

It is most likely to be proportionate to exclude, modify or limit trans people’s access where a service provider has limited resources and physical space to alter the way the service is provided or if they are dealing with groups with particular needs; for example, female victims of male sexual assault who may feel unable to participate in the presence of someone they perceive as male.

This example makes assumptions about what women survivors ‘may’ feel or how they may perceive others, it does not align with our experience and it is unhelpful. It also tells service delivery experts (us!) about what is likely to be proportionate in the services that we are running!

We do not know of any service which runs groups based on the identity of the perpetrator and it is unhelpful to define service users according to the gender of the perpetrator. It is true that the majority of perpetrators are male, but we also know that as a society, we make it extremely difficult to speak out about crimes committed by female perpetrators so the true scale of these perpetrators is largely unknown.

² Pain R, Cygnus Support and O’Neil S (2021) “One of the lasses”: Trans inclusion and safety in abuse support services. Newcastle University, Newcastle upon Tyne.

In addition, this example gives no thought to the needs of trans people and it contributes to the impression that the recovery needs of trans people are less important than the recovery needs of cis people.

3, Frames the support needs of cis women as more important than the support needs of trans people

And

4, Does not acknowledge the additional discrimination trans people experience when accessing services

The EHRC guidance states:

*“You will need to balance the interests of trans people with those of other service users. Does the reason for limiting access or excluding trans people from your service outweigh any discriminatory effects of the treatment? (i.e. **the impact on trans people of exclusion is outweighed by the impact on other users if they were included**)*

If it doesn't, it might be unlawful to exclude a trans person from the single sex service of the gender in which they present or limit their access to the service.

If it does, it is likely to be lawful to exclude a trans person from the single sex service of the gender in which they present or modify or limit their access to the service. You should always balance and take account of the needs of different groups.” (EHCR 2022, Schedule 3, Para 28)³

In this section, you have stated that it is essential to balance the needs of groups of people with different protected characteristics. However, in the guidance, when giving examples based on gender-based violence services, you have omitted any reference to reasons why trans people would be disproportionately impacted by a lack of support, or by being excluded from using services.

Trans people are amongst the most marginalised in society. They are the subject of significant levels of hate crime, including nearly 1 in 5 having been subjected to or threatened with sexual assault⁴, and they are discriminated against in many areas of their lives (housing, education, employment, access to health care etc)⁵. Trans people face vast barriers to accessing services after experiencing violence and we know that they only attempt to access single sex services if it is explicitly stated within service descriptions that they are welcome. Therefore, services need to act in a way that is especially welcoming in order to engage with trans survivors at all. Where a trans person is restricted from accessing

³ Equality and Human Rights Commission (4 April 2022), Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment provisions. Gender Reassignment Provisions in the Equality Act. Available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-provisions-equality-act> [accessed on 7th April 2022]

⁴ <https://galop.org.uk/resource/transphobic-hate-crime-report-2020/>

⁵ https://www.stonewall.org.uk/system/files/lgbt_in_britain_-_trans_report_final.pdf

a particular service within an organisation, it is extremely unlikely that they will access another service (such as 1:1 support) within that organisation as they are likely to feel unwelcome.⁶

The guidance did not give any examples which spoke to the very real experiences of discrimination that trans people experience in their everyday lives and why they may need additional support.

Sexual violence support services have to work exceptionally hard to ensure that clients feel welcomed into services and that they deserve support due to the frequent presence of underlying shame. This guidance contributes to the sense of lack of worth and shame that is felt by trans people trying to access services for support after experiencing sexual violence. It risks further reinforcing harmful beliefs which lead trans survivors to de-prioritise their own safety and wellbeing and thus avoid seeking help in the face of considerable danger.

5, Offers suggestions which do not take into consideration the current reality of trans-led service delivery

The EHRC guidance states:

“Take steps to minimise the impact on trans people if you decide exclusion is the only option.

For example, you could create a list of specialist services that you could signpost trans people to and identify the appropriate contacts for these services.” (EHRC 2022, Schedule 3, Para 28)⁷

The reality is that there are very few specialist services providing this kind of expert support,⁸ and it is unrealistic to suggest that there are. To offer this as a recommendation in your guidance is baffling, and indicates a lack of interest in genuinely offering solutions which see the support needs of each group of people as equally needed.

In sexual violence support services, we meet each survivor as an individual and we try to meet their needs as they are presented to us. This is our expertise. Some people will be unsuitable for groups for a range of reasons, and may need to be considered for 1:1 support alone. Please trust us!

Women-only spaces are uplifting and empowering. They offer a place for women to come together to create a shared journey of recovery and healing, to lean on each other in times of difficulty, and celebrate together in times of joy. The purpose and value of women-only spaces is to empower and strengthen women. To suggest that the value in women-only spaces lies solely or primarily in the exclusion of men significantly undervalues the inception,

⁶ <https://survivorsnetwork.org.uk/resource/tnbi-group-report/>

⁷ Equality and Human Rights Commission (4 April 2022), Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment provisions. Gender Reassignment Provisions in the Equality Act. Available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-provisions-equality-act> [accessed on 7th April 2022]

⁸ <https://domesticabusecommissioner.uk/wp-content/uploads/2021/11/Galop-LGBT-Domestic-Abuse-Service-Provision-Mapping-Study-Final.pdf>

the purpose and the continuation of women-only spaces. Trans women are welcome in these spaces, they add amazing value to these spaces and we need them in these spaces.

Whilst it is very helpful to have guidance to navigate the legal complexities of equalities legislation, please have a balanced range of examples which do not hint at underlying prejudice.

We would urge you to revisit your guidance with the support of trans-inclusive gender-based violence services, to add balance and relevance to your reflections. We are open to having a conversation about how we would be able to support you in this.

We look forward to hearing about your next steps in relation to this.

Warm regards,

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