

Scottish Rugby consultation: Guidance for non-binary players Response by Forwomen.Scot, 31 August 2019

Forwomen.Scot welcomes this opportunity to respond to the consultation on guidance for non-binary players, and the closely linked guidance for transgender players. FWS is a grassroots women's rights organisation comprised of ordinary women from across Scotland: the primary motivation for foundation was concern about the Scottish Government's proposal to reform the 2004 Gender Recognition Act and the potential impact on the hard won rights and protections for women and girls. These rights are embedded in the Equality Act 2010 with protections based on 'sex', and include exceptions permitting female only sport.

It is important to note that gender, gender identity, transgender and non-binary identity are not defined or included in the Equality Act, and that sport is played with bodies, not identities. Regardless of personal identity, every body has a biological sex, and the fact of being male or female is a protected characteristic in the Equality Act.

Part 14, s.195 of the Equality Act¹ permits the exclusion of all biological males from women's and girls' sporting events regardless of identity, status under the protected characteristic of gender reassignment, or whether a gender recognition certificate is held. This is to ensure the safety, dignity, and fairness of opportunity and competition for women and girls.

The definition of gender², as stated by Stonewall is that "gender is largely culturally determined". In other words, gender is simply the stereotypes associated with each sex.

Non-binary³, again from Stonewall's definitions, is "people whose gender identity doesn't sit comfortably with 'man or 'woman'".

Accordingly, non-binary people have a personal identity that does not sit comfortably as a man or a woman according to the gender roles and stereotypes dictated by society. All non-binary people still have a biological sex, and it is this which should determine whether they play in either the men's or women's game.

As a non-binary male is not a transsexual (as defined in law), but a gender non-conforming male, it makes no sense to play in a female team as they have neither a female sexed body, nor do they identify with female stereotypes. Should a non-binary male bodied person not wish to play in a male team, we think the more pertinent question is *why* they are not comfortable playing in the men's game? Is there an underlying culture that is hostile to gender non-conforming males?

Our biggest concern however, is the inclusion of males (regardless of whether they identify as trans or non-binary) in the female category overall, and is primarily regarding safety issues.

Rugby is a dangerous, physical game as evidenced by your disclaimer "Primary responsibility for the health and wellbeing of each player lies with the individual player. In

agreeing to participate players must take seriously the risk of injury to themselves and to others.”

This is a rather confusing part of your transgender policy as it seems to run contrary to all other policies regarding mixed sex rugby where there is contact.

Every other policy we found, from the United States to Australia, indicates that from the age of 12 the sexes should play separately. To quote directly from USA Rugby⁴, “A player should not participate in mixed gender* contact rugby under any circumstances once they have reached the 9th grade.”

*Assume they mean sex

They also state that mixed teams ideally should finish by the 6th grade unless exceptional circumstances occur and there is no other way of playing in the 7th and 8th grades. Presumably this is for safety reasons as once puberty starts males are, as a whole, significantly stronger than females.

Your policy seems to indicate that an U18 male player can play in a female team simply by signing a declaration that he identifies as a woman. How is the risk to females mitigated by signing this piece of paper? What are the physical differences between a 16 year old male and a 16 year old male who identifies as trans? Has a risk assessment been carried out?

U16 trans players must also provide evidence of parental consent. Are the parents of the other players informed that they will be playing against a male bodied person? Informed consent is surely paramount in terms of safety for ALL involved. Will the other players be informed and given the option to not play against a male bodied person? As per your statement “In agreeing to participate players must take seriously the risk of injury to themselves and to others” then the players surely must be informed as otherwise they cannot know what they are agreeing to participate in.

We also note in your policy that “the dignity and privacy of transgender players must be respected”, which is of course important, but we didn’t see an equivalent statement for women, is that perhaps in a different policy document?

Are the changing facilities separate for the sexes? Or are women and teenage girls expected to change with male bodied people. Many of our members have played rugby and are familiar with the communal changing rooms and showers. How does that reconcile with privacy for teenage girls?

Moving on to adult rugby where, again, our focus is on adult males playing on a female team.

The single concession required is to lower testosterone levels to less than 5 nmol/L, this is nearly double the average female level. In fact, it is so high that if a woman presented to her doctor with a level that high she would be investigated for serious illness.

The reduction in testosterone does not reduce the danger to women that a male body presents when playing a contact sport. Male puberty locks in many changes to the male body that cannot be reversed.

Males as a class are stronger than females as a class, this is not a controversial statement.

Males can run faster, jump longer, throw further and lift heavier. They outperform females by 10% on the running track and 30% when throwing various balls. So big is the gap that there are 9,000 males between the 100m world records for male and female.⁵

Pre-puberty the differences are not so stark, although boys do still mainly outperform girls. However, male puberty is the point at which boys really open up the gap, hence the separation of the sexes when playing contact rugby.

Males have around 40% more muscle mass, even when height is taken into account, and 40% less body fat.⁵

Transwomen are, for the most part, physically healthy males who prefer to express their gender using female stereotypes. The transgender organisation GIRES gave evidence to a Parliamentary committee stating that only 5% of transgender people have sought any medical treatment.⁶

There are numerous studies that show transwomen who lower their testosterone, and even those who have had a gonadectomy do not lose bone mass, retain significantly larger muscle area, are stronger, and outperform females.

There is also a study just emerging from Sweden, as reported in the Times⁷, that indicates that the effect of reducing testosterone in relation to reducing leg muscle strength is almost negligible for men who transition to present as women. Testosterone suppression for transgender women has little effect on reducing muscle strength even after a year of treatment according to the study.

Rugby is an intensely physical game that can be dangerous, there is no doubt. How is it possible to reconcile allowing males who retain virtually all their significant physical advantage to play against females safely when ALL policies point to a need to separate the sexes by age 12 on safety grounds?

In conclusion, we are firmly of the view that the provisions of the Equality Act should be utilised in full to keep women's rugby as single sex, for the safety, dignity and fairness of female players. We are concerned that gender (identity) and sex are becoming conflated in many policy areas to the detriment of women, and agree with the Scottish Government that sex is a distinct category from gender.⁸

References

1. <https://www.legislation.gov.uk/ukpga/2010/15/section/195>

2. <https://www.stonewall.org.uk/help-advice/glossary-terms#g>
3. <https://www.stonewall.org.uk/help-advice/glossary-terms#n>
4. <https://assets.usarugby.org/docs/mixed-gender-guidelines-2016.pdf>
5. https://fairplayforwomen.com/emma_hilton/
6. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/written/19292.html>
7. <http://archive.fo/x0GWu>
8. <https://www.theguardian.com/society/2019/feb/07/new-scottish-census-bill-conflates-sex-and-gender-report>