**Women in Prison**

**Statement on transgender people in prison** November 2020

In March 2019, the Ministry of Justice started to develop specialist accommodation (known as E-wing) for some trans women in HMP Downview, a women’s prison. This statement is an update on that made in March 2019 and updated in July 2020, responding to further developments to the broader issue of transgender women and men in the prison system, particularly women’s prisons, and community-based women’s spaces.

# Why Women in Prison exists: Harm of imprisonment & replacing a broken system

Women in Prison (WIP) is a feminist campaigning charity that provides services supporting women affected by the criminal justice system and prison, many of whom have experienced male violence. WIP was established in 1983 because its founders, Chris Tchaikovsky and Pat Carlen, observed that the needs of women were overlooked, in a system largely responding to male offending, and where women make up 5% of the prison population. Our organisation is built on a founding belief in human rights and the values of feminism and social justice.

Today, WIP campaigns to expose the injustice and harm caused to women, families and communities by imprisonment and to radically reduce the number of women in prison. Harm exacerbated by, and resulting from imprisonment – for women, men and children - includes death, abuse, discrimination, self-harm, trauma, mental ill health, homelessness, unemployment and damage to families and children, especially when their primary carer or parent is in prison.

The vast majority of women are imprisoned for non-violent offences that attract short sentences, and, because of a lack of appropriate support on release, the rate of re-offending following a prison sentence is high. Evidence of high rates of death and self-harm across the prison system show that prisons are not safe places for anyone in them. All of this, alongside woeful levels of support to respond to high levels of trauma across the prison estate, provides overwhelming proof of a broken system which needs to be replaced.

# Supporting individuals, safety and wellbeing

For thirty seven years, one of the main purposes of Women in Prison (WIP) has been to offer support to women affected by the criminal justice system - in women’s prisons, in the community and, for the past decade, in women’s centres, in order that they be best equipped to rebuild their lives. This support has included both trans men and trans women. Like so many women’s services, we have a proud record of responding to the needs of individuals with compassion and care, including being responsive to the needs of trans people as far as our resources and expertise allow. As long as we are able, we will continue to do this.

WIP respects the right of any individual to transition and to self-identify their own gender. Drawing on our experience in providing support, we recognise the significant difficulties that this often involves, and the discrimination that it attracts. We know that the transgender community has some of the poorest outcomes for both mental and physical health of any group, and experiences high levels of hate crimes perpetrated against them, homelessness, violence and prejudice. We support the rights of women and transgender people to access services that meet their needs and recognise that their often deeply marginalised status prevents them from accessing appropriate care and support. WIP has always strived to provide transgender people with respectful, individualised and empathetic advocacy within our services and through referral to partner agencies.

# Prisons duties to support gender identity, privacy and dignity

Because their core purpose is punishment and containment, prisons are inherently unsafe and harmful. However, within the current system, HM Prison and Probation Service (HMPPS) have a duty to maintain a safe environment for every person in prison. HMPPS data is limited as it relies on voluntary self-reporting, but suggests that the vast majority of trans women are living in male prisons, and the vast majority of trans men are living in female prisons. There is also a small number of trans women in women’s prisons.

In the light of this, much more attention needs to be given to how all those in prison are supported to identify in their chosen gender, whether in a male or female prison. For example, all prisons should have access to female and gender-neutral toilets and showering facilities, and provide single cell arrangements. Single cell provision preserves the privacy, dignity, safety and rights to confidentiality of all involved and spares people having to share a cell with someone of a different sex (where this difference is known to HMPPS).

This is especially important considering that female prisoners’ disproportionate experience of male violence means that, for some, sharing living spaces with trans women or trans men may trigger experiences of previous trauma of male violence and sexual abuse.

# Managing and balancing risk

WIP supports the commitment to case-by-case reviews of requests by trans people to move to a women’s or men’s prison. WIP shares the concern of others that rigorous and transparent risk assessment that explores the motivation and potential risks to the individual and to others, has not been consistently conducted and monitored. WIP fears that this lack of consistency has led to decisions that have placed both trans people and others in prison (particularly in women’s prisons) at unnecessary additional risk to both themselves and others.

The policy framework for case-by-case decisions relating to E-wing (specialist accommodation in HMP Downview for transgender women) has still not been made public, and we would urge this to be done as a matter of urgency.

Whilst the policy framework for individual case-by-case risk assessment has been strengthened, it must include consideration of all the following factors:

* the individual’s particular transition circumstances, including their gender identity and transition circumstances before prison, future intentions after serving their sentence, and any risk to, or impact on the individual, and on others, of moving prison and of not being moved;
* their needs (including medical requirements and issues relating to addressing offending behaviour, such as specialist programmes);
* any history of sexual exploitation, violence or abuse;
* evidence of motivation to exploit, control and/or manipulate others (including coercive control);
* and risk to the individual or others of consensual sexual activity, pregnancy or sexual assault.

All of this must be done paying careful regard to individuals’ rights under the Gender Recognition Act (2004) and the Equality Act (2010). Risk assessment needs to be consistent across the prison estate (rather than left to individual governors to interpret) and monitored centrally.

Any failure of the risk assessment process can have life threatening consequences and impact on the safety, sense of security, wellbeing, mental health and daily lives of all those in prison, including transgender people.

In addition to thorough risk assessments, the Government have a responsibility to provide alternative facilities if it is decided that the placement of a trans woman or trans man is not appropriate in the prison of their self-identified gender - and this has been requested. Such alternative facilities need to take account of the particular needs of trans people, including for access to specialist medical services and particular programmes to address offending behaviour. Where these facilities are situated in a women’s or men’s prison, the broader implications of this placement need to be addressed, prioritising safety, sense of security and the prevention of harm for all affected.

We share the specific concerns of the Independent Monitoring Board (IMB) in relation to E-wing in HMP Downview, the Government’s first alternative provision for trans women. In its December 2019 report, the IMB cited specific concerns relating to E-wing’s rushed opening, the lack of regular purposeful activity for those living on E-Wing, the absence of a long-term strategy and the additional demands E-wing places on prison staff and the mental health services specifically (which has resulted in the delayed opening of a new Community Health and Wellbeing Centre in the prison).

The IMB also found that the opening of E-wing had impacted on progress on equality issues in HMP Downview generally. We believe that the rushed creation of E-wing and lack of consultation have led to insufficient consideration of balancing the needs of those involved, to mitigate any negative impacts on those in E-wing, women in the prison and staff. Overall, we find the lack of consultation and transparency extremely concerning. Despite repeated requests, HMPPS have not shared or made public the policy on E-Wing’s use. We urge the Government to improve transparency and undertake a full impact assessment, to ensure that they are effectively managing both the risk and the rights to privacy and dignity of all those in HMP Downview.

For E-wing, and any future alternative facilities in male or female prisons, there needs to be a transparent approach to ensure these do not have unintended consequences to either trans people or others in the prison. One of these is the danger that such facilities ‘create demand’ from sentencers, or are used as a ‘place of safety’ or a means to access specialist support. The very high numbers of remand and recall prisoners across the prison estate (particularly those facing multiple challenges, including mental ill health and substance misuse) shows how widespread this practice is. Data needs to be monitored closely and transparently to guard against this – and the record of the system so far is extremely poor in addressing this issue.

# Nothing about us without us: Consulting trans people and women in prison

Crucially, transgender people and women in prisons must be consulted and properly involved in developing responses to this issue. We need to know where in the system trans women and trans men are experiencing support (both in their transition and in the wider issues they face), and where their treatment is not of an acceptable standard. We need to know directly from all those living in prisons (including HMP Downview) how the prison service is responding to this issue and how it should be addressed in the future.

It is disappointing that work to consult with those in prison has not yet been undertaken and, with over a year now having passed since the opening of E-Wing, we suggest that such a listening and consultation exercise should begin in HMP Downview as a matter of urgency, and then be extended to other prisons.

# Specialist support services for women and transgender prisoners

We know that there is a serious lack of specialist support for transgender prisoners in general, and especially for those who are in the process of transitioning or express a wish to transition. This is an unacceptable gap that the women’s sector is not equipped to fill, particularly when services to women in prison are already so desperately underfunded. When people are in the care of the state, it is the responsibility of state agencies to ensure effective support is accessible.

WIP operates under the Equality Act exemption that allows the provision of single sex women’s services, including women only spaces. Justification for these provisions includes a woman’s right to privacy and dignity and the ability of organisations to provide the most effective services. Provision of women only spaces is necessary for a range of reasons, including the impact of the trauma of male violence and sexual exploitation, and because some generic services do not meet women’s specific needs.

The exemptions in the Equality Act enable case-by-case decisions to be made in relation to the access of transgender people to women specific spaces (as is happening in the prison system currently). The government must ensure that these vital legal protections continue and that guidance is adequate to enable service providers to make decisions that balance the rights of individuals without opening services to an unreasonable risk of legal challenge. It is clear that government departments like the Ministry of Justice and individual specialist providers are not confident in their legal protections when making complex case-by-case decisions. This must change if the rights of women and transgender people are to be adequately balanced and safeguarded.

WIP, like other organisations working in the field of penal reform and in the women’s sector, is facing an acute financial crisis, as resources shrink, demand increases and the needs of those we support become more complex. If the government is serious about tackling the crisis in prisons, then real investment is required in the women’s sector and appropriate specialist services so that the prison population is reduced, trauma and other root causes addressed, the cycle of re-offending is broken and all individuals have a genuine opportunity to rebuild their lives. Only this will ensure the safety, wellbeing and human rights of all those caught up in the criminal justice system.

Women in Prison does not comment on individual cases.