

SPS Policy Review of the Gender Identity and Gender Reassignment (GIGR) (2014) Policy: Evidence Paper

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Introduction

This evidence paper covers the evidence base gathered in the course of the GIGR (2014) Policy Review. Consequently, the evidence paper covers both gender identity and gender reassignment and sets out evidence gathered on both the transgender and gender diverse populations.

The evidence set out supports the individualised approach which underpins the updated SPS Policy for the Management of Transgender People in Custody (2023). The evidence paper also supports the placement and management of Gender Diverse people based on their birth sex, as set out in Operational Guidance.

The evidence also supports SPS' decision to make a clear commitment to preventing transgender women with a history of violence against women and girls (VAWG) who present a risk to women from being placed in the women's estate. All prison populations who engaged in the review, including transgender people themselves, recognised and supported the need for SPS to have robust processes in place to prevent predatory men gaining access to the women's estate. Furthermore, the evidence illustrates that transgender people themselves felt that predatory men claiming to be transgender in bad faith were a threat to their own wellbeing and a threat to the perception of transgender people more generally.

Methodology: engagement

SPS received input from more than 400 people during the policy review, ranging from people in prison to community organisations, from academia to public bodies, specialist expertise in Scotland and internationally. The methods and engagement underpinning this evidence review are set out in more detail in the Methodology section (pg.12) but include:

- 9 semi-structured interviews with transgender people in custody.
- 13 semi-structured interviews with staff members ranging from Residential Officer to Governor all with experience of managing transgender people in custody.
- Surveys were distributed to all women and the same number of men in custody (240 to men and 240 to women) to better understand general attitudes towards transgender and gender diverse individuals and the policy's impact of managing transgender individuals across the prison population. 238 (49.6%) surveys were returned completed. 143 from men (a 59.6% response rate), and 95 from women (39.6% response rate).
- Surveys were supplemented with interviews with 11 non-transgender men and women in custody to expand on the survey's findings particularly the impact that the policy may have had on their own wellbeing.
- Consultation across SPS Directorates and teams including an Operational Quality Assurance panel, Operations expertise (including Governors), Psychology, Chaplaincy, Health, Digital and Human Resources.
- 37 external organisations and agencies were invited to participate in the interviews. 18 interviews took place and two organisations provided written feedback. These organisations included academia, communities of interest and identity, service providers and healthcare. Written submissions were received from three organisations.
- SPS engaged with other jurisdictions including the Ministry of Justice in England and Wales, the Correctional Service Canada, and the Department of Corrections in New Zealand via e-mail to learn about their policies and practices towards the management of transgender and gender diverse people in prison to inform our own

learning and practice. Learning was also gathered from published policies and research on policies from other jurisdictions; and

- A public engagement exercise was published on SPS's website.

Why a dedicated policy for the Management of Transgender People in Custody is needed.

An effective, dedicated policy for the management of transgender people in Scotland's prisons is needed because transgender people are the only group of people in Scotland's prisons where a decision must be made about what gender of estate they are to be placed in and what gender of prison officer should search them.

Evidence based policy development

Evidence based policy assessment: policy options

The evidence set out in this paper enabled the SPS policy review to identify 4 options for the management of transgender people in Scotland's prisons:

- **A "sex-based" approach**, which used an individual's sex assigned at birth as the main criteria upon which to make decisions about a person in custody's admission, management, or placement.
- **A "gender-based" approach**, which used an individual's gender identity as the main criteria upon which to make decisions about a person in custody's admission, management, or placement.
- **A "status-based" approach**, which used an individual's status as a transgender person as the main criteria upon which to make decisions about a person in custody's admission, management, or placement.
- **A "case-based" individualised approach**, which used a holistic body of evidence upon which to make decisions about a transgender person in custody's admission, management, or placement.

Evidence based policy assessment: conclusions

Drawing on the evidence gathered as well as the wider statutory and regulatory obligations placed on SPS as a public body and as a prisons service, together with operational, legal and equalities and human rights considerations, the SPS policy review assessed the 4 policy options and concluded that:

- SPS would not be able to adequately consider and manage risk, including VAWG risk, if SPS was to adopt a blanket approach to the management of transgender people in prison, based on sex, gender identity or someone's status as a transgender person.
- SPS would not be operating in a way which was consistent with its statutory or regulatory obligations if SPS was to adopt a blanket approach to the management of transgender people in prison, based on sex, gender identity or someone's status as a transgender person.
- Prisons policy and practice for transgender people should be individualised, as far as is operationally practicable, at each stage of their admission, placement, and management, in line with wider prisons policy and practice and based on the time and information available.

Why SPS policy should adopt an individualised approach

The review identified 4 main reasons why SPS should adopt a case based, individualised approach:

- It enables SPS to adequately consider and manage risk that people may present to themselves or to others including VAWG risk.
- It protects the rights of transgender people in custody whilst also promoting the care, safety, and wellbeing of everyone across Scotland's prison estate.
- The processes and categories introduced to mitigate the risks at the point of admission and to consider and manage risk are proportionate.
- It is an approach which is consistent with SPS obligations.

Why SPS should not adopt a blanket gender identity-based approach

The review identified 3 main reasons why SPS should not adopt a blanket 'gender identity based' approach:

- A blanket 'gender identity based' approach does not enable SPS to adequately consider and manage risk that people may present to themselves or to others, including VAWG risk.
- A blanket 'gender identity based' approach would run counter to the obligations placed on SPS.
- A blanket 'gender identity based' approach could inadvertently 'out' people.

Why SPS should not adopt a blanket sex-based approach

The review identified 3 main reasons why SPS should not adopt a blanket sex-based approach:

- A blanket sex-based approach does not enable SPS to adequately consider and manage risk that people may present to themselves or to others, including VAWG risk.
- A blanket 'sex based' approach would run counter to the obligations placed on SPS.
- A blanket 'sex based' approach fails to acknowledge gender identity.

Why SPS should not adopt a blanket 'status based' approach

The review identified 3 main reasons why SPS should not adopt a blanket 'status based' approach? (sometimes referred to as transgender halls or wings):

- A blanket 'status based' approach does not enable SPS to adequately consider and manage risk that people may present to themselves or to others, including VAWG risk.
- A blanket 'status based' approach would run counter to the obligations placed on SPS, is discriminatory in that it would segregate a small group of people based on a single characteristic, which is disproportionate.
- A blanket 'status based' approach fails to acknowledge gender identity

The 5 stages of the policy review

The policy review was undertaken in 5 stages:

- **‘Policy initiation’** – this initial stage looked at the methodology for the review, the people that SPS should invite to be part of the policy review and an initial horizon scan. The development of the EHRIA commenced at this early stage and was mainstreamed throughout the remainder of the review.
- **‘Evidence and engage’** - this stage included an anonymised survey to all women in the prison estate and an equal number of men, interviews with people in prison who are transgender and who are not transgender as well as engagement with stakeholders from a range of public bodies, academia, communities of interest and identity, including organisations who work with women in prison and people with expertise in preventing VAWG. Critically, the review engaged with prisons staff with experience in managing transgender people as well as prisons and justice expertise from other jurisdictions in the UK and further afield as well as trade union partners. A public consultation was also undertaken.
- **‘Analyse and recommend’** – this stage included the development of key findings, the identification of the policy options emerging during the review for the management of transgender people and assessment of these against key criteria. This stage also included further updating of the Equalities and Human Rights and other Impact Assessments. This stage also included further engagement with VAWG expertise, ‘operational assurance’ and engagement with trade union partners.
- **‘Authorise and publish’** – this stage included engagement with SPS Executive Management Team, SPS Advisory Board and the Scottish Government. This stage also included communications arrangements for publication.
- **‘Implement, monitor and evaluation’** – this stage is critical and recognises that policy does not end at the point of publication. This includes an ‘Implementation Plan’ based on an assessment of the policy against an ‘Implementation Framework’. This stage of the review identified proportionate monitoring and reporting arrangements, including public reporting arrangements consistent with SPS Data Protection obligations.

Summary of evidence

A summary of key findings from the engagement stage of the policy review are as follows:

Evidence and analysis: engagement

Engagement with people in prison who are not transgender

- The interviews conducted suggest that both men and women had a ‘live and let live’ attitude towards everyone in prison, including transgender people.
- There was hesitation, a ‘fear of the unknown’ and a perception of risk amongst men and women – but this was not based on their experience of prison or living alongside transgender people but more on what might happen if SPS get it wrong.
- The survey findings suggest that there is less of a fear of transgender people amongst women than has been characterised – the survey findings suggest that women are less concerned about the threat posed by ‘authentic’ transgender people and more about the robustness of the processes SPS have in place for detecting predatory men.

Engagement with people in prison who are transgender

- The transgender people in prison largely supported an individualised approach but were keen to emphasise that an approach for one transgender person may not be the best for another.
- Some transgender people supported a 'status based' rather than an 'individualised' approach (commonly referred to as a transgender wing/hall) on the basis that it would create spaces more focused on support for transgender people with staff who had expertise in managing transgender people. However, in the main, transgender people saw the transgender wing/hall as a discriminatory way to separate one population from the mainstream population.
- Transgender people made it clear that the approach SPS adopts should include risk and safety and were vocal that SPS required robust processes to prevent predatory men gaining access to women's estate.
- Transgender people felt that predatory men claiming to be transgender in bad faith were a threat to their own wellbeing and a threat to the perception of transgender people more generally.

Engagement with prisons staff with experience of working with transgender people

- Positive relationships with staff were seen to be key to both transgender people in custody and other populations who may be affected by the policy, for example, women in custody.
- Staff said that SPS needed clear and concise processes and guidance in place.
- Staff said that they needed to retain some discretion but required a level of clarity around processes to ensure they were making defensible decisions. This discretion was especially important to manage transgender people in a way which minimises opportunities for re-traumatisation for women with traumatic past experiences.
- Staff did not support the idea of exclusive spaces for transgender people as it would minimise options for supporting them or to protect transgender people and others.
- Staff acknowledged that transgender people can be subject to a high level of harassment and abuse and that efforts should be made to minimise that in the future.

Engagement with external stakeholders

- There was general convergence across the range of stakeholders that people's rights should be respected, risks should be managed and needs, and vulnerabilities should be responded to. The divergence came mainly in two areas: when stakeholders were invited to interpret those rights; and when stakeholders were invited to input on how these things should be achieved.
- The way that some stakeholders interpreted human rights were often in conflict and opinions were often polarised in how best to uphold these rights.
- The notion of incompatible rights was highlighted, especially in relation to the most suitable accommodation for this population.
- Irrespective of views of stakeholders, most felt that the purpose of the policy is to diffuse tensions and to strike a balance that is desirable and beneficial to all individuals impacted by the policy.

Engagement with prisons expertise internationally

- There is a limited evidence base internationally.
- The jurisdictions we engaged with, in the main, sought to strike the right balance between upholding people's rights and managing risk and protection considerations.

- While there is no ‘silver bullet’ internationally that would address all the concerns of all stakeholders, there are areas of good practice that the updated SPS policy and operational guidance draws on i.e. the searching and sampling arrangement form being introduced through the updated policy is based on searching agreements used in England and Wales, Canada, and New Zealand. Evidence and analysis: policy review

The policy review:

- identified key improvements to prisons policy and practice to ensure transgender people are managed in a way which seeks to prevent transgender women with a history of VAWG who present a risk of harm to those in the women’s estate from accessing that estate, is rights based and ensures the health, safety, and wellbeing of all people in prison. These improvements are set out in more detail in subsequent paragraphs.
- identified changes needed to searching practice introduced in the 2014 policy, through the introduction of searching and sampling arrangement forms, enabling overriding risks to the health, welfare and safety of staff and the transgender person, as well as the vulnerabilities and behaviours of the transgender person to be considered and allow deviation from searching in line with affirmed gender, through defensible, transparent decision making.
- identified and assessed the options available to SPS for the management of transgender people.

Evidence and analysis: impact assessments

The EHRIA is clear that:

- The policy position adopted is the most focused on risk and safety that SPS can achieve without negatively impacting on the rights of staff or people in custody in Scotland.
- SPS can go no further on rights or on risk without introducing arrangements that would be inconsistent with our obligations either as a prison service, as a public body or as an Executive Agency of Scottish Government.
- The policy position seeks to maximise the safety and order of Scotland’s prisons and to maximise the rights of people in Scotland’s prisons without negatively impacting on transgender people or others

The Data Protection Impact Assessment (DPIA) is clear that:

- There is a risk that transgender individuals in prison can be identified through SPS public reporting arrangements and that SPS must change public reporting arrangements for the transgender prison population

Evidence and analysis: key lessons learned

The lessons learned from the events of 2023 have informed the direction of the policy review, mainly around ‘admission’ of transgender people to Scotland’s prisons and the ‘case reviews’ undertaken. The key lessons learned that the policy review has drawn upon are as follows:

- The need for consistency in standards across policy and practice through more prescriptive and robust guidance and recording of case conferences and decision making.
- More detailed processes for the ‘admission’ and ‘case conference’ processes for transgender people in custody.
- A recognition that processes must be flexible enough to mitigate the risks of SPS being ‘time poor’ and ‘information poor’ at the point of admission.
- The need for VAWG to be more clearly spelt out across processes and guidance.
- The need for SPS to continue to improve how we communicate with people in prison to keep them engaged and up to date with decisions affecting them.

Terminology

Affirmed Gender

The gender by which a person wishes to be known. This term has been used interchangeably with “chosen gender” in the past, however affirmed gender is preferred now amongst transgender communities because “chosen” gender implies that the person was not always the gender which they identify as.

Cis gender/non-transgender

A person whose gender identity aligns with their sex assigned at birth. In any of the documents related to this policy, it is a term which is used to mean a person who is not transgender and does not imply any innate gender identity. SPS makes no assumptions about how a transgender, or a non-transgender person might express their gender identity or present their gender.

Cross Dressing

Those who identify as cross dressers are not included under the provisions of the Managing Gender Diverse People in custody Operational Guidance, however an explanation of the term is for clarity and understanding in relation to gender diverse identities. Cross dressing is the act of an individual wearing items of clothing that are not typically associated with that individual’s gender identity, often as a form of gender expression. The word is synonymous with “transvestite”, though this term is not contemporary, and some find it to be derogatory. It should be noted that the term “cross dresser” is not the same as the term “drag queen” or “drag king” – with the former relating to a person gender expression, and the latter two related to entertainers who dress “as a different gender” for the purposes of entertaining audiences.

Gender

The characteristics such as norms, behaviours and roles associated with being a man or woman. This is related to but is different from sex, which refers to the biological and physiological characteristics.

Gender Diverse

An individual that does not follow the gender norms commonly associated with the sex they were assigned at birth. This is also referred to as “gender non-conforming” and operates as an umbrella term for gender identities and gender expressions that differ from dominant social expectations. This term is used to categorise various gender identities (non-binary, gender fluid etc.). Gender diverse individuals may use he/him, she/her, they/them or other pronouns or a combination of these.

Gender Expression

The way a person presents their gender to people around them through a combination of speech, body language, the emphasis of behaviours or physical characteristics, clothing, or hairstyle. Where gender identity is internal and often invisible, gender expression is an outward projection of the way a person understands their gender.

Gender fluid

A person whose gender expression or gender identity changes over time. That change might be in gender expression, gender identity or both.

Gender Identity

The way that a person internalises and experiences their gender as an individual. This is something that is personally experienced, and a person’s gender identity may or may not correspond to the person’s physical characteristics, or the sex they were assigned at birth. A person’s gender identity, therefore, is not always visible.

Gender Recognition Certificate (GRC)

A formal certificate granted under the Gender Recognition Act 2004 which grants full legal recognition of an individual's transition to the other gender. Individuals seeking a GRC need to apply to acquire one, and once obtained, an individual can obtain replacement birth certificates updated with their new legal gender identity. A GRC is not a requirement for protection under the Equality Act 2010 under the protected characteristic of gender reassignment.

Intersex

A person who is born with variations in sex characteristics (reproductive organs, etc.) that does not align with a typical male or female. This term describes a sex characteristic of an individual, and therefore is a category of "sex" and not "gender".

Non-binary

A person whose gender identity does not align exclusively with being a man or woman. A person who is non-binary may feel as though their gender is best expressed as a mix of both man and woman, that they have no gender at all or that they identify as a third gender.

Transgender

Transgender refers to persons with the protected characteristic of gender reassignment under the Equality Act 2010 if the person is proposing to undergo, is undergoing, or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

The term transgender is often abbreviated to "trans". A trans woman is a person who was assigned male at birth, but understands herself to be a woman, and identifies as a woman. A trans man is a person who was assigned female at birth but understands himself to be a man and now identifies as a man. The term transsexual is seen by many as an outdated term for transgender/trans but is used in the Equality Act 2010 under the definition of gender reassignment.

Transitioning

The steps a transgender person takes to live in the gender with which they identify. Transitioning may encompass a variety of steps including medical and surgical intervention, presenting and dressing in the gender with which they identify, changing names and pronouns and changing official documents. It is important to understand that not all transgender people may want, or are able, to go through medical or surgical transition. This process may also be called gender reassignment. Gender reassignment is also the term used in the Equality Act 2010 to denote the protected characteristic of transgender and gender diverse individuals.

Sex assigned at birth

The sex assigned (male or female) to a child when they are born and is most often based on the child's external sexual anatomy.

Evidence Paper

This evidence paper sets out the evidence gathered during the policy review and findings. The evidence paper should be considered alongside the range of other documentation published. The evidence gathered represents a range of views from a range of stakeholders as well as other sources of evidence.

Considering Options for Admission, Placement and Management

To best understand the options available in relation to admission, placement and management of transgender people living in Scotland's prisons, the policy review considered international examples of prison management alongside wider literature.

The academic literature focuses largely on the experiences of transgender people living in prison, rather than focusing on the impacts on the prison regimes associated with admitting, placing, and managing transgender people.

The policy review identified four categorised policy options, which emerged from international examples of the management of transgender people within prison systems. These options were generated for the purposes of understanding the impacts these different approaches may have on those living and working with Scotland's prisons.

Option 1: Sex-based Approach

The admission, placement, and management of transgender people in prison would be determined by their biological sex assigned at birth as recorded on their birth certificate. Sex assigned at birth would act as the most substantial criteria in relation to decision making about that person's management.

For example, a decision about a transgender man's admission, placement and management would be made using that individual's sex assigned at birth (female) as the main factor in determining their placement in custody.

Option 2: Gender-based Approach

The admission, placement, and management of transgender people in prison would be determined by a person's self-declared gender identity. Self-declared gender identity would act as the most substantial factor in relation to decision making about that person's management.

For example, a decision about a transgender man's admission, placement and management would be made using that individual's self-declared gender (man) as the main factor in determining their placement in custody.

Option 3: Status-based Approach

The admission, placement, and management of transgender people in prison would be determined by their status as a transgender or gender diverse person. The status of the person as transgender, and the characteristic of gender reassignment would act as the most substantial criteria in relation to decision making about that person's management.

For example, a decision about a transgender man's admission, placement and management would consider their transgender status as the most important factor when making decisions about their placement – regardless of their biological sex assigned at birth, or their self-declared gender. This option was specifically linked to examples of “transgender exclusive spaces” within prison settings, where placement into these spaces was predicated by a person's transgender status, rather than their sex assigned at birth or self-declared gender identity.

Option 4: Case-based, Individualised Approach

The admission, placement, and management of transgender people in prison would be determined by the outcome of individualised, case-based decision making. Outcomes of case-based evaluation will act as the basis for decisions made about that person's management, with sex, gender, and gender reassignment acting as factors to be considered alongside other factors, including needs and safety concerns.

For example, a decision about a transgender man's admission, placement and management would be made through the consideration of a range of different factors, both related to their transgender status, their sex assigned at birth, and their self-declared gender, alongside factors including their offence, behaviour, and the impact that their presence may have on the wellbeing of others living in custody.

Using the Options to Guide Evidence Gathering and Analysis

These four options each represent different approaches, practices and operations for admission, placement, and management. By speaking to those living and working in Scotland's prisons, and by engaging with external stakeholders with insights into the impacts of managing transgender people in custody about these different options, the policy review explored the development of an evidence-based policy position, contextualised by the experiences of people living and working in Scotland prisons, and through the expertise and insights of external partners and stakeholders with an understanding of the impacts of managing transgender people in custody.

Evidence Gathering for the Policy Review

To gather evidence about these different options, the policy review developed questions to explore the implications of these options in practice – how these different approaches would impact the practices of those working in prison, the experiences of those living in Scotland's prisons, and the level of support and care that could be provided to transgender and gender diverse individuals living in custody.

This enabled the policy review to consider the appropriateness of each of the policy options, and to identify which of the options provided the most practicable position for admission, placement and management whilst ensuring consistency with the obligations of the SPS as a public body and prison service.

The policy review explored each of the options freely with research participants, asking for their advice on the positive and negative implications of adopting one of the four positions outlined above, to generate a balanced position which can provide a rights-based approach to promoting the health, safety and wellbeing of all people living in Scotland's prisons.

Methodology

The following section outlines the methodology used for the data collection to support the policy review. The policy review set out to ensure that SPS gave as many people as possible who live and work within the Scotland's prisons the opportunity to contribute to the review in their own words, to arrive at an evidence-based policy position, grounded in individual experiences. This approach was complemented by insights from stakeholder organisations and interest groups from across Scotland who could provide us with a deeper understanding of the implications and impacts of different policy options for the management of transgender people in custody.

The policy review identified five (5) key groups as part of the 'evidence and engage' stage of the review: men and women in custody, people in custody who are transgender people and people in custody who are not, SPS staff members with experience of managing

transgender people in custody, external stakeholders with an understanding of the impacts of a policy for managing transgender people in custody, and the wider Scottish public.

International Comparison of Policies for the Management of Transgender People in Custody

The policy review sought out comparative policies on the management of transgender people in prison from other jurisdictions. The purpose of this was to explore available policy options, find examples of good management practice which could be adopted and understand the impacts of different policy approaches.

Effort was made to include policies and practice from a geographically and culturally diverse set of countries. Initial search of policies was conducted via internet searches of a selection of prisons. Country examples were also sought from the UNDP report *Mapping of Good Practices for the Management of Transgender Prisoners (2020)* as well as the APT report *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide (2018)*. Policies and practice are included from prison services in Argentina, Canada (federal and provincial prison services), Croatia, England and Wales, Italy, Honduras, Mexico, New Zealand, USA (federal and state prison services), Sweden and Thailand.

Email exchanges also took place with the Department of Corrections New Zealand as well as video calls with the Ministry of Justice in England and Wales and the Correctional Service Canada.

The international comparator of evidence is attached as an annex to this evidence paper.

Interviews with People in Custody

In order to capture experiences of the impacts that the GIGR policy has had on people in custody, the policy review engaged with transgender people (who are directly affected insofar as the policy details the way they should be managed whilst in custody) and people who are not transgender (who have experience of living alongside transgender people, and are therefore impacted by decisions made as part of the policy being carried out in practice).

In selecting transgender people in custody to participate in these interviews, the policy review reached out to all transgender people that were in custody at the time of the data collection. Of the eleven transgender people that were in custody at the time of the data collection, one potential participant was in the process of being liberated from custody, and another declined to be interviewed as part of the data collection engagement. Unfortunately, both potential participants were the only transgender men that were in custody at the time of data collection. As such, we conducted nine interviews with transgender women living in custody. Consequently, the data that was collected from these interviews has a particular bias towards the views and experiences of transgender women, and limited experiences for transgender men in the prison environment. This is a recognised weakness in the evidence base; however, it was not an unexpected limitation given the very small size of the potential participant pool, from which the participants had to be recruited. The implementation, monitoring and evaluation arrangements for the updated policy will look to address this.

In selecting people who are not transgender to participate in these interviews, the policy review surveyed people in custody (see below) and included a section which allowed people in custody who had answered the survey to say whether they would be happy to be spoken to about their responses to the survey. A random sample of participants was selected from this pool. The policy review identified participants that had experience of living alongside a transgender person whose gender matched the establishment they were living in, and those who had lived alongside a transgender person whose gender did not match that of the establishment they were living in. This allowed the policy review to determine how different decisions for the management of transgender people may have impacted on the lives of

those they live alongside. The policy review identified six women and six men in custody who had experience of living alongside transgender people whilst living in prison, and of those selected, 5 women and all 6 men accepted to invitation to be interviewed.

There was a mixture of face-to-face and virtual interviews carried out to speak to people in custody. Interviews with transgender people in custody were conducted earlier in the review process when the impacts of COVID-19 were still more salient. As such, many of the restrictions on non-essential staff entering establishments, as well as the restrictions imposed on social researchers by the Office of the Chief Statistician to protect against the spread of COVID-19, meant that virtual interviewing was the most appropriate option available for the interviews during the engagement processes initial stages. These virtual interviews were achieved using secure video-calling software, or using equipment used for “virtual visiting” that was deployed during the pandemic. As the restrictions eased deeper into 2022, options became available to speak face-to-face to participants in establishments, and the policy review arranged for in-person interviews to be conducted with the non-transgender participants currently living in custody.

Interviews with participants ranged between 30 and 90 minutes – with differences in length of interview being largely influenced by the participants experiences of the interview content, or operational constraints on the amount of time we had with participants. This resulted in 10-11 hours of interviews with 9 transgender people in custody, and around 8 hours of interviews with 11 non-transgender participants who had experience of living alongside transgender people in custody. These interviews were recorded – for the virtual interviews, the internal recording function of the video conferencing software was used, and a digital voice recorder used for in-person interviews – and transcribed using word processing software. The transcripts were then analysed using thematic analysis to explore the current policy – and it’s positive and negative impacts on participants – and other policy options that were drawn from international examples and literature.

Survey of People in Custody

For the purposes of understanding the wider impact of GIGR policy on the wider prison population, the policy review constructed a survey which could capture the attitudes of people in custody in relation to the way that transgender people are managed, and their thoughts and concerns about different approaches to the management of transgender people living alongside them within the prison setting. It was critical to capture the thoughts of men and women living in custody to ensure that the impacts of managing transgender people in custody were fully understood, and how those impacts differed between the men’s and women’s estates. The survey contained questions to consider the attitudes of individuals towards living alongside transgender people in custody, questions about the current policy and its impacts, and included ‘vignette’ style questions which allowed people in custody to comment on the principles of other policy options that were drawn from the international prison context and from literature.

In selecting participants of the survey, the policy review sought to maximise the number of people participating that had first-hand experience of living alongside a transgender person in custody. As such, the policy review identified the establishments in Scotland where transgender people were accommodated within the last year and distributed the survey across those establishments. Given the proportional difference in population between men and women, the policy review concluded that delivering a survey to all women in custody that lived in establishments where transgender people were recently housed would give the potential for a reasonable number of responses from women for the purposes of analysis. As such, 240 surveys were distributed to women living in custody. Using this number, the policy

review then divided up another 240 surveys across the male establishments in Scotland where a transgender person in custody had recently been located.

Surveys were sent to staff members working within these establishments, and staff were briefed on the review process, the survey's purpose as a data gathering method, and the best way to support individuals in filling out the survey. The policy review was attentive to levels of literacy across people in custody and recommended that staff aid people in custody should they need help to complete the paper form. It is also worth noting the limitations that this method of survey distribution may have on response rate when we consider the power dynamics within the prison setting. The evidence from other surveys conducted in custody suggests that individuals do not feel 'compelled' to complete surveys that are distributed by officers. This was a potential limitation that was difficult for the Policy Review to mitigate in the context of the review – the restrictions from COVID-19 and other factors required that staff assist in the distribution and collection of the survey responses rather than having members of the review team present in establishments to assist in the survey being completed.

Of the 480 total surveys distributed, 238 (49.6%) were returned completed. 143 of these were returned by men (a 59.6% response rate across all male participants), and 95 returned by women (39.6% of women who received a survey). Responses were digitised for analysis, and the findings used to supplement understanding of the interviews carried out with transgender people in custody, non-transgender people in custody and SPS staff. The responses provided a range of insights into the experiences of people in custody of living alongside transgender people, their attitudes towards their management and how their management might impact them.

A summary of these survey findings has been provided as an annex to this paper.

Interviews with SPS Staff members

Understanding how GIGR policy impacted staff members across the SPS was critical to the review. The policy review carried out interviews with staff members that had experience of managing transgender people in custody or had experience of decision-making processes involved in the management and placement of transgender people in the prison setting. Staff were selected from a range of establishments where transgender people were currently living, across a range of different job roles. This resulted in a participant pool with a diverse range of experiences of operational experience in establishments where transgender people were living to better understand the operational impact that the policy has on staff work and experience, alongside highlighting the elements of the policy that staff feel work in practice or could be improved.

Interviews with 14 members of staff were conducted across 13 interviews – one of the interviews being conducted as a two-participant interview for logistical and operational reasons. This included five interviews with staff in a "senior management" position, which included Governors in Charge, Deputy Governors or equivalent from establishments not operated by the SPS. Four interviews were conducted with staff in a "middle management" position, which included Unit Managers, managers in operational functions within establishments, and staff now working in national, centralised roles within SPS Directorates. Finally, five interviews were conducted with "operational" staff members, including Residential Officers and Operations Officers, who were responsible for the management and care of individuals living in custody. Both men and women participated at each of the "levels" indicated above, to ensure that a gendered perspective of these experiences were also captured.

Interviews with staff members ranged from around 45 minutes to 90 minutes, resulting in around 15 hours of interviews with members of staff. They were transcribed using word processing software, and thematically analysed against the potential options for the management of transgender people in custody, and against the emerging themes and concerns that the staff raised during the interviews.

Stakeholder Engagement

37 external organisations and agencies were invited to participate in interviews, including academia, communities of interest, communities of identity, advocacy groups, service providers, SPS partners and healthcare providers. Questions centred on the GIGR policy as well as questions about their recommendations impact on equalities and human rights issues and obligations.

Other penal jurisdictions were also engaged, including the Ministry of Justice in England and Wales, the Correctional Service of Canada, and the Department of Corrections in New Zealand. These jurisdictions represented different policies and practice towards the management and placement of transgender people, and engagement with these organisations allowed the policy review to anticipate policy challenges, as well as barriers to development and implementation.

At the 'analyse and recommendation' stage of the policy review, the team also engaged with experts with an understanding of minimising and combatting violence against women and girls. Experts came from justice system, third sector and academia, providing insight and constructive challenge of the policy process and content through the lens of preventing violence against women and girls. The advice from this engagement has directly informed the development of the Equality and Human Rights Impact Assessment (EHRIA).

Additionally, the policy review engaged with other organisations across the criminal justice system in Scotland on the topic of data sharing about gender and admission.

Public Consultation

SPS provided an opportunity for members of the public to comment on two questions related to the management and placement of transgender people in custody:

1. 'What should, if possible, be retained from the 2014 policy?', and,
2. 'What should be adapted, included or discarded in an updated policy'?

The rationale behind carrying out a wider public consultation on this topic stemmed from SPS' desire to develop a wide range of data to inform decision making about the GIGR policy review. Previous consultation on similar topics – namely, on the impact of alterations to gender recognition legislation – generated a large data set through public engagement, which appealed to the principal that the policy review sought to adopt around gathering as much relevant evidence for the development of the policy as possible. We published a link through the SPS website to collect these responses and published this link on social media platforms to enhance opportunities for the public to respond.

The response to the public consultation was extremely low, with only three responses received from the Scottish public. The three responses were summarised and considered alongside the other evidence collected from the stakeholder engagement to ensure that these submissions did contribute to the final review.

Literature around the placement and management of transgender people in custody

Scoping of available literature around the placement and management of transgender people in custody revealed a range of articles and papers linked to the experiences of transgender people in custody, the impacts of decisions made to accommodate and manage transgender people on the transgender individuals themselves, and the wider impact of those decisions on other people living in custody and the staff that are tasked with managing them in prison. Publicly available articles were collected using the search terms.

1. “Transgender” “prison”
2. “Transgender” “detention”
3. “Transgender” “men’s prison”
4. “Transgender” “women’s prison”
5. “Transgender” “male prison”
6. “Transgender” “female prison”

A range of articles were examined for the purposes to exploring the themes considered above.

Involuntary separation, on the grounds of violence reduction or protecting other people in custody, can act as a barrier to integration, and can compound or reinforce stereotypes associated with those in custody who are seen as requiring to be separated in this way (Arkles, 2009).

The Committee for the Prevention of Torture highlights the view that “transgender person should either be accommodated in the prison section corresponding to the gender identity or, if exceptionally necessary for security or other reasons, in a separate section which will best ensure their safety. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (2017) states that, if accommodated in a separate section, transgender people “should be offered activities and associated time with other prisoners of the gender with which they self-identify”

A key theme across the articles focused on the impacts of managing transgender people in a variety of ways across different jurisdictions, but the commonality across those jurisdictions that transgender people can experience a “double punishment” or increased feelings of marginalisation through approaches to management. For example, the use of involuntary separation of transgender people, on the grounds of reducing violence or protecting the transgender individual or those alongside them, could amount to a barrier to reintegration for transgender people, and could compound or exacerbate negative stereotypes about their intentions and behaviours (Arkles, 2009; Forder, 2017). This is further compounded by the notion that the transgender population represents an “invisible” cohort within custody (Dunn, 2013, Gordon et al, 2017) – one that is too small to divert substantial resources to, which in turn diminishes a prison service’s understanding of their needs, risks, and vulnerabilities. This dearth of knowledge about the experiences and needs of transgender people is feature that authors have highlighted extends into the research space (Gordon et al, 2017; Van Hout et al, 2020; Van Hout and Crowley, 2021), which in turn contributes to this “invisible” characterisation of transgender people living in custody.

Steps have been taken to enhance the evidence base related to the experiences of transgender people in custody. Jenness, and colleagues (Jenness, 2010; Jenness and Fenstermaker, 2014; Jenness and Fenstermaker, 2016; Jenness et al., 2019; Jenness and

Gerlinger, 2020) have produced research with the intention of better demonstrating the experiences and needs of transgender people in the context of the United States, and Maycock (2020; 2022a; 2022b) providing accounts of transgender people's experience in the Scottish context. Largely, these works focused on the needs, vulnerabilities, and complexities of transgender women in custody. The notion of gender authenticity emerged in both bodies of publications (Jenness and Fenstermaker, 2014; Maycock, 2020), with both authors reporting a desire across the transgender population to live as their authentic self and affirmed gender whilst in custody. This desire for authenticity could lead to further discrimination (Jenness and Fenstermaker, 2016) for transgender women who seek to present female within a men's prison – which demarcates them as another within the “hypermasculine” environment of prison. The gendered nature of the prisons – the organisation of the prison estate along the lines of men and women – does not provide a helpful backdrop for considering solutions to the minimisation of that demarcation. Lambie (2012) acknowledges that there is little space in a gendered environment like a prison estate for discretion to be applied in the combatting of these concerns about gender normativity. The hard and fast distinctions and definitions of policies that seek to categorise transgender people – and the infrastructural binary focus which prisons are required to view this population – minimises the scope for prison services to make decisions based individualised risks and needs (Hochdorn, et al, 2016; Jamel, 2017). The problem also extends into healthcare and support for the transgender person wellbeing, where the binary nature of the prison estate means that provisions for health and support cannot reach transgender people in the same ways as their non-transgender peers (Sevelius and Jenness, 2017).

Within this context, some authors considered the impacts of placement decisions on transgender people living in custody, and how different policies shaped the experience of the transgender person, and the person they were living alongside. Placement which focused on legal sex – including provisions which required transgender people to have acquired documentation which altered their legal sex - was considered by Stohr (2015), who emphasised the inconsistencies which can be experienced when relying on legal certification as basis upon which to categorise transgender people. Specifically, it minimised the experiences of those transgender people that may not be able, were unwilling, or did not find it necessary to apply for that documentation. Additionally, reducing the scope of policies to have a narrow definition of what sort of person qualifies to be housed in a particular estate with prison can make transgender people more susceptible to victimisation or assault (ibid). Dunn (2013) found that this issue was not confined to the US – the context of Stohr's research – but that the experiences of transgender people in English and Welsh custody was also characterised with victimisation and harm. This could be, in part, emphasised by the cultural differences between establishments which have been slower than others to challenge negative attitudes towards transgender people living in custody (HMIP, 2015). The compound problem is perhaps best expressed by Rodgers et al. (2017), who examine the circular issue of existing prison policies seeking to protect or reduce the vulnerability of transgender people through separation or other protective practices, which emphasises their otherness, which in turn lead to pathologizing all transgender people as having the same experiences, and therefore, the same need for protection. Rather than tackling the cause of the victimisation and concerning an individualised plan for the management of transgender people, the solution of removing the transgender person from harm does little to combat the perception that a transgender person's placement represents, inherently, a risk to the order of the prison.

Perhaps the most politically prevalent discourse within the Scottish context over the course of this review is the impact that the placement and management of transgender people may have on those living and working alongside transgender people within the prison

environment. In 2019, Murray and Blackburn (2019) examined the role that gender self-identification – the basis the 2014 policy’s position on the placement of transgender people in custody represented a lack of due processes, and as a result, did not appropriately consider the impacts of non-transgender women living in custody in this decision making. This article prompted debate across academic circles in relation to the policy position, (see Cowan et al, 2021, and subsequently Murray et al, 2021), which is an example of the arguments which are often considered on this specific topic. In short, the question how the non-transgender population of a prison is impacted by the placement and management of a transgender person is often characterised as an under examined element of research in this field. Maycock (2022) interviewed women living in prisons alongside transgender women to their experiences of custody. Maycock highlighted that there existed a wide range of perspectives across the cohort “complicated the idea that all cis women (sic) in custody feel threatened or vulnerable as a consequence of living with transgender people”. Within these discussions, the notion of legitimacy and genuineness of transgender women living in custody was raised as a concern of women who are not transgender living in custody. The idea of predatory men claiming to be transgender in bad faith has been highlighted in previous prisons research, which, problematically in some regards, places “motivation” to transition on the list of factors which a prison service might consider keeping women living in custody protected (Simopoulous and Khin Khin, 2014). Other motivations may be present too, as Sandor von Dresner et al (2013) highlight, in relation to the consumption or selling of drugs, or in US examples, in pursuit of establishing romantic relationships (Jeness, 2014).

In the past decade, it seems, research literature around the management of transgender people has not proliferated in ways that expand our understanding of prison practice and policy specifically, but rather has focused on the experiences of transgender people (mainly transgender women), and more recently, smaller shifts towards understanding the impacts of “motivation” of transgender people, and how that can impact the experiences of non-transgender populations in custody. Ultimately, understanding about practices and options for the placement and management of transgender people are largely descriptive, official publication of policies or procedures, which are detailed in Annex 1 of this paper. From the above literature however, two major points emerge which we should consider within the gathering of evidence to inform policy options:

Decisions about the placement and management of transgender people can emphasise the marginalisation and “otherness” of transgender people, in ways that can undermine their safety, access to support and rehabilitation. Additionally, this adds to a culture that transgender people’s issues and support is a concern that requires specialised resource, rather than tackling the concerns in a way that SPS – or any other prison service - might for other populations.

Women living in custody are impacted by living alongside transgender people in custody, and SPS management of transgender people in custody, and having processes in place to ensure that admission, placement, and management practices do not negatively impact women living in custody and provide reassurance that SPS can prevent predatory men from taking advantage of policies that manage and place transgender people in custody.

Admission of Transgender People into Scotland's Prisons

Admission of transgender people to prison is a key area of focus of the policy review, especially the process for transgender individuals initially arriving to establishments, and the implications that the admission of a transgender person into custody had on operational processes – specifically in relation to initial placement and identifying needs (both in relation to the needs of the transgender person, and the needs of staff to make evidence-based and practical decisions).

There was a distinction drawn amongst staff between the management of a transgender person at the point of admission, and the management and placement of the transgender person in the longer term. The GIGR (2014) policy (p.18) highlighted an initial “72-hour period” within which specific processes relating to the transgender person’s management should be carried out.

The engagement with staff highlighted that this period represented a different set of needs in relation to decision making than was needed at later stages of the transgender person’s management and placement.

“I think the first 72 hours... is about asking, are you in the right place? And is there anything you need? So that’s done. But like I said what the policy then misses are the personal officer discussion and I think there... there would need to be a wee guide for the personal officer what kind of things to ask for additional information from the personal officer... that can then get added to the rest of the assessment which can get done and then that takes you from that 72-hour period... Where are we going to put you now? What kind of needs do you have long term?” – Staff Interview

“I think there is maybe a two-tier approach and there is maybe an immediate assessment around what information do you have at the very start... then later on, I think it is good thinking about the different stages in somebody’s prison journey and how their transition relates to those different parts” – Staff Interview

From the evidence gathered, the main factors that resulted in the first 72 hours being distinct from longer term periods of management from transgender people could be thematically separated into two distinct areas:

1. the information that was available to establishments at the point of admission to assist in decision making in the case of a transgender individual; and
2. the impact of the process of admission on the transgender person themselves.

Information about Transgender Individuals being Admitted to Custody

The need to draw a distinction between admission and longer-term placement and management of transgender people is a clear operational reality. The early stages of a transgender person’s time in custody are largely about ensuring that establishments are able to collate a practicably feasible amount of information about that individual to ensure that decisions are made in an evidence-based way. In some cases, the type of information that is available about the individual is sparse or limited, which presents difficulties in relation to decision making.

“It’s 7pm at night, it’s a male establishment, and we get a person that’s identifying as a female, all the way down to the name of the warrant. They were initially being sent to a women’s estate, but at some point, along the way that changed. Nothing has been communicated to us in terms of preparation. I’ve printed off the policy. Ultimately, we worked our way through it, and it worked out, but we had no information when they ended up coming in” Staff Interview

“It absolutely is the case for everyone in custody, people come in, first time in custody, 50th time in custody, first time as a woman. It is very much a unique person-centred thing. And yes, you might know more about a person after 72 hours, but it might be a week, it might be a month, or 6 months, however long it might be.” Staff Interview

Staff highlighted that the information that was available at the early stages of someone’s admission sometimes meant that decisions made about the placement of people in custody needed to be made in the context of that limited information – this was a general reality of decision making at the point of admission, rather than a distinct feature of the management of transgender people in custody. The lack of available information on new admissions into custody (an issue generally with new admissions to custody, rather than distinctly related to transgender people) was due to two specific factors:

Firstly, much of the information that could inform the assessment of a new admission into custody are drawn from a range of different sources – sometimes these sources are other organisations, with their own protocols for data sharing and resource demands meaning that information which can inform decision making processes is not always obtained in a timely fashion.

“You might need information from other professions to make decisions, health, social work... it might be an expert with the community... but you can only make the decision that is right at the time, and give yourself the space and time to gather more information, to understand the person better, where you might need to adapt or flex the approach to their management” – Staff Interview

“There might be occasions where you’re got significant information from psychology, a whole host of information on prison record systems, narratives on the persons behaviour on a weekly basis, which is all great, but you might not be able to gather that quickly to come to an appropriate decision. – Staff Interview.

“For a multidisciplinary approach like you need for this one, when you are working with a range of complexities, then you add population pressures, very violent individuals to manage, drug issues and staying on top of that, ensuring we are providing the right care for those who have mental health challenges, all of those different professionals you need to assist you are tied up with those things, and they are telling us that they don’t have the time... as the world changes and the challenges that face us become more complex, resource rarely changes to reflect all of that” – Staff Interview

Whereas this is an operational reality across all populations in custody, the transgender population is the only population currently in SPS care where decisions need to be made about the appropriateness of estate rather than just appropriateness of establishment (i.e. the appropriateness of placing a transgender man in custody examines both whether they should be placed into the male or female estate, alongside decision about which establishment within that estate would be most appropriate). Given the implications of these decisions, staff highlighted a desire to have more guidance around how these decisions should be made.

“I think the policy as we have it now is written a wee bit vague, or loose. There is some stuff that is bold writing, so you read that as a direction. But if you struggle to interpret that direction, you end up feeling as though you can’t comply, or that you need someone else to decide. Should I take the person at face value, or is there evidence I need to consider? Even some bullet points to guide you through that process, where we might find that evidence.” Staff Interview

“Out in society we have moved on massively with regard to gender identity. In custody, because we are not coming across it very often, we have to refer to policies when someone comes in, and I’m not quite clear that we have focused enough effort into focusing on making sure staff understand the need to be focused on equality and diversity... and so we need to seek guidance, whether that is internally or from partner organisations.” - Staff Interview

“I think the simpler and more comprehensive the guidance you give people on looking at how we manage and assess transgender people the more successful it will become, particularly when we are talking about people with complex needs” – Staff Interview

Ensuring that staff had appropriate support in decision making around admission goes further than simply providing clear guidance on how to navigate those decision-making processes. There was a tension across staff that making decisions requires information, which may not be readily accessible. As such decisions needed to be made in a way that was timely, but in a way that was cognisant of individual’s safety and rights.

“I understand that the person has their rights, it’s their right to live as they choose, and I don’t think we have an issue with that, but how can I put someone that we think represents a risk to a woman in a women’s hall... There is a balance there that staff need to have confidence in”. – Staff Interview

“The nature of prison makes people’s rights more vulnerable, and I don’t think that unique to the transgender population. It’s about making defensible decisions when we have people in custody who may have their rights compromised. It’s not about flagrantly setting aside human rights to make someone’s job easier. We need a policy that allows for that and allows us to facilitate each case on its own merits, and its own risks” – Staff Interview.

There was a tension across staff that making decisions requires information, which may not be readily accessible. As such decisions needed to be made in a way that was timely, and guided by already established and a concise way to consider the tensions around rights and risks is found in a written response that one stakeholder provided to us in relation the impacts of rights. It involved a consideration about the need to preserve some communication within the policy between the rights and risks at the level of an individualised assessment.

“I am of no doubt that transgender people remain a ...group who face continued discrimination and that recognition of one’s identified gender is essential to human rights and individual wellbeing. This recognition in a wider society should, as with all other rights, also apply to prisons. However, if there was a possibility... allowing for female transgender prisoners with a GRC to be automatically housed in the female estate without any individual risk assessment, my view would then be unquestionably having to align with [the view that transgender women should never be accommodated in the male estate]” – Written submission from Stakeholder

This difficulty in disentangling the interactions between risks and rights perhaps resulted in an apprehension to make decisions related to this, and desired further support or assurance that the decision they made was appropriate from senior staff within establishments, or from SPS staff with expertise on managing these issues.

“The support needs to be there for staff to give them the confidence to make the decision on their own, but in order to get them to a point where they can arrive at decisions where there isn’t someone at the other end of the phone to tell them what they should or

shouldn't do, they need to know that the policy puts things in place to protect and guide them, and that there will be people to back up those decisions" – Staff Interview

"Whether it be at HQ, whether it be from a governor or from a line manager I would hope there would be an avenue to support us when we didn't feel confident about our decisions "– Staff Interview

The second factor that limited availability of information on an individual arriving in custody was quite simply whether there existed, on any system, any information that might be considered relevant to inform decision making around a person's initial admission into custody. In certain cases, establishments were reliant largely on the information that the SPS already held about an individual who was being admitted into custody.

"In prisons, we need to make decisions every day based on limited information. Assessments will only be as good as the information presented to us, but failing to decide is not an option. Its right that we may err on the side of caution where information is limited, but thereafter, you need to have the flexibility in the process so that as we learn more, we can apply different standards when the information changes. -Staff Interview

"There needs to be a more joined up approach. What information does the court have about them?... Does community based social work have a view they can share before they get to the establishment to try to avoid us needing to remove someone from association straight away." – Staff Interview

"Yeah, I think... it's a common issue again against all of the populations and all of the people. We need the information about a person in custody, we need a pack of information about what is known about them through the court, the police, the escort, the local authority, social work services. People should come into custody with a pack of information about what is known and that doesn't happen" – Staff Interview

Staff were more comfortable making decisions about individuals arriving in custody that were 'known' to establishments – individuals who SPS had already managed and had an established understanding of their behaviour and conduct whilst living in custody – than they did when someone 'new' arrived in custody for the first time. Staff highlighted the tension that emerged here; did lack of evidence about a person's behaviour mean that they should be viewed as a potential concern, or could lack of evidence about negative behaviours be considered a sign that they did not represent these potential concerns? When considered in the context of a transgender person in custody, staff sometimes felt as though they were making decisions about a person's transgender status, rather than simply reflecting on the practical implications of their management.

"What a lack of information means is that there is a risk that we might make judgements about trans people based on feelings or appearances, and actually, if you end up making those sorts of judgements you end up with something so reductive and unfair. That's not our job." – Staff Interview

"What sort of evidence would we want as an organisation that we make us able to say, 'that person is ok to live as that gender'? I don't think we as an organisation could ever be seen to assess if someone was legitimately transgender. You don't get asked proof of your heterosexuality? What you can assess is someone's risk based on the information you have. That's what risk assessments are for. Just because they identify different doesn't mean we should categorise them differently" – Staff Interview

Interpretating the “trans-ness” of a particular individual through available evidence is mentioned in the policies and practices of other jurisdictions. HMPPS provide staff with a way to interpret evidence within their guidance on the management of transgender people and notably highlight when evidence is “strong”, or inversely, represents “negative” evidence of a transgender person’s authenticity. Staff who were interviewed as part of this review were uncomfortable with the idea of determining an individual’s “trans-ness”, but rather pointed to evidence that they had available to make decisions about the risk that individuals may present to others in custody.

It was also apparent when reflecting on the survey responses from women in custody that they saw the SPS’s role in relation to managing transgender people in custody as being about detecting those who wanted to use the system to victimise women. Women ranked different factors like the length of time someone had been living in their transgender identity and the timing of the transgender person’s declaration about their transition as more important in decision making processes than men who answered the survey (see Annex 2, responses to question 4).

Further still, considering remedies for this lack of information – specifically considering the sharing of information about an individual gender identity *before* they arrive in custody – is not as straightforward as it may seem. Discussions with partner organisations across the justice system in Scotland, that were held to consider the sharing of data in relation to gender reassignment, highlighted inconsistencies in the way that sex and gender is recorded at different moments within a person’s journey through the criminal justice system. Even when that information is known by different organisations within the criminal justice system, there are still uncertainties as to what information is shareable. Where there are no legal concerns about sharing information about protected characteristics under GDPR and data sharing protocols, the relevance of that data sharing to SPS (particularly at a stage in the journey where convictions are present) still raises questions about what data sharing processes are appropriate. This was reflected by staff who saw these issues manifest in practice within the admission and reception processes.

“We had a transwoman whose warrant said [a female establishment] but that had been scored out in pencil, and [a male establishment] had been written in. Somewhere, someone believed they should go to the female estate, but that was changed. But at no point was I involved in that decision, but I need to manage their admission. Something’s not adding up that one name is scored out and our establishment’s name is written in. I don’t have any information about them. Does this mean that they aren’t to be treated as a woman now? All I can do is make sure that person is safe.” - Staff Interview 4

Tackling this last issue, about the sharing of information across the criminal justice system, is not immediately rectifiable through the policy review – different organisation uses different recording system and different automated mechanisms to produce documentation. There are further issues related to when and where it is appropriate for organisations to collect, record or disclose information about individuals. Early discussions have taken place between SPS and other Scottish criminal justice partners to explore solutions to these complex issues, but until they are addressed on a system wide basis, then even collecting information as basic as someone’s gender or gender reassignment status provides a challenge for admission.

Stakeholders emphasised the point about lack of recorded information at the point of admission, and where SPS efforts could be engaged to mitigate the challenges that were posed by that.

“A person is largely unknown at [point of admission] aren't they? So, there's a concern immediately about wellbeing, about their mental health, about suicide, so I think you would really want to mobilise your resource around about health to try and get a richer assessment for the individual. You might need a strategy in place to ensure someone is placed on observation during that initial period in custody, so that professional can get a better handle on how they are going to support that individual”. – Interview with Stakeholder

The policy review identifies a need to ensure that staff are equipped with the right tools to assess available information in the decision-making processes of admission, and when the (likely) scenario arises where there is little information known about an individual entering custody, that there are processes in place to support staff in the decision-making process. These tools need to include an explanation of the type of evidence that can assist in making those decisions, how that evidence can be interpreted, and what the absence of information means for the decision-making process. Additionally, it should include reassurance that there are senior managers and staff in oversight roles, within establishments and nationally, that can support decision making. There should be a clear and practical process for escalating decision-making processes where complex decisions are required.

Beyond this, there is further work to be done to explore data and information sharing improvement across the Scottish criminal justice system in relation to the recording of sex and gender, allowing SPS to identify any relevant information about an individual's gender identity earlier within their progress through the criminal justice system so that information can become sharable at the earliest possible opportunity.

Understanding Risk and Safety in the Admission of Transgender People into Custody

Once in receipt of the available information about a transgender person entering custody, the way that the transgender person was managed within the first 72 hours of the individual's admission represented a different challenge from their longer-term placement and management. Where information was scarce about the individual entering custody, staff felt that there were risks associated with their management and admission. Where information about an individual was not known or scarce – which is often default when a person is arriving in SPS custody for the first time – then decisions about the individual's admission and initial placement in custody can be challenging for staff that are required to assess that individual alongside others through the admission process.

It is often the case, where the risk that a transgender individual represents is unknown to the SPS, that isolating an individual in accommodation where they are unable to present a risk to themselves or to others in custody is used until further information about their behaviour becomes available. Staff who worked on the reception and admission of transgender people acknowledged that could often be the case for a new person entering custody that was transgender.

“When I first arrived, this officer had to take me through reception and they didn't have any information from court, they hadn't told him anything, and he was sort of confused about the best way to search me. I've been on hormones for years before coming into custody. They didn't know where to put me in the hall” -Interview with a Transgender Person in Custody.

“We have had male to female, female to male, but on the odd occasion, regardless of what their identity was, the risk was just too great for us to think about putting them in with any population. For example, for a transgender woman, we could house them in the female estate out of association in our separation unit but doesn't feel like a legitimate reason for using [rules to keep people in separation].” – Staff Interview

The use of separation in these instances raised important questions about the admission process for transgender people where information about their behaviour was largely unknown. SPS should always look to minimise the use of separation in light of the impacts of isolation and separation on those that are held there and only use separation where there is no other alternative. The evidence upon which separation should be used for the accommodation of individuals – particularly at the point of admission, which can be a stressful and alienating time for any individual in custody – should be persuasive. The GIGR (2014) policy does not provide staff with adequate guidance to make those decisions, and staff were left to feel as though they could be given more support in those areas to ensure that the decisions they were making resulted in the correct outcomes for the individual and were defensible where the use of separation was found to be the best course of action.

“We are a risk averse organisation... if you have a transgender person coming into custody and you know they are in for sexual offences, or you don't know who they have committed their crime against, that person should probably be held in separation and re-integration... until we have got more of an understanding about that. They may also not get moved out of there particular quickly because we are, like I said, risk averse. No one wants to make a mistake like that” – Staff Interview

This brings into focus the question of what evidence and information could be used to legitimately arrive at decisions about the admission of transgender people into custody. For example, should the most important factor in the transgender person's placement be their own self-declared gender, then it could lead to scenarios where other factors – like their

known behaviour, or type of offence, or their vulnerabilities – are not given the full range of consideration that it should be when assessing appropriateness for being initially placed in a particular estate. A transgender man, for example, might be too vulnerable to place into a particular men's establishment, and may be safer being placed in the women's estate until more information and planning could take place. A transgender woman may be convicted of a specific crime that makes their placement into the women's estate inappropriate and would be better housed in the men's estate despite their self-declared gender. Staff and transgender people in custody acknowledged that respecting self-declared gender was an important feature of the management of transgender people, but there were other factors that made relying on self-declared gender as the most important factor for decision making inappropriate or unworkable.

“When someone first comes in, trying to decide based on their social gender can be difficult. Do I take their declared gender at face value? What name is their driving license in? What's their name on the warrant – that means someone at some point of the criminal justice system has made that decision, but that's not a definitive answer... if there is no evidence about how a person has lived outside of custody, then where's the line for people working on reception. You don't want to make a mistake, but you don't want to be overly restrictive in how you manage them” – Staff Interview.

“It's not everyday that you encounter an 18-year-old person that was born female, coming into prison, and saying 'look, I'm known as a man on the outside'. That doesn't happen everyday in custody, and it's such a small minority that when somebody does say that you want as much information as possible, and you don't want to take them at face value. But it's not until you start gathering information, you get information from the police and the courts, from social work that you start to back up what they are telling you... It has to be an individual approach... – Staff Interview

“If you don't have all the information you need to default to something safe, a safe holding position which is likely to be on a [rule to separate that person from association]. For both their own safety and for the safety of other people on the hall. They could be distressing people that they are placed alongside no matter what gender they are... and that's not exclusive to the trans community, but I can imagine it would be very distressing for a hall of men to hear a transman shouting and screaming, or a transwoman who was born a man shouting aggressively at a staff member in a women's hall. That would cause distress. We need to minimise that distress at a point when we have no information – Staff Interview.

This later point made by staff was one which woman living in custody mentioned when discussing the impacts that placing transgender people in custody might have on their own wellbeing.

“I think that the issue with trans people being housed comes from the fact there is a low threshold for how they might present. I think that if the person has come out as trans, or is going through a transition, as long as they are committing to the process, then yeah. But I think at the moment if someone isn't committing to it, then that's when you need to ask questions about moving them. I have trans friends outside of prison, people that I know and love, that don't want to be labelled like that, like they are “using the system”. They have fought hard to be able to push forward in their journeys.” – Interview with a Woman in Custody.

“You need consider what placing a transgender woman in a women's hall might do to women living there. Regardless of what they say, they might be biologically male. I know

women in here that have a history of being battered and abused. You still need to be aware of what women need” – Interview with a Women living in Custody.

Considering this point alongside the reality that not all information can be known about a transgender person at the point of admission, raised concerns about how informed SPS could accurately predict a person’s previous behaviour, particularly when considering transgender women arriving in custody.

Risk was a key focus for all stakeholders, and perhaps there was a clear consensus across all stakeholders that safety – of the transgender person, the people they were placed alongside, and staff – was maintained across the prison estate through the revised policy. For some, policies like the GIGR (2014) policy played a role in assisting with wider perceptions that all transgender people represented an inherent risk as a homogeneous group.

“I very much support the SPS taking the safety of everybody in custody seriously, but I sympathise with the difficulty this issue creates. I don’t think that characterising males as inherently violent is necessarily helpful. If there are individuals that pose a risk to a population then that’s an issue, regardless of whether or not they’re trans, and that should be an issue regardless of whether or not they are trans. I think to single out transgender people through a particular risk assessment feels problematic, and I also think that the risk that a huge population would pose to one outside is probably much higher than the impact that one individual could have on that population... but I have lots of sympathy with the instinct, particularly as a woman that has experienced violence, to protect any other women from that violence” – Interview with Stakeholder

“I think that the policy should be entrenched in legislation and human rights which reflect everyone’s rights and then relying on an individualised approach which to really pick up on the individual circumstances of each person you’re placing in custody... but in relation to risk you need to be clear what risk you’re talking about when you’re applying it. There are so many perceptions out there about what risk looks like in relation to this, so when you talk about risk, you need to define the sort of risk you are talking about” – Interview with Stakeholder

“Not everyone who talks about risk in these areas, even those who are experts in risk, which I am, agrees about the difference that gender identity and sex play in the way that we assess risk. Some say you should separate the two entirely, some think they should be considered together, some say biological sex is the only thing you should see. I think that the very fact there exists this disagreement means that the important thing is not making assumptions about the risks that anyone might represent, it’s about embracing that ambiguity and not leaping wholeheartedly to embrace one over the other, and to make reasoned judgements on the basis of available evidence in each case.” – Interview with Stakeholder.

Notably, as the stakeholder above suggests, the difference between men and women was a concern for some stakeholders in their consideration of risk, notably focused on the context of prison, and the ways in which that the prison environment shaped risk.

“We need to acknowledge that there is difference between men and women, and that these differences come to the fore in situations where you’re locked up with someone. I understand that prisons have male guards... but they are structured and limited job roles, the women know exactly what’s going on and they also aren’t left alone with the staff member. So, when we are talking about harms, we are not just talking about actual attacks. We are talking about women being in fear in their presence” – Interview with Stakeholder

“I think what the risk assessment has never clearly done... it only really looks at the index offence or very obvious things in a prisoner’s offending history... I think you need to look at the person completely to assess the level of their risk.” Interview with Stakeholder

Beyond this, acknowledging the goals of prison service, and the impact that environment plays in achieving those goals was considered by some stakeholders.

“If think it’s worth engaging with the people themselves, transgender and non-transgender people, to understand their own complexities. The kind of work that the SPS are embarking on with partners around creating nurturing environments, all of that is about turning folks lives around, listening to them and getting it right. That can be challenging if we are creating environments that they don’t feel safe in.” – Interview with Stakeholder

Stakeholders highlighted safety and risk as being central to their reasoning for supporting one particular option over another, but principally, there were shortcomings identified by different stakeholders in relation to each of the explored options. This was not surprising, given that the range of stakeholders included in this review viewed risk through lenses informed by their own expertise and interests. This shared exploration of what risk means in the context of the placement of transgender people was broad, and ultimately underpinned a need for clear and prescriptive guidance which focused on minimising risk in an environment where information about individuals was poor, but allowing for a dynamic assessment of safety as more information about an individual became available. Such an approach needs to be cognisant of the environment and experiences of those that lived alongside transgender people, with the needs of those individuals being a consideration the way that decisions about a transgender person are made.

This evidence highlights the limitations of using self-declared gender as the sole factor for determining the placement of transgender people in custody, particularly when there are factors – like the transgender person vulnerabilities, or previous behaviours and convictions – which jeopardise the safety of the individual or anyone living or working in SPS establishments. The revised policy should give space for known (and unknown) information about the risk and individual may represent to themselves or anyone living in custody to have a bearing on the way that SPS initially admits people into custody, not simply to reduce the risk that the transgender person may represent to the population in the receiving establishment, but also to ensure that SPS minimises the negative impacts of separation by making informed decisions about the admission of transgender people before that separation needs take place.

It is important to recognise that the evidence gathered was largely in favour of an individualised approach to be acknowledged and respected, but in the case of initial admission and subsequent placement decisions, the evidence made it clear that safety of everyone living and work in Scotland’s prisons needed to be reflected in the decision-making process. Where there was legitimate evidence that an individual did not represent a risk to this safety, then ensuring that SPS were respecting a person’s self-declared gender was important. When the evidence suggested that the individual may represent a safety risk to either themselves or others in custody, then it was just as important that this risk be considered alongside self-declared gender and be factored into the evidence which is used to determine initial placement.

Placement across the Prison Estate

SPS staff indicated in the evidence gathering process that the process required for longer term placement decisions about transgender people in custody had distinctly different considerations than the decision-making process around initial admission. Firstly, the lack of information that SPS may have about the transgender individual which is characteristic of decision making processes at the point of admission has normally been rectified – there has been sufficient time to gather more information and any relevant intelligence about the individual from key partners to better understand the needs and vulnerabilities of the individual, and more time to engage with criminal justice partners about offending history and any available information and intelligence about the person’s behaviour that their placement may have on safety.

The GIGR Policy (2014) vehicle used to make decisions about the long-term placement of transgender individuals is the transgender case conference. This is the mechanism through which this information can be brought together to develop a plan for the individual’s placement, to consider the needs that the transgender person may have to ensure that SPS provides them the appropriate level of care, and highlight any potential impacts associated with their placement.

The Role of the Case Conference

Staff considered the case conference process as the main vehicle through which defensible decisions about the placement of transgender people in custody could be made. These case conferences were multi-disciplinary, allowing for the transgender person themselves to make representations about their placement and management, and considering this representation alongside the expertise of SPS staff, partners from NHS and social work, and any other relevant parties that may be invited to better understand the impacts of these decisions. The case conferencing models, and associated processes are well known to SPS staff, and as such, there was a concern of over complicating already existing processes through this review.

“I think because having a transgender person come into custody is rare, and more unique, we want to make sure our Equality and Diversity manager is on top of case conferencing and note taking and that this. Looking at any relevant risk assessments, acting a local expert that can pull everyone else together. Because there are so few cases you want that single point to pull everyone together like psychology, NHS, social work, any other organisation that they think might be useful, family members if there are challenges there or for their own support, and of course the individual themselves. I don’t think it’s about creating a whole new system of case management for transgender people; it’s about incorporating it into the way we manage other people, using familiar paperwork that exist in case management, streamlining it, and incorporating it into existing frameworks. That way it’s more visible, and fits into local and national processes we already have. We don’t want one establishment doing it one way and another establishment doing it another way.” – Staff Interview

Transgender people in custody acknowledge the importance of these case conferences in giving them a space to input into the decision-making process.

“Yeah, I definitely felt like I was inputting into the process [at the case conference]. I remember there was a manager, a governor, some nurses, and couple of officers who knew me there, and we talked to one another to understand what would work best”. – Interview with a Transgender Person in Custody

“I think that they were the place to talk about risk assessment and the things you might experience. We discussed those things, and I think it gave ample time to talk to psychologists and officers, so they got an idea of what it was they were dealing with, to get a better understanding of me and how I felt.” – Interview with a Transgender Person in Custody

Despite this, some transgender people mentioned that they did not feel completely informed about the process in which they were participating.

“I think initially the case conference could be quite intimidating, but I think that’s because that’s when you’re letting people know that you are transgender, and everyone is becoming aware of it. I think going into some of the people there might not know what to expect, the terminology, they might not have knowledge of transgender people, so that can be intimidating. For me, as time went on less people were involved, and it sort of ended up with core people being there, who we felt were important to have there for my benefit and the prison’s benefit. I suppose there might be more people at others, but it’s a very personal and individual thing.” – Interview with Transgender Person in Custody

“They seem to be like walking through treacle at times. They were back and forth on things, and saying oh, we need to check this and that, but that’s only because different people are attending different conferences, as it depends on what staff are on that day. If they don’t know what’s going on, how am I supposed to know what’s going on” – Interview with Transgender Person in Custody.

“I think it would help if it was the same people at each one, rather than a mixture of different folk each time. I’ve had three different managers in there, asking question that have already been asked and answered previously. I don’t know why social work one time is there and then not the next, I don’t know what their input is going to be or should be.” – Interview with Transgender Person in Custody

This raises questions about the procedural efficacy of the case conference process, and SPS’s role in providing procedural justice to transgender people living in custody. Having a workable process for the placement of an individual is important but translating that process in a way that is accessible and understood by the person who is the subject of those decision-making processes is also vital. This was emphasised by transgender people in custody who ultimately found the process inconsistent, and difficult to understand in terms of their own expectations.

The experience of this individual highlights an important point that should be rectified in the policy review. Failure to ensure that transgender people experience an adequate level of procedural consistency could result in transgender people receiving different care, having limited access to services, or have an impact on the items they use to live in their chosen gender if the documentation from the case conference process is not adequately capturing the reasoning behind these changes. In instances where evidence capture differs across establishments, then justification of those decisions becomes even more difficult. Staff also acknowledged that the GIGR (2014) policy could have gone further to provide support for staff to ensure that they were capturing relevant information, and coming to defensible decisions regarding transgender people, correctly.

“The policy has been here since 2014 and while I think there is a lot of good information in it that helps staff know how to manage transgender prisoners, we are in place know where we have more information about their management that when the policy first arrive, and it would be beneficial for those elements to be updated, to provide staff with more of an understanding. When it first came about transgender people coming into establishment

that a lot of staff had never come across before. It was brand new, and a learning curve, getting staff to understand how best to interact and communicate their needs, and I think the policy does the base line that we would need to know to manage them back them, and staff have come a long way since when it first appeared too” – Staff Interview

Despite the desire for improved guidance, staff acknowledged that the multi-disciplinary nature of the case conferences, and the ability for local staff expertise and the transgender person’s representations to be factors in those decisions making alongside other concerns around risk and safety, was the best format through which these decisions should be made.

“Sometime people complain to me that [the 2014 policy] is not a rigid policy, that it leaves a lot of grey areas, but there needs to be local decision taken at any time. We might think they are genuine, but some might not be. Risk changes, we need to make decisions which require the grey areas. It needs the grey area but still needs clear guidance to staff about what we need to do... but that makes it an individual approach. It must be”. – Staff Interviews

Given the range of impacts that the placement of transgender people in custody can have on needs, well-being and safety of the individual being placed, those they live alongside, and the staff members managing them, understanding the details and concerns associated with each individual case was seen as the most appropriate approach to the placement of people in custody. Decisions required thoughtful consideration, which blanket rules which constrained decision making by relying on specific criteria placement decisions, which could lead to challenges, from both an operational and equalities perspective.

They emphasise the need for multiple factors, and an individualised consideration to be applied to decision making, was also a feature of the survey responses from people in custody, which contextualises the need for an emphasis on individualised approaches within the case conference model.

“This is dependent on the individual trans-persons situation and whether they put anyone else at risk. Everyone had the right to feel safe, secure, and accepted, mentally, and physically in their own skin and their own home.” – Woman responding to Additional Comments Free Text in the Survey

“Having lived with a transgender female living in a male establishment it’s difficult to know where to place the person. If risk factors are low the individual should be allowed to live in the establishment they identify with. People must accept individuals are different and should be allowed to live as they choose” – Man responding to Additional Comments Free Text.

These views did not minimise the concerns identified by people in custody in relation to the transgender person’s own safety, nor the potential impacts they may have on the population they are placed alongside, however, there appears to be an acknowledgement across the survey responses that the need for a consideration of a range of factors, not limited to gender identity or sex assigned at birth, within decision making processes about placement.

These points suggest that SPS policy review revisit the role of the case conference as a vehicle through which decisions about transgender people's management are arrived at. Whereas the case-conference model is seen by staff and transgender people as the most appropriate model for these decisions to be arrived at, the variation in the way that evidence was recorded, and decisions were arrived at across the estate could result in differences in outcomes. The role of processes like the case conference model is to ensure consistency of practice across the prison estate, allowing for procedural justice within the decision-making processes. Taking the positive elements of the case conference process which allow for individualised decision making and providing clearer process and guidance for staff to ensure consistent of process, will allow the case conference to achieve these ends and give staff a stable platform where decisions can be made defensible and transparency with appropriate support and oversight.

Additionally, to ensure that the transgender people in custody that are subject to the case conference process understand the process and outcomes, more products should be developed to give transgender people more insight and understanding about the process, to help guide them through complex decisions which will impact their experiences of custody.

Accommodation

The case conference model for determining long term placement of people in custody was favoured by staff given the scope of the information that could be used to better understand the impacts of placement decisions on both the transgender person in custody and those they would be living alongside. When considering the outcomes of these decisions, both staff and transgender people highlighted support for different accommodation arrangements. The policy review asked them to reflect on the idea of introducing accommodation for transgender people that was exclusive to them. For a range of different reasons, some staff and transgender people were in favour of this idea.

"[an exclusive space] for transgender people might be the stepping stone they need for progression..." – Staff Interview

"I think it would be interesting to see what the benefits are. I like the idea because you could have selected, specialised staff that could maybe provide a better outcome for people in in custody. – Staff Interview

"On the face of it, I think it's a bad idea, but I do see the benefits of setting up a space where they could receive individualised support... or with other people that understand the process they are going through, who could share their experience and knowledge" – Staff Interview

"I think [an exclusive space] is a sensible thing to consider in terms of progression. So, it might be the case that you have someone on an SRU, that might be where they are, and the first step [towards progression] might be going onto this other environment, which is a progression into a different estate." - Staff Interview

Transgender people in custody were more centred on their path through their transition, creating a space where they could continue that journey in a supported way.

"It could be a place where we could provide support for one another, maybe more so than the staff or anyone else could give us. I think it would be a good idea." – Interview with Transgender Person in Custody

“For transgender people to progress we need peers. The fear right now is that you put transgender people into the female mainstream without knowing anything about them. They might have other needs that don’t get captured – I want to go somewhere where I can get used to routines. I don’t necessarily like being in [the male estate] as a transwoman, but I don’t feel like I’m ready to move to the female estate yet either.” – Interview with a Transgender Person in Custody

“I think that should happen, I’m for [a unit for transgender people]. In the community, people think that transgender women are just trying to get into women’s spaces, that we are men trying to get into women’s spaces, but that’s not the case. I imagine that someone might try that, but that means we are all tarred with the same brush.” – Interview with a Transgender Person in Custody

Notably, however, the support from transgender people in custody had largely come from those who had been living as a transgender person for shorter periods of time, or those that had not transitioned until they had already been placed into custody. For those that came into custody having already started their transition or had been living in their gender identity for longer periods of time, the idea of a dedicated unit was seen as more problematic.

“I don’t think that right for me to be honest. I was in hospital before for a while, and that hospital had male, female, and “other” units, and I was put in that “other” unit, and it really felt like I was being othered and singled out. It felt really bad.” – Interview with a Transgender Person in Custody

“Having been here and been a transwoman [for a long time] now, I feel confident when I say that the prison service will treat you fairly based on the way you behave. We should be treated as the person that we want to be and putting people into a segregated wing away from mainstream, especially when you are going through something as big in your life as a transition, I think it would enhance their fear and anxiety not even just for that person, but for the people that they will be living alongside. It’s all well and good saying you could have better trained staff there, who are aware of trans issues and all the rest of it, but when you look outside the prison into the community, transgender people don’t have specific housing, or jobs or benefits. Why should we make prison different?” – Interview with a Transgender Person in Custody

“I would put it this way. If I was Jewish, and someone said to me ‘you can’t be in here, the Jewish people live over there’, I don’t think that would be appropriate. We are not just transgender people, we are people’s sons, daughters, mothers, fathers. We are people. And some of us are very complex.” – Interview with a Transgender Person in Custody

Those who responded to the survey were asked to reflect on the idea of a trans-exclusive space in custody, and here, the responses were generally mixed. Whereas the general responses to the survey highlighted a very spilt level of agreement with the statement “there should be separate accommodation for transgender people”, the highest frequency of survey responses highlighted that most “neither agreed nor disagreed” with the statement. Women were slightly more likely to favour the idea of a trans-exclusive space. This was echoed later in the answers to the questions associated with “Ian and David’s” vignette in the survey, where there was a general affirmation that a transgender unit was a good idea. However, when asked if they thought that a transgender individual should be made to move to such a unit, the majority of respondents answered negatively. For people in custody, there was a suggestion that the trans-exclusive wing represented a good idea in so far as a transgender person had a choice about deciding to move there – perhaps echoing the concerns from staff and transgender people that just because transgender people share a protected

characteristic of gender reassignment doesn't mean that they would act as a source of support for one another or create an environment where experiences could be shared.

“One of the transmen that was had in custody was great, he got on well with other people he was living alongside. We had another one that was on a different landing, but whose behaviour was a lot more challenging. The first guy did not want to associate themselves with the second guy, the only thing they had in common was they were both transgenders. That didn't mean they were going to support each other and get along.” – Staff Interviews.

“I think that if it was part of someone's journey that wouldn't be a bad idea. For me, as someone that's lived as a woman for a while, I've fit into female hall and I understand the dynamics, but I don't know if everyone would. On the other hand, would they be safe in a male hall? A dedicated unit might work for some but for me that sounds like hell to live in.” – Interview with a Transgender Person in Custody

The operational feasibility of a transgender exclusive accommodation would be sizeable, particularly when compared to the proportion of the prison population who identify as transgender. Allocating accommodation from an existing estate would minimise the resource needs, and given the small transgender population, may be a more reasonable direction. However, it raises further questions about what establishment(s) should be made to reduce their spaces and services available to the remainder of the prison population to house and manage a relatively small proportion of those living in custody. Diverting resources from within the existing estate could be burdensome, not necessarily satisfy this, and would not necessarily provide a service more specialised than what is currently provided.

Notably, those transgender people who were supportive of the transgender exclusive spaces were less likely to have lived in their gender identity for extended periods of time when compared to those who did not support it. For transgender people who had lived in their gender identity for extended period of time, it went against the identity that they had already spent years living in, had developed supportive relationships with people of that gender within prison, and saw the idea of living in a space that highlighted their transgender status, rather than their gender identity, as a retrograde step in their transgender journey – or indeed their established gender identity.

Beyond this, staff and transgender people highlighted the tensions that creating exclusive spaces for transgender people, based principally on their characteristic of gender reassignment, amounted to discrimination and when compared to other populations with other protected characteristics, the principle upon which that separation was based would create difficulty.

“I worked in the English service for a while, and this reminds me of this one time we had a meeting, because we were getting pulled up after an inspection. We didn't quite know what it was for. What had happened was we had one section of the hall where there was a large Chinese population living in custody. We put them together predominately for language reason, thinking that all these Chinese people would form a community and support each other. We thought 'great, why not', and within a year it had become “the Chinese hall”. What we didn't consider was that hall had recently had new facilities put in, it had a nice new gym for example. So other prisoners were looking at that hall and thinking, I can't use that nice new gym because it's for Chinese people only. People had mentioned to the inspectorate “I can't get on this programme because you've got to be in that hall, and to get in that hall you need to be Chinese”. We weren't actually creating a community, we were accidentally creating

an exclusive box, and to get in that box, you needed to be categorised as “Chinese”. – Staff Interview.

“As a middle-aged white man, I’m wondering if you would put all the middle-aged white men together in a hall? Or would we focus on the ‘middle-aged’ part and put all the middle-aged guys together? We wouldn’t do that because that would be clear discrimination – you’re creating a space based on a characteristic. If a transgender woman comes in, why would they want to be put there? They don’t live like that when they are outside, everything they do outside is live like a woman. I think we would have a challenge to it, basically.” -Staff Interview.

“This is the last thing we should do. It would create a terrible environment for most people that would be put there. Are we saying that to reduce predatory men getting to the women’s estate, we are going to put them in a space with transgender people that do not represent a risk? We would never think about creating an Afro-Caribbean section, or a Roman Catholic section. We need to promote integration. The way we promote [Equality and Diversity] is promoting people’s understanding of each other’s culture, sexuality, gender reassignment, whatever it might be. Putting people in different pigeonholes and housing them based on that characteristic is a retrograde step – Staff Interview.

“I don’t think it would feel appropriate for people to be accommodated specifically in recognition of the fact they are not cis gender (sic)... we would be assuming that the issues facing the transgender person, and others in custody, are generic and universal to a whole population. If the main issue is safety of that person, or the safety of other people in custody, then the issue is around risk assessment, and we do that in establishments that we already have. I can’t say that putting transgender people into a single unit would necessarily be the safest option either, because you would have a range of different people with a range of different needs. That feels like ghettoising people” – Staff Interview.

Taken together, the idea of separating transgender people from the wider prison population, and creating transgender exclusive spaces in custody, raised concerns in relation to equalities and integration, and ultimately, whether a space of this type would be open to legal challenge. Where some evidence pointed towards the reduction of the risk of violence through the creation of transgender exclusive housing, others saw that reduction as limited. Despite the mixed response, and potential legal barriers to this option to be explored further, there is an important lesson to be learned from the support for this policy option.

The general challenge associated with a dedicated unit for transgender people is largely one that goes beyond attitude, and into a legal space which the evidence cannot adequately address in a vacuum. However, what the support for the dedicated unit highlights is that transgender people encounter specific challenges and have specific vulnerabilities and needs, distinct from other populations. The support for transgender exclusive space ultimately centred on the idea that specialised support is required to meet these needs, and that specific support mechanisms are required to promote transgender people’s support and progression. The revised policy should be cognisant of these support needs, and the case conferencing mechanism should be used to understand these needs and develop practical and reasonable ways to meet them.

As may have been anticipated, and as discussed in the section above about understanding risk, stakeholders that were engaged through the policy review offered a range of insights on this topic characterised by their individual interests and expertise.

“The safety and wellbeing of everyone in prison should be a starting point... we support a case-by-case approach. That’s the approach that we be the most valuable in relation to placement decisions. We know not all transgender people want to live in the estate that aligns with the gender identity.” – Stakeholder interview

“Prison accommodation should be on the basis of sex registered at birth, and there should be appropriate or better provisions within those single sex facilities in order to meet the specialist needs... that manifests itself that there needs to be far more thought to meeting the dignity, safety... and respect of these prisoners because they do have protected characteristic.” – Stakeholder interview

“An individualised approach where we consider gender identity makes sense, measured against the vulnerabilities of everyone. It’s important for me that we place people into the relevant prison that reflects their gender expression, because I think we have moved beyond the binary of male and female, and we want iterative change in the prison service. That is absolutely tied to robust risk assessment that should be happening anywhere within the prison population” – Stakeholder interview

As above, the preferences of each stakeholder were shaped by their own specific expertise and interests, but all were underpinned by the concept of safety of everyone within the prison environment.

When considering the placement of transgender people either using biological sex or self-declared gender, staff, transgender people, and people in custody leaned towards the placement in custody based on gender identity rather than sex assigned at birth, but again, favouring the need to be cognisant of individualised factors which would impact decision making.

“I think the benefits [of an individualised approach that respects gender identity] is that we can operate very flexibly with the person at the centre of the decision making, addressing their needs in a person-centred way. The concern is that there are occasions when there are clearly other issues affecting that individual, understanding a person’s mental health needs, vulnerabilities, motivations, all of those things are important... Every person has their own individualised needs. I’ve had experience of transgender people in custody, and it’s been plain sailing, and I’ve had other experience where the transgender person has been really challenging and we have had to remove them from mainstream.” – Staff Interview.

“I’m very much of the view that it’s all about the person, but you need to consider the risk to both that person and the prison environment that they are going to enter into. I think those factors are both important because you have got to consider... the risks depending on where they are in their transition, how open they are about their transition. The environment and their impact on it are just as important. A lot of the conversation is about the risk the individual poses, but what risk are posed to the individual? That’s important too. So, I do agree with [an individual approach].” – Staff Interview.

“There is a transgender person I know that has been transitioned [for a number of years]. I suspect there are people in their hall and some staff that, unless they told them, wouldn’t know. What is clear is that if you try to tick everyone’s boxes – meet every individual need, meet the need of all extreme views in prison or in the public, or try to factor in every

person, resident or staff into decision making, you are at risk of failing miserably. You can't meet every expectation, but you can make a decision that protects the interests of everyone involved in the best way we can. That might be different for each person. It sounds incredibly complicated, but I suppose that is because it is." – Staff Interview.

For women living in custody who answered the survey, there was a general agreement with the individualised approach to placement and the acknowledgement of safety as a key factor in those decisions.

"SPS should check that transgender people are not just playing the system and could pose a real danger to officers and other prisoners" – Woman Responding to Question 1 Free Text

"There is not an easy answer to this, as there are various factors to take in consideration, like the seriousness of their crime, the length of time they have been transitioning, etc." – Woman responding to Question 1 Free Text

"This all comes down to safety and where is best for Alice [the fictional character in one vignette in the survey]. If the establishment can accommodate Alice's transition and provide reasonable safety measures, then there's no need to move her... While Alice may feel safe, at some point she may come across others who do not agree she should be in a male establishment... in the female estate, she would be supported and have far less problems than living in the male estate." - Woman responding to Question 6 Free Text

"If you're fully transitioned and have had all operations then you should be in the establishment your gender now matches regardless of what you were before. If you still have your "private parts" then you should stay in the estate that matches your gender until operations have been done." – Woman responding to Question 6 Free Text.

This last quote, however, highlights an important consideration for women living in custody - that acknowledging a person's stage of their transition, and whether or not they had undergone any reassignment surgery, emerged as an important feature of both men and women in the free text responses. For these respondents, their safety, the genuineness of a person's transgender status/motivations for identifying as transgender, and the capacity of the SPS to identify potential threats to their safety stood out as key factors on how they saw the placement decisions impacting them.

Being able to have in establishments that aligned with their gender identity found it as a source of comfort for some transgender people, particularly those who had lived in their identity for longer periods of time

"The thing is, for the longest time I've lived as woman. This is how I've lived and it's all I've known about myself. In the community I've never been treated differently, and I've felt like a 'normal' woman [sic]. I've had my name changed officially and all my documents changed to reflect it. I don't feel like going to a men's prison was where I was supposed to be" – Interview with a Transgender Person in Custody

"It might sound weird, but I feel like a human in [this female establishment]. I've been in other establishments, and I've been made to feel like an animal. I felt that people made comments about being born male, about what parts I had. They treated me like I was extremely dangerous all the time, and they never really took the time to know who I was or get to know me. When I first came into prison after court, I was terrified of what was going to happen to me, in either estate, male or female. I had never lived as a man, but I thought that I would feel really isolated in the women's estate – what would they think about me? I feel

like now people see me for who I am, particularly the group of people I'm living with." – Interview with a Transgender Person in Custody

Generally, the prison population surveyed as part of the data collection had differing views on the management and placement of transgender people, but generally agreed that the key factor in their placement centred around different indicators of "legitimacy" – that the SPS needed to be able to assess, in some way, how "genuinely transgender" a person in custody was. This spoke to a major theme which emerged across all populations engaged with across this policy review, and since January 2023, has generated political and media attention. Namely, how can the SPS prevent those people who claim a transgender status in bad faith, to access spaces where they can victimise other individuals in custody?

Protecting Against Predatory men

The risk of a person acting disingenuously and claiming to be transgender in order to victimise others was a key concern for both staff and transgender people; staff from the perspective of minimising operational risks to the prison population, and transgender people from the perspective of how these individuals undermine the legitimacy of their own gender identity in the context of the prison setting:

"I would love to be in the female estate, but I don't want to go and not be welcome because they think that I'm just trying to get something out of it, and how I'm going to be perceived. I don't want it to be the case that there are people that abuse the system, and that reflect onto me on the reasons that I'm moving to a different estate." – Interview with a Transgender Person in Custody

"I think there is a fear in this hall across women in this hall about how someone goes about transitioning. I think they think half the guys in the male hall are going to say, "I'm a woman", and get shifted to a women's hall because that's what they declare. I've tried to speak to women about it, tell them that there is a risk then they won't get moved... It's about weighing up the good and the bad, and I would be concerned if it wasn't, because not only might be there a chance that someone would be there to fool you, but that's damaging for us as a group of [transgender] people. That person isn't just impacting the safety of the people in custody, but risking our status too, because it will make the public think we are all that person." – Interview with a Transgender Person in Custody

Women in custody mentioned their concern about the perception that there would be men out there who would seek to victimise women by claiming to be transgender.

"Even if they have changed their sex on their certificates, that's just a certificate, it's not how they act or behave... I think there will be people that will try to play the system basically, because they think that they will get an easier time in a women's jail." – Interview with Women in Custody

"I've not felt in a position where I've feared being hurt by them when they have been in, but I think there will be a [transgender] girl that comes in and makes the other girls feel uncomfortable. You don't know what sort of person you are going to get, and I think that you don't know how to feel if you get someone in a women's jail that is biologically male, or how strong they are, or if they have male [genitals] – Interview with a Women in Custody

Staff acknowledged this fear in their responses, but ultimately, there was confidence that focusing on risk rather than someone's transgender "authenticity" was enough to minimise those concerns. Additionally, when discussing the factors other than risk at the point of placement, staff highlighted their own concerns that gauging a person's management based on their "legitimacy" as a transgender person could create further complications.

“There is a difficulty here, and one that I think amounts to a red herring, but that is about trying to measure how ‘genuine’ someone is about their gender identity. It’s a complete maze. What their genuine intention might be, even if you have a robust process, and full psychology evaluation that runs for 100 pages in gory detail that tries to tell us how they think and feel, you will still get people saying that they are “at it”. The process should be light touch, it should be about allowing people to live how they want to live, but that doesn’t mean giving everyone everything they want to get. We need to make a call at some point, if we are going to accept self-declared identity, then there is a degree of responsibility that we need to shoulder. And that responsibility is about keeping people safe, whether they are genuine or not.” – Staff Interview

“What are we asking them to prove? People know we have [the 2014 policy]. I think it’s been very successful. But did it lead to an increase in people suddenly identifying as a different gender? No. If we suddenly were inundated with transgender people, I think we would have been concerned, but we haven’t. We take them at face value, and if they come in, we consider the risk they represent based on the information we have.” – Staff Interview

The safety of women and protecting the prison population from those that would seek to be disingenuous was a clear concern across responses.

“To me, the overarching consideration [as an indicator of success] should be ‘have you harmed prisoners by your policy?’... As far as we are concerned, one woman harmed by this policy is too much, but obviously you are an institution housing quite a population of prisoners and you have a really difficult problem. So, I don’t know what your criteria should be for success.” – Stakeholder interview

“I think a lot of this has been hyped up in a way that it’s become a big concern for people – if we keep hearing messages that all transgender women are dangerous, of course they will be viewed as a risk. But that creates a concern, and I don’t think it’s good to just dismiss people’s concerns. I think those concerns are misplaced, but they come from a genuine place of worry.... There’s a balance to be struck here between pushing back on the balance of disbelief that doesn’t give people the benefit of the doubt... I think the prison service is savvy enough to identify when someone is behaving fraudulently. I think the bigger danger comes from a presumption of disbelief.’ – Stakeholder interview

What is important within the evidence gathered is not losing sight that the need to provide women in custody with confidence in the processes which prevent predatory men from accessing the women’s estate through disingenuously claiming a transgender identity must be acknowledged. If that cannot be done through a blanket rule about the placement of transgender people in custody (as the engagement with VAWG expertise suggested), then it must be done through robust processes that enable the consideration of as much evidence as possible to inform decisions about that individual’s placement.

Where someone seeks to misrepresent their gender to access an estate that does not align with their sex assigned at birth, SPS needs to be cognisant that relying on either self-declared gender or sex assigned at birth as the principal criteria and factor in decision making for the placement of people will not lead to the elimination of the risk associated with those acting disingenuously. The most effective way to achieve this is to weigh up a range of factors that can point towards the behaviour of an individual to best inform placement decisions which do not negatively impact either the transgender person or others in custody. Having an individualised approach to placement decisions that allows for a range of relevant factors to be considered in relation to these decisions, including the transgender person's own representations and the potential impact that their placement may have on others in custody, is the most comprehensive way to achieve this.

Managing Transgender People in Custody

Further evidence about the way in which SPS manages transgender people was considered alongside considerations of their admission and placement. The GIGR (2014) policy provided guidance for staff on the daily management of transgender people that may differ from the management of other people living in custody. In many ways, the guidance for the everyday management of transgender people operated in a similar way to the way that SPS manages other populations who may require modifications to their living arrangements based on protected characteristics (mobility and accommodation modifications for disabled people; dietary requirements, or regime modifications to allow for prayer for those in custody expressing religious beliefs etc.). Notably, the GIGR (2014) guidance highlighted a number of topics representing the key areas where the accommodation and managing transgender people may impact the routine running of prison regimes. The evidence gathered about the feasibility and operationalisation of that guidance was the focus of the evidence gathered by the policy review in relation to the management of people in custody.

Everyday Management of Transgender People in Custody

Single cell occupancy

The GIGR (2014) policy laid out that transgender people would not share a cell with another prisoner in custody. This policy decision seems to operate to accomplish two functions: to promote prisoner privacy whilst in their cell, or to minimise risk to or from the transgender person by others in custody associated with the proximity of their placement.

“One example, we had a transgender female in our accommodation living alongside other women. Based on the policy, she was not to go into any other woman’s cell. She thought that it might have been because we thought she would be a risk to the women she was living with. In reality, if that was the case, she wouldn’t have been in that hall. We actually had intelligence that might suggest other women in that space could have been a risk to her, because at the time she was a bit of a “novelty” in the establishment.” – Staff Interview

“It’s our goal to have single cells, and we have others in custody where its mandatory that they are kept out of another person’s cell. Whilst we might want them to mingle with others in custody for all the social aspect, we can monitor this in a way that ensures they couldn’t go into other people’s cells. – Staff Interview

Women living alongside transgender people in custody expressed that they were living in single cells and had not felt that there had been a situation where a transgender person’s management had impacted that. When considering single cell occupancy of transgender people, women generally saw this as a non-issue given that the goal for the prison estate was to move towards single cell occupancy for everyone.

“Living in [Edinburgh], the trans people in my hall obviously had single cell markers, but everyone treated them well, and we wouldn’t stand for any bullying or nastiness towards them. – Interview with Woman in Custody

“Everybody in here is in a single cell, and if you’re asking, no, I wouldn’t want to share a cell with a transgender person, but I wouldn’t like to share a cell at all. I like being by myself for my own mental health. It wouldn’t matter if they had transitioned into a full woman [surgically], I still wouldn’t want to share a cell with anybody” – Interview with Woman in Custody

It is the goal of SPS to maintain single cell occupancy within prisons, in situations where large numbers of individuals are admitted to custody in a short space of time, the practice of doubling up and cell sharing where appropriate can be adopted. Having to ensure that transgender people have access to single cells, and preventing them from doubling up, can become a barrier to this in practice.

“I could see somebody [who is transgender] where there isn’t a realistic choice around using single cells and when that might be an issue. Say they come in from court at 11 o’clock at night. I might only have one or two cells left, but I need to put them somewhere, so I need to make sure that there is a single cell for the transgender person, so I need to move people around, in the middle of the night. Safety first and foremost, but you could see the challenges that the bigger or more populated prisons might have there. I think there needs to be guidance and support for staff to make those immediate decisions. – Staff Interview.

Though it was the case that transgender people felt othered or singled out through the use of single cell occupancy, and the extension of this, being prevented from going into other people cells at any point, ultimately, they saw it not just as an extension of a need to protect others, but also to make their own experience of custody easier.

“Our Equalities Manager at the time, after my first case conference, straight away sorted out the single cell marker, moved me to a cell closer to the showers and made sure that I could shower separate from others, all the things within the policy” – Interview with a Transgender Person in Custody

“Other people are allowed to go into each other’s rooms and chat and speak to each other, but I wasn’t. If I wanted to chat to anyone, I needed to sit at the tables in the middle of the halls which felt a bit silly”– Interview with a Transgender Person in Custody.

This negative element of single cell accommodation for transgender people was ultimately discounted given that the overall aim of population management is to arrive at single cell occupancy for everyone in custody. The GIGR (2014) position on single cell occupancy aligns with this, and as such, arguments against this position on the grounds that it represents a barrier to the sharing of cells is not a persuasive one.

Evidence gathered as part of this review demonstrated that having a single cell occupancy policy for transgender people was both sensible in pursuit of accommodation arrangements that protected against the needs and dignity of the transgender person, whilst also aligning with the wider goal of SPS to promote single cell occupancy for everyone living in custody

Showering arrangements

In establishments with in-cell showering facilities, there was no reported impact of the policy’s position on transgender people’s showering arrangements.

For those prisons where in-cell showering facilities are not available for people in custody, the GIGR (2014) policy provides for separate showering provisions for transgender people living in custody, so as to allow for both the privacy of the transgender person, and to minimise the impacts of transgender people’s presence on those they would be sharing the showering space with largely, by accommodating a transgender person use of the showering facilities at a different time from people who are not transgender within the hall.

For staff and transgender people, this worked in practice.

“If you are managing a hall in which people need managed access to shared showers, that is a feature of your regime regardless of having a transgender person or not. It becomes one of the other competing demands, so you manage a daily shower for everyone in the hall... and people might need to shower at different times or request access for different reasons, so managing that can become a focus of your day. If the accommodation has showers in cells or rooms then people can shower whenever they like, and so establishments with those facilities will be impacted less. – Staff Interview.

“When I managed transgender people we had a shared shower, so they always showered separately from the rest of the people on the hall. And that included separate from one another, because it might be the case that they are at different stages of their journey. Additionally, we got them to shower in the facility closest to the staff’s desk so we could keep an eye and monitor to make sure no one else went in.” – Staff Interview.

Transgender people living in accommodation that aligned with their sex assigned at birth and not their lived gender highlighted the attention that these arrangements drew towards them, given that they were showering separately from the population they were living alongside despite biological similarities.

“In this establishment I think they treat us as fairly as they possibly can. In other places, when we were doing separate showers, everyone would go out to the shower block, and I would be locked up. Then, everyone would come back, and they would all get locked up and I would walk to the showers on my own. It makes you feel like you are walking around with a big marker on your head” – Interview with Transgender Person in Custody

Ultimately though, transgender people appreciated the fact they were given the privacy to shower separate from those in custody – both to protect their own privacy, but also to minimise the impact of their presence on other people in custody who they identified as potentially being uncomfortable with a different arrangement.

The showering arrangements of the GIGR (2014) policy represented the correct approach for both staff and transgender people in custody, but the concerns raised by some transgender people highlighted the need to ensure that showering arrangements in prisons must ensure the privacy and dignity of everyone within the prison setting.

Access to activities, programmes, and work

In relation to activities – association during recreation – there was minimal impact, given that many transgender people interviewed highlighted that they were still able to participate in different recreational activities so long as they were not subject to any Rules which had resulted in their separation from association for safety reasons.

For access to employment and work parties, transgender people that were living in establishments where both men and women could be accommodated had different experiences to those in establishments exclusive to one gender or the other.

“When you look at activities and access to programmes, mental health, some establishments can move them between environments where men and women are living in those particular establishments. It’s all about progression and case management, and it should be different for transgender people. If there are options to allow for that I think it’s important to make sure we are contributing to them progressing.” – Staff Interview

“If we got a transgender woman into [male establishment], one of the biggest concerns isn’t just ‘where are we going to put them’, but also ‘what are we going to do with them’? There might not be appropriate activities available for them because everything is gendered towards men. It feels like the opportunities for them in relation to progression get slim.” – Staff Interview.

Access to programmes represented a different challenge when considering transgender people living in custody, for two different reasons. Firstly, the sort of programmes that are offered by the SPS can sometimes deal with sensitive or private topics – having transgender people in some of these programmes might evoke a negative reaction from those within the group who may feel uncomfortable within settings designed to be comfortable and safe. Secondly, programmes offered to people in custody can sometimes be required through court order, or a condition of a person’s prerequisites for release – ensuring that programmes are available for those transgender people that require them as part of release conditions is an essential requirement for accommodation establishments.

“I was working towards Parole, and I need to do a particular programme to get Parole, but then I was told that it wasn’t offered at this prison anymore, and they brought in a new programme, and I don’t think that’s available here now. But even sending me to [another establishment] I don’t know how that will work, because of the fact I’m transgender and what that might mean for where I’m placed” – Interview with a Transgender Person in Custody

“They see me as a woman here, and I wouldn’t say that I’ve been held back for anything as a trans person, but I’m concerned about what my progression looks like when it comes time for me to move to open conditions or national top end [the later part of a long-term sentence with more access to community-based opportunities] as part of that. I don’t know where I’m going to be sent to be given access to open conditions. And I’m post-op, so I don’t know what that means for those in custody that haven’t had any surgery” – Interview with a Transgender Person in Custody.

Staff acknowledged that there could sometimes be a tension between providing transgender access to different avenues of progression, and the need to minimise the impact of their presence in spaces that were designed to encourage compassion and openness when discussing sensitive topics like addictions, family relationships or victimisation, or spaces which were intentionally designed to be lower security and community facing. Some staff mentioned the impact that this direction might have on equalities, and whether or not that such an exclusion from the “mainstream” participation in these classes might amount to discrimination, however, the 2010 Equality Act provides space for organisations to exclude individuals based on a protected characteristic (in this case, based on gender reassignment) from services in a proportionate manner to ensure the safety and wellbeing of others that require that service.

This did represent a challenge, however, where there was limited opportunity for this to happen, or where certain programmes were gender-specific, and only available in some establishments, if the transgender individual was required to participate in them as part of their progression towards release or part of a court order. Where the impact of management and placement decisions, based on the person’s transgender status, impacted on the possibility of the transgender person being able to participate at all in these programmes, then concerns were raised about how to manage that need.

“I think that every individual in custody, regardless, should be managed on an individual basis. You can see a personal progression pathway, but when placement options

are limited, things get difficult. We had a transgender person who was held in an SRU for their own safety, but the longer they remain out of association, the less we know about how they interact with others. When we look at progression, we need to look at risk, but in the case of a transgender person that has had their options for integration limited, how can we appropriate evidence risk? They haven't been exposed to anything against which information about their behaviour can be assessed. Risk assessment and safety is critical, but at the end of the day, so is someone's pathway to progression. I'm not clear that there are opportunities for establishments that can accommodate that reintegration to assist in that pathway – but you may have different experience in establishments where both men and women can be accommodated.” – Staff Interview.

“We have some experience of that here at [establishment where men and women were both located]. We used a phased approach. You might have someone that is housed in an estate that matched their sex assigned at birth, but they might associate with groups that match their gender identity for things like work parties, going to the gym, at education. That might require supervision, but the case conferencing model allows you to consider that. If they don't cause issues, if the people they are associating with do not have objections to it, you build confidence in that approach, and you can manage it in such a work as to eliminate the risks and ensure that they have access to what they need to progress. – Staff Interview.

The concept of progression and the need to participate in court mandated programmes as a prerequisite of release is not just a feature of a person's time in custody but represents an obligation for SPS to ensure that the individual in custody is being managed legitimately in line with SPS' role as part of the criminal justice system. Failure to provide this element of their time in custody represents a failure of the justice system to appropriately fulfil the conditions of their custody. As such, there is a tension between ensuring that programmes represent safe spaces for the progression and development of every person living in custody, and that through the legitimate limitation of a transgender person's participation in pursuit of that goal, that SPS is not negatively impacting a transgender person's requirements to fulfil the condition upon which their release may be dependant.

Access to programmes for transgender people should be made available wherever possible and where there is difficulty in provide a transgender person access to programme that is essential for their progression to liberation, the case should be escalated through appropriate channels in pursuit of a resolution.

Items in Use

As staff mentioned, the GIGR (2014) policy highlights that transgender people may require access to different property or items than other people in the same establishment may never require. The policy guides staff to acknowledge that these items or property may be an extension of the person's expression of their gender identity and that where possible, the transgender person should be able to access those items.

“I've worked in establishments where we've tussled for weeks about whether a person can get make up because it's got some sort of alcohol in it as a preservative. I've been in [male establishment] where people were told that from the items in use list you could get a “single earring”, and the transgender person wanted to buy two earrings, and they were told that they couldn't. That's judgemental and limited, and that's a sign that we need to modernise our understanding of what items a person might be allowed. That's a probably

widely though, not just with transgender people, anyone should have access to property that they might need to help them feel comfortable” – Staff Interview

“Working in a men’s establishment, what we did was spoke to the female establishment and asked about their purchase sheets. If they don’t have a problem with women having those items, then it makes sense that a transgender woman could have them too. Just to make sure everyone has access to purchase what they need.”- Staff Interview.

“What I noticed is that you might have someone that doesn’t think they will need something, but the longer they go without it, then they realise that it is something they need to feel comfortable. I think that items in use for individual transgender people should remain under review and dealt with on a progression basis. Someone’s attitudes towards what they need may change over time, and I think it’s something you want to consider on a gradual basis” – Staff Interview.

For transgender people living in an estate which did not align with their gender identity, the processes behind acquiring or purchasing those items sometimes felt frustrating, particularly when it was seen as something easy to acquire or commonplace.

“Getting stuff for hair removal hasn’t been straightforward. Clothing is something that affects me in a negative way. I know that there are other transgender people in custody that are able to buy certain types of underwear, but I’ve been told I’m not allowed them. I’ve spoken about it with staff, and they said that they would look into it, but I haven’t heard anything. And things like hair products and skincare are very expensive, never mind make up.” – Interview with a Transgender Person in Custody

“I was fighting for so long to get different things purchased like make up, and then I finally spent money on things, and then the rules changed and ‘you can’t get thing in that way anymore’ or ‘you’ll need to find another way to get them’. It feels like there are roadblocks put up every so often that weren’t there before, and they get moved anytime you jump over them.” – Interview with a Transgender Person in Custody

The point made about the availability of items that helped transgender people facilitate their transition (hair removal applications, voice recorders for speech therapy) for example is an important one. Modifications of the availability of items is done in other areas of the prison population where protected characteristics may impact on the need for individual (e.g. items for the expression of religious belief, modification to dietary requirements, improving capacity for disabled people for mobility and accessibility, etc.)

For the updated policy, more guidance should be provided for staff about the sort of items that might be considered appropriate for the expression of persons gender identity, as well as ensuring that the availability of these items will be consistent across the prison estate.

Accessing gender clinics/healthcare support

Provision of healthcare in Scottish prisons is managed through NHS. As such, the quality and management of healthcare is not one which the GIGR (2014) policy, or subsequent policy, could feasibly change. However, accessing healthcare and the role that healthcare play in a transgender person’s experience of custody was important to consider, particularly when that provision of care related to their gender identity.

“I feel like [this prison] puts you at the end of the queue. I’m trying to get a [particular medical product], so I spoke to the nurses, and I showed them a thing from the NHS that classes it as an important product for transgender people to affirm their identity. And they

were like “oh no, you can’t get that” or “we are not allowed to issue that”. I know people that have had it issued to them at [another prison]. – Interview with Transgender Person in Custody

“I think it might be a small thing but giving us notification about when our appointments with NHS are going to be, especially if it’s a gender clinic thing because we want to be prepared. I’ve had to come from my welding shed covered in grease, rush back, tried to get ready, and risk missing my appointment or not taking something with me that I need to bring. I tried to get back and ready in time, but I was late, and I missed it. I’ve been waiting three years to get this appointment with the gender clinic arranged. – Interview with Transgender Person in Custody.

Healthcare provision, as it is for all people in custody, is an essential provision for transgender people, but the preparedness for these appointments, and core function that the outcomes of these appointments may have on the person’s ability to express their gender had a different impact for them when compared to others in custody. Continuity of care from the community and continued access to hormone therapy or medication associated with their transition, as well as additional treatments like speech therapy or hair removal has a different impact should those sorts of treatment be limited or discontinued. For people that are not transgender that discontinuity of care could result in negative health impacts; for transgender people, the negative health impacts could be compounded by a regression or stagnation in medical transition, placing emphasise on their transgender status, or placing their expression of their own gender identity at risk.

“There was one establishment that I came into, and the doctor took me off my hormones. I think it was because I hadn’t been able to get to the gender clinic for a while – because I was in jail – and they didn’t want to prescribe them to me, even though I have been taking them before I came into prison. I had to say to a few of the nurses, and thankfully, I was out of custody a few weeks later and could get them sorted out again. Since I’ve been back inside, I’ve had access to them. I think there are issues with some people in custody that get access to hormones, but they are not actually taking them. They are just trying to test the limits. So, I needed to end up taking them supervised to make sure I was taking them. All of that makes us stand out and look bad, it leads to us all being judged the same way” – Interview with Transgender Person in Custody.

“I spoke to a doctor about a month ago, and I was told that I would need to wait a year from starting the transition before I could start on hormone treatment. A year came and went, and the doctor wasn’t very helpful. Since then, I was in contact with the mental health nurse, and they are still to get back in touch with me. I’ve had no update on what the doctor is doing about the hormones, and it’s frustrating that I can’t move forward with things. – Interview with Transgender Person in Custody

The policy review acknowledges that whilst provision of healthcare is important for everyone in custody, discontinuation or non-availability of healthcare associated with an individual transition could have more impact on the wellbeing of the individual than simply the healthcare aspects. Biological, psychological, and social impacts are potential negative outcomes of this non-availability, and as such, the revised policy should be able to provide staff with an awareness of the impact of healthcare decisions, to enable them to promote the wellbeing of the transgender person in appropriate forums (like the case conferencing mechanism when discussing appropriateness of healthcare provision). Being cognisant of the transgender person's awareness and preparedness for healthcare appointments was also important, given the additional impacts that failure to attend, late arrivals, or unpreparedness could have on the integrity of their transgender journey.

Searching Transgender People in Custody

Much like the transgender case conference, the GIGR (2014) policy's position on searching was inconsistently applied across different establishments.

"People in custody should be rubdown and body searched in accordance their social gender in which they are living, rather than according to their physical body. Where the person in custody's social gender is unclear, the person in custody should be asked which gender they wish to be searched by and their answer recorded, and their rubdown and body searches conducted accordingly" – GIGR Policy (pg. 26).

In some establishments, staff highlighted that searching in line with a person's social gender was not always followed. In practice, this caused no problems as most establishments carried out discussions with the person in custody and explained why. This discussion provided the basis for a workable and practical arrangement for searching that individual. Most transgender people reported positive experiences of searching under the 2014 policy.

"You've got staff that don't have a problem working with transgender people and they are happy to conduct searches and make sure you're looked after. And that makes you feel like you're being treated like a human being. A transgender human being." – Interview with Transgender Person in Custody

"Honestly, I've never had bad experiences. I've had top surgery but not bottom surgery, so there have been times where I will see people worried about searching me, so I have a women search the top half and a man search the bottom. But that's more for their own comfort. Searching doesn't make me feel uncomfortable, at the end of the day it needs to be done. I think it depends on the staff and their own comfort. It's something that needs to get done, I don't think that someone should do it if they have a problem with it" – Interview with a Transgender Person in Custody

"When I lived in a male establishment, I was given the option, and I wasn't sure about the processes at the time, so I was asked men to do it to stop it being awkward. Since coming to the women's estate, it's always been women that have searched me, and I've never had any issues with them, there have never been any comments made. They were, I think we all were, initially quite embarrassed, but I think that's normal for searching. Everyone that has ever searched me I got on with anyway so no, I've never had a problem with it." – Interview with a Transgender Person in Custody

As such, in some cases, a transgender person was searched in line with the social gender, and in others, they were searched in line with their biological gender. Reasons for the latter included preference of the transgender person (not wanting to be treated differently than

other prisoners), or where staff had identified a risk associated with the searching through the individual's behaviour.

"It comes up in case conferences a lot. We ask the transgender person how they want to be searched, and in my experience, the ones that have been in this establishment have preferred to be searched by staff that match their biological gender." – Staff Interview

"We haven't had many issues in relation to searching, but we discuss it at a case conference. If we have a transgender man and they say they want to be searched by men, then men can search them. We need to be professional about it. I don't think it's something we should chop and change on a whim depending on who is on shift, we should be comfortable with the decision that we reach at the case conference that it is appropriate to search that person. – Staff Interview.

Staff also articulated the operational realities associated with searching, and the need to protect staff members in situations where the behaviour of the transgender person represents a risk.

"I think that's where you need to look at risk assessments and tools to help us understand the person's behaviour. We had someone in that had allegations about sexual crimes, and in that instance, we decided that it was safer to have that person searched in line with their sex assigned at birth." – Staff Interview.

"[Some time ago] we had someone come in, and they identified as a woman, but as it turned out, that person was clearly getting some sort of gratification from being searched by females, so we changed the way we searched that person. The risks we knew about changed, and we made the decision to search with male staff. You need that grey area to change those decisions in an individualised way." – Staff Interview.

Additionally, some staff members may have had experiences in the past that may impact their level of discomfort with searching people in custody anatomically different to themselves. For some, that was linked to personal experiences of discomfort, and for other, linked to failure of the organisation to set out expectations about searching transgender people in custody.

"We have decided, as an organisation and in our rules, that men search men, and women search women. Other jurisdictions don't make that ruling. We immediately make it more difficult for ourselves. We get into realms, then, about when a man becomes a man. Is it a transwoman with male genitalia? Is so, how do we search that person? We are putting staff in a position where they could breach our own policies, because we are not clear on these points. We have got ourselves caught up in that, where in actual fact, why can't we say that any staff member could legitimately search anyone so long as that's done professionally? Bring in training to make sure that's done properly." – Staff Interview

"I really feel for people that haven't had surgery and have a body that doesn't match their authentic gender. I understand how difficult that must be, but we need to make sure that we consider both that person and the staff we are asking to search them. At establishment level, there is probably a choice given, there might be females that are happy to search people with a male body, and they are content to and that's absolutely fine. I also feel that if someone doesn't want to do that, we need to consider that as fine too. We need to consider that the staff member might have something in their own background that makes it inappropriate, we don't know what's gone on in their personal lives. We need to be careful with those things. – Staff Interview

“It’s cultural, right? You come into the organisation, that is what you are taught and that is what you do. Men search men, women search women. That’s what we are trained to do and that’s what we have always done. Would I [as a woman] search a male bodied person? Yeah, I would do it. But I think given the choice I wouldn’t. I think it has to be a consideration of both the person being searched and the staff member, create an individualised plan which included staff perspective. Some staff will be fine with it, and some will have no issue at all, but some could have vulnerabilities or trauma in their own life, and we need to be considerate of both. – Staff Interview.

“I think that when we are training people about searching that we need to cover off the possibility that a person that we need to search could be of the opposite gender” – Staff Interview.

“I haven’t searched women because I am a man. I know the process of its kind of thing and the process isn’t any different. The processes are the same when you are searching someone. I think we should be told it at the college or you, in a catch-up course or whatever. If it’s a female searching a female, there are certain things that you can’t do anyway so where is the different if you are the male searching that female? It might make staff uncomfortable if we don’t have that guidance and expectation set out for us. – Staff Interview.

Where there were legitimate operational reasons – the transgender person had a preference to be searched in line with their birth sex, or there was inappropriate behaviour that constituted a risk – then it could be considered justifiable to search the transgender person in line with their birth sex. Where staff had concerns about their own discomfort in performing that search, those things were managed at an individual level.

Whereas most establishments had used some form of discussion with the transgender person to ascertain the approach to searching that would work for them and set expectations with the transgender person on how they could expect to be searched, the decision-making process was not documented consistently across establishments.

Searching transgender people is managed in practice currently through discussions between the transgender person and staff managing their time in custody. This discussion sets the basis for the way that searching is carried out and is based on both the transgender person’s lived gender and appreciation of the operational feasibility of carrying out the search in line with the person’s gender identity or sex assigned at birth. An individualised approach to searching requires staff to document decisions made and the evidence upon which those decisions are made. Guidance should be developed and detailed to provide staff support through the decision-making process. This provides staff and the person in custody clarity about searching arrangements and provides an evidential basis for the searching that promotes defensible decision making.

Conclusion

This evidence paper covers the evidence base gathered in the course of the GIGR (2014) Policy Review (2021 – 23), covering feedback from over 400 people, a literature review and wider analysis. The evidence paper covers gender identity and gender reassignment due to the scope of the 2014 policy and therefore sets out evidence gathered on both the management of transgender and gender diverse populations.

Relationship to updated policy and practice

The evidence gathered and the key learning points summarised at the end of each section directly inform the content of the updated SPS policy and operational guidance for the Management of Transgender People in Custody and the separate Operational Guidance for the Management of Gender Diverse People in Custody.

The evidence clearly supports SPS' clear commitment to preventing transgender women with a history of violence against women and girls (VAWG) who present a risk to women from being placed in the women's estate. All prison populations who engaged in the review, including transgender people themselves, recognised and supported the need for SPS to have robust processes in place to prevent predatory men gaining access to the women's estate. Furthermore, the evidence illustrates that transgender people themselves felt that predatory men claiming to be transgender in bad faith were a threat to their own wellbeing and a threat to the perception of transgender people more generally.

Drawing on the evidence gathered, and the wider statutory and regulatory obligations placed on SPS as a public body and as a prisons service, together with operational, legal and equalities and human rights considerations, the key conclusions of the policy review are as follows:

- SPS would not be able to adequately consider and manage risk, including VAWG risk, if SPS was to adopt a blanket approach to the management of transgender people in prison, based on sex, gender identity or someone's status as a transgender person.
- SPS would not be operating in a way which was consistent with its statutory or regulatory obligations if SPS was to adopt a blanket approach to the management of transgender people in prison, based on sex, gender identity or someone's status as a transgender person.
- Prisons policy and practice for transgender people should be individualised, as far as is operationally practicable, at each stage of their admission, placement, and management, in line with wider prisons policy and practice and based on the time and information available.

Finally, this evidence paper and associated documents illustrate the extensive engagement undertaken during the policy review (2021 – 2023), including bespoke engagement with key stakeholders, including VAWG expertise, community organisations and groups, as well as a wider public consultation exercise. SPS therefore has no plans to formally consult on the updated policy or this evidence paper. Nevertheless, as with any area of prisons policy or practice, any relevant feedback received from stakeholders on this evidence paper or the policy itself will be registered and considered as part of any future policy evaluation.

Thank you.

SPS Policy Review (2021 – 23)

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Annex 1: Comparative Analysis: SPS, HMPPS, New Zealand Department of Corrections and Correctional Service Canada Policies on the Management of Transgender People in Custody

	Scottish Prison Service	Ministry of Justice / His Majesty's Prison and Probation Service - England and Wales	New Zealand Department of Corrections	Correctional Service Canada
Name of policy/policies	SPS Policy for the Management of Transgender People in Custody (2023)	The Care and Management of Individuals who are Transgender (2023)	M.03.05 Transgender and intersex prisoners (2014) 1.10 Management of transgender prisoners (2018)	Commissioner's Directive 100 Gender Diverse Offenders (2022) with updated Decision-Making Guide in Feb 2023 (internal guidance document)
Gender self-id and recognition by the prison	Ensures respect for transgender people and that transgender people are treated fairly and without discrimination on the grounds of their identity or gender reassignment. Transgender people's identity, pronouns, names, and access to property etc. should be respected to matter what estate they are located in.	Individuals are able to self-declare their gender identity and are supported to express this gender identity with staff instructed to use the individual's correct pronouns.	A person's gender identity must be respected by staff. Transgender people in prisons should be managed in a way that: is individualised, seeks to preserve their dignity, safety, and privacy; enables the maintenance of a person's gender identity and is not dependent on the gender of person the prison usually houses.	Individuals are able to self-id and gender identity is understood as how a person feels internally and that it may be different from the individual's sex assigned at birth. Staff must use the individual's chosen name and pronouns and individuals are able to access property and purchase items which support their gender identity.
Admission from court	Admission of transgender men and women to the female or male estate is determined on three categories of risk (for transgender women) and	Transgender women with birth genitalia and/or any sexual or violent conviction or current charge should not be held in the general women's estate, unless an exemption is	Little information given about admission from court. From the information available about reception processes, transgender women may arrive at men's or women's	Prior to admission into custody, gender diverse individuals are given the opportunity to state their preferred type of prison – men's or women's.

	<p>vulnerability (for transgender men): no apparent or obvious risk/vulnerability, known risk/vulnerability, unknown risk/vulnerability.</p> <p>Transgender women: If a transgender woman demonstrates no apparent or obvious risk that is, she does not meet the violence against women and girls (VAWG) criteria, and it is established that there is no known information that she has any previous incidents of VAWG, she should be considered for admission into the female estate.</p> <p>If she meets the VAWG she must be admitted to the male estate – she is a known risk</p> <p>If the initial information provided indicates she does not meet the VAWG criteria with her current offence, but SPS cannot be certain of all previous offences at the time of admission; or SPS cannot sufficiently assess her risk then she would be deemed an unknown risk and admitted to the male estate until further information is made available.</p>	<p>authorised by the HMPPS Director General and the Secretary of State for Justice. This includes those transgender women with a GRC.</p> <p>Otherwise, transgender prisoners who do not fall under the above criteria must be initially allocated to the part of the prison which matches their legally recognised gender or birth sex. Communication with HMPPS suggested that courts would telephone establishments in advance to inform them of any transgender person they had who would be coming into custody.</p> <p>Pre-sentence report writers must consider requesting a full adjournment for the preparation of a pre-sentence report where an individual discloses that they are transgender. The adjournment for a pre-sentence report allows for a local case board to take place to consider risks and circumstances and how these would be managed. This would contribute to the pre-sentence report.</p>	<p>prisons: “If they have arrived at a prison which is the same as their gender identity (for example, a male to female trans person arrives at a women’s prison) check the prisoner understands the reasons for their placement and discuss any concerns they may have.”¹ Individuals can be kept separate from others until their support plan has been complete, this can be on the individual’s request or because a risk is identified (they pose a risk or they are at risk from others).</p> <p>On arrival transgender individuals are assessed for risk to self-harm as well as their needs. The needs assessment should occur within the first 4 hours in custody if they are remand, newly sentenced or have been transferred from another region.²</p>	<p>CSC divides admission processes into those where it does have sufficient information to assess an individual’s needs and risks and those where it does not.</p> <p>In cases where CSC has sufficient information to assess risks and needs, a case conference should take place without delay to determine the most suitable prison.</p> <p>Where there is insufficient information, i.e. where CSC cannot assess an offender’s risks and needs the intake prison will be based on the individual’s current sex (pg. 23 Gender Diverse Offender: a decision-making guide)</p> <p>Current sex means the individual’s anatomy.</p> <p>For those returning to custody from the community gender diverse individuals are sent to the prison which better aligns with their gender identity if that is their preference unless there are overriding health or safety concerns that cannot be resolved. The process</p>
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	<p>Transgender men: A transgender man should be considered for admission into the male estate if there are no concerns that his health, safety, or wellbeing would be put at risk – no apparent or obvious vulnerability</p> <p>A transgender man should be admitted into the female estate if there are concerns around risks to their health, safety, or wellbeing at the time of admission or risks to health, safety or wellbeing of others were they to be admitted to the male estate – known vulnerability</p> <p>If there are concerns for their safety or the safety of women, or he meets VAWG criteria or he is an unknown risk he may be managed under Rule 95 (1) conditions within the female estate until further information can be ascertained to make an informed placement decision – unknown vulnerability</p>			<p>explained below only applies where:</p> <ul style="list-style-type: none"> • the offender was not last released from an institution that better aligns with their gender, or • they were released from that institution type, but CSC has subsequently obtained information to suggest that there may be overriding health or safety concerns that cannot be resolved. <p>CSC undertakes an intake assessment process using a number of assessment tools no matter which estate the individual is admitted to as well as gender specific tools. After these assessments are complete an individual will be placed according to their gender identity or expression in a men’s or a women’s institution, if that is their preference, regardless of their sex (i.e., anatomy) or the gender/sex marker on their identification documents unless there are overriding</p>
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				<p>health or safety concerns that cannot be resolved, the offender will be placed in an institution that aligns with their current sex (i.e., anatomy).</p>
<p>Placement</p>	<p>Transgender women with VAWG criteria and who presents a high risk to women, should not be admitted to, or placed in the women’s estate. Decisions about placement are first discussed at a transgender case conference which takes place within 72 hours of admission of a transgender person into custody. The case conference approach allows for both risk and gender identity to be considered when making long term placement decision. It allows time for evidence to be sought on risk and/or vulnerability which may inform placement decisions. SPS policy and practice considers as GRCs and genitalia as factors in decision making but they are not the only factors and are considered alongside other evidence – risk is the key</p>	<p>1. Transgender women with <u>birth genitalia</u> should not be held in women’s prisons – evidence of gender affirmation surgery will be required in the form of medical documentation or confirmation of healthcare records 2. Transgender women with any sexual and/or violent conviction should not be held in the women’s estate Of note is the fact that the gender of the victim in these offences is not mentioned. Communication with HMPPS suggests that violent and sexual offences committed against men also result in transgender women not being housed in the women’s estate.</p>	<p>Policy allows individuals to be placed through self-identification so transgender individuals can be placed according to their affirmed gender regardless of what is stated on their birth certificate. This is the most common pathway for placing individuals, however if an individual does produce a birth certificate and is recorded as either male or female, they must be placed in a prison that matches the sex stated on their birth certificate. Those who have committed or been accused of a serious sexual offence against someone of the same gender as those they wish to be co-located with are disqualified from being allowed to apply for a transfer and will only be housed in the prison where they were first housed, which usually reflects that stated on the court warrant.</p>	<p>Gender diverse prisoners are placed in an institution of their preference "regardless of their anatomy (sex) or gender on their identification documents, unless there are overriding health or safety concerns which cannot be resolved."³ Requests for transfer are decided on a case-by-case basis and requires a review of the individual’s security classification as well as consideration for health and safety concerns and any mitigation measures that could be adopted.</p>

	<p>factor in decision making on placement. If the TCC cannot make a location decision, it becomes a Complex Location Decision and is escalated to a local Risk Management Team. These include cases of transgender women who meet VAWG including those requesting to be placed in the women's estate. Transgender women with VAWG may be considered for placement in the women's estate but evidence of VAWG will continue to weigh heavily on the assessment of whether the person in custody presents a risk in the women's estate. The RMT should make a recommendation on where transgender persons falling under Complex Location Decisions should be placed and an Executive Panel (EP) chaired by SPS's Deputy Chief Executive should provide assurance of any of these cases that involve VAWG.</p>	<p>Transgender women out with these criteria but who do not hold a GRC should generally be held in the men's estate. Transgender women with a GRC should be allocated to E-wing at HMP Downview – the dedicated wing for trans women with a GRC who are not deemed safe enough for the mainstream women's estate.</p>		
<p>Searching</p>	<p>A transgender individual should be searched in line with their affirmed gender</p>	<p>The revised policy states that searching decisions are made under a Voluntary Agreement.</p>	<p>DoC asks transgender individuals to sign a searching agreement indicating the</p>	<p>The new policy states that as part of the individualised protocol, individuals are</p>

	<p>unless they request otherwise and/or unless there are risks concerning the individual's or officer's health, safety, or welfare, or in relation to the security or good order of the prison. A Searching and Sampling arrangement form should be completed and signed by both the individual and a unit manager recording the decision and evidence for the decision.</p>	<p>The VA must be consistent with the sentence plan. Searching of transgender individuals must be consistent with Annex A of the Searching Policy Framework for adult prisons unless alternative arrangements have been made as part of a VA (outlined below)</p> <p>From Annex A of the Searching Policy Framework: Careful consideration must be given to arrangements for searching transgender prisoners. In determining arrangements, it is essential that staff consult sensitively with the prisoner concerned and those involved in their care. It may also be necessary to consult with healthcare professionals (with the prisoner's consent).</p> <p>A transgender prisoner who holds a Gender Recognition Certificate (GRC) is legally of the gender outlined on the GRC irrespective of their birth sex and therefore must be searched by a member of staff of the same gender as the prisoner's affirmed (GRC) gender. Alternatives to this can be agreed as long as the</p>	<p>gender of the officer they would prefer to conduct the search. This choice must be followed but the individual does have the opportunity to change their mind.</p>	<p>allowed to choose the gender of the person conducting strip and frisk searches, urinalysis, and medical escorts.</p>
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		<p>individual agrees, and this is detailed on a voluntary agreement.</p> <p>Transgender prisoners who do not hold a GRC do not have the right to insist on being full searched by staff who are (in these circumstances) of the opposite legal sex.</p> <p>Rub down searches: Transgender women with a GRC should be rub down searched by female staff. Transgender men with a GRC can be rub-down searched by male or female staff. Transgender women who remain legally male can be rub-down searched by either male or female staff. Transgender men who remain legally female, should be rub down searched by female staff.</p> <p>Full searches: Transgender women with a GRC must be full searched by female officers according to the women's full search procedures. Transgender men with a GRC must be full searched by male officers. Transgender women who remain legally male should be</p>		
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		<p>full searched by male officers. Transgender men who remain legally female, should be full searched by female officers. Non-binary searching considerations: Searching arrangements for a prisoner who identifies as non-binary is that they must only be full searched by a member of staff of the same gender as the prisoner’s legal gender.</p>		
<p>Role / significance of Gender Reassignment Certificates or changing legal sex</p>	<p>Possession of a Gender Recognition Certificate is one piece of evidence that SPS can take into account when deciding on how to best place a transgender person in custody. SPS retains the ability not to locate a transgender individual in the estate which aligns with their acquired sex (with or without a GRC) if there are overriding risks to safety and wellbeing of them or others including if they have history of VAWG which may preclude them from placement in the women’s estate.</p>	<p>The revised guidance states the new rules preventing transgender women with male genitalia or convicted of sex or violent offences from being housed in the women’s estate applies regardless of whether a person as Gender Recognition Certificate. Exemptions can only be made in exceptional cases with approval of Ministers.</p>	<p>New Zealand has had a form of self-id since 2018.⁴ This law allows transgender and gender non-conforming people to change the sex stated on their birth certificate, including to remove their gender entirely. The current process to change one’s birth certificate requires individuals to demonstrate that they have assumed and intend to maintain the physical gender identity of their nominated sex (via medical treatment). This has resulted in a very low number of applications to change the sex on birth certificates. In December 2021 the law was changed to make this</p>	<p>Birth certificates (legal sex) does not play a role given the ability of transgender individuals to self-id and be accommodated in the prison which aligns with their gender identity.</p>

			process easier and would no longer require any proof of medical transition.	
Case conference / management	The policy is centred round the Transgender Case Conference process where issues are discussed and decided upon with a multi-disciplinary group of professionals as well as the individual in question. Topics discussed include discussions about placement (see above about the placement decision process), safety, privacy and dignity of the individual, access to property to facilitate their transition and gender identity, access to NHS gender reassignment services, searching, progression, liberation, and accommodation, including establishment, unit, and cell placement.	Case conference boards take place to decide on transfers to a prison which matches their gender identity. These boards look at a range of risks presented by the individual and vulnerabilities of the individual which should be considered when making placement decisions.	The day-to-day management of transgender individuals in custody falls under its Management of Transgender Prisoners policy. Transgender individuals must have a support plan which they discuss with a member of staff within three days of their reception into custody or informing a member of staff that they are trans. The plan includes considerations of where the individual is placed within a prison, safety issues related to association, property, searching arrangements, safety during escorts and transfers, support from external organisations, community etc., additional support needs to enhance safety, dignity, and privacy. ⁵	Case conferences only take place when discussions and decisions are required regarding transfer of an individual to a prison which better aligns with their gender identity. Case conferences with transgender individuals are seen as an integral part of case management, they allow staff to discuss and obtain an understanding of the offender's criminal pathway, risk and needs and assist staff in making informed decisions concerning offenders' gender-related needs, and will ensure progress towards rehabilitation and reintegration into the community. ⁶ These case conferences involve representatives from various sectors including from prisons, regional and national staff and managers with the purpose of drafting a recommendation to the decision maker accounting for any risks and mitigation

				<p>strategies to manage the offender. Case conferences help document decision making and push the org. ensure we have looked at every aspect before taking a decision.</p> <p>Outside of the case conference process, trans and gender diverse individuals are managed through individualised protocols developed in consultation with the individual. This protocol, which is recorded on the prisoner management system, includes their preferred gender of staff to conduct searching, correct names, and pronouns etc.</p>
<p>Inclusion of other gender identities</p>	<p>The policy is for transgender people with the protected characteristic of gender reassignment as described in the Equality Act 2010 and covers a person who is proposing to undergo, is undergoing, or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.</p>	<p>The policy does include those whose gender does not match with that assigned at birth but the policy states that they are to be managed in accordance with their legal gender e.g. for housing and searching provisions.</p>	<p>Those whose birth certificate records an individual's sex as indeterminate or does not record a sex (as permitted under New Zealand law), are automatically eligible for a review of their initial placement decision, regardless of offending history.</p>	<p>The policy applies to those who identify as transgender or other gender diverse identities (non-binary, two spirit,⁷ gender fluid etc.) hence the title of the policy using the term "gender diverse". The policy also uses the phrase "...that better aligns with their gender identity or expression" to reflect the understanding that prisons are organised according to</p>

	<p>Under the policy, those who identify as gender diverse (non-binary, gender fluid) would not be subject to decisions about their admission, placement or how they are searched or give samples. Separate operational guidance staff on the management of gender diverse individuals is to be published.</p>			<p>the gender binary, but that people may not wholly identify along this binary. Other genders outside the binary as well as non-binary are included in CSC's gender considerations individual protocol which asks for the individual's gender as well as in its definitions list. Under Canadian law, self-id allows citizens to change their gender in legal documents to M, F or X.</p>
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Annex 2: Summary of the Survey Findings from Survey of People living alongside Transgender People in Custody

For the purposes of understanding the wider impact of GIGR (2014) policy on the wider prison population, the policy review constructed a survey which could capture the attitudes of people in custody in relation to the way that transgender people are managed, and their thoughts and concerns about different approaches to the management of transgender people living alongside them within the prison setting. The survey contained questions to consider the attitudes of individuals towards living alongside transgender people in custody, questions about the 2014 policy and its impacts, and included 'vignette' style questions which allowed people in custody to comment on the principles of different policy options. A copy of this survey is available [here](#).

In selecting participants of the survey, the policy review sought to maximise the number of people participating that had first-hand experience of living alongside a transgender person in custody. As such, the policy review identified the establishments in Scotland where transgender people were accommodated within the last year and distributed the survey across those establishments. Given the proportional difference in population between men and women, the policy review decided that delivering a survey to all women in custody that lived in establishments where transgender people were recently housed would give the potential for a reasonable number of responses from women for the purposes of analysis. As such, 240 surveys were distributed to women living in custody. Using this number, the policy review then divided up another 240 surveys across the male establishments in Scotland where a transgender person in custody had recently been located.

Surveys were sent to staff members working within these establishments, and staff were briefed on the review process, the survey's purpose as a data gathering method, and the best way to support individuals in filling out the survey. The policy review was attentive to levels of literacy across people in custody and recommended that staff aid people in custody should they need help to complete the paper form. It is also worth noting the limitations that this method of survey distribution may have on response rate when we consider the power dynamics within the prison setting. The evidence from other surveys conducted in custody suggests that individuals do not feel 'compelled' to complete surveys that are distributed by officers, the power dynamic between staff and people in custody may result in participants answering questions in a particular way if they perceive a particular question as having a 'correct' answer which they believe staff are expecting them to give. This was a potential limitation that was difficult for us to mitigate in the context of the review – the restrictions from COVID-19 and other factors required that staff assist in the distribution and collection of the survey responses rather than having members of the review team present in establishments to assist in the survey being completed.

Of the 480 total surveys distributed, 238 (49.6%) were returned completed. 143 of these were returned by men (a 59.6% response rate across all male participants), and 95 returned by women (39.6% of women who received a survey). To assure that the survey specifically captured the views of people who are not transgender and people who are not gender diverse in relation to the impacts of managing transgender/gender diverse people, surveys that were completed by those who did not identify as male or female in the demographic section of the survey were removed from the data analysis. This included those completed responses which included free text which identified the respondent as

transgender or gender diverse. This was done to maximise the opportunity for the experience of people who are not transgender and people who are not gender diverse to inform this part of the data collection.

Responses were digitised for analysis, and the findings used to supplement understanding of the interviews carried out with transgender people in custody and people who are not and SPS staff. The responses provided a range of insights into the experiences of people in custody of living alongside transgender people, their attitudes towards their management and how their management might impact them.

Question 1

Do you agree that a transgender person should be allowed to live in a prison that matches their gender identity?

1. Yes, transgender people should be allowed to live in a prison that matches their gender identity.
2. No, transgender people should not be allowed to live in a prison that matches their gender identity.
3. There should be a specific unit/hall/wing for transgender people to live in.
4. Other
5. Don't know.

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Response 1	108	49.54%	65	50.78%	29.82%	43	47.77%	19.72%
Response 2	14	6.42%	11	8.59%	5.05%	3	3.33%	1.38%
Response 3	66	30.28%	37	28.91%	16.97%	29	32.22%	13.30%
Response 4	17	7.79%	9	7.03%	4.13%	8	8.88%	3.67%
Response 5	13	5.96%	6	4.69%	2.75%	7	7.77%	3.21%
Total Valid Response	218	-	128	-	58.72%	90	-	41.28%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses

Non-Response/Not Valid	20	8.4%	15	10.49%	6.3%	5	5.26%	2.1%
Total	238	-	143	-	-	95	-	-

Across the full survey responses, the highest proportion of respondents selected the first option, agreeing that transgender people should be allowed to live in a prison that matches their gender identity. The second most frequent response highlighted a desire for a dedicated or exclusive space for transgender people in custody. Notably, the major differences in relation to gender breakdown of these responses shows that the first response was slightly more favoured by men, whereas the dedicated/exclusive space option was slightly more favoured by women than men. These differences are too slight to show a significant finding, but it is worth noting that where the first option is familiar to many of the people living in custody (given that this position is allowed under the 2014 policy), the “dedicated” unit option is a practice that the SPS has not adopted for the transgender population, which respondents saw potential benefits in selecting. The answers given by both men and women to this question were largely similar in proportion across both groups, with percentages of valid totals for each of the responses only differing 3-5% in relation to each. On this basis, there is little data from this survey to suggest that there are starkly opposing views between our male and female populations in relation the options that should be considered as appropriate for the placement of transgender people in custody.

70 respondents chose to provide additional detail in the free text box, including those that selected the “other” option from the list of responses. All respondents who answered with response 4 provided detail of their “other” option in the free text box provided. These answers were thematically coded, and key themes, concepts and keywords generated into thematic categories into which the answers could be organised.

Of those that answered “other”, seven of the nine men, and seven of the eight women, who provided this response included something about the ‘legitimacy’ or ‘completeness’ of the person’s transition in their response. The idea that someone had “fully” transitioned, for them, was an indicator of whether or not the person should be moved to an establishment that aligns with their affirmed gender. It was largely implied through the language use by both men and women that these responses were based, in the main, on the transgender individual’s anatomy, and a “full” transition, for the respondents, would constitute gender reassignment surgery, amounting to using a transgender individual’s genitalia and anatomy as an indicator of “appropriateness” in making decisions about their placement in custody.

“If a person as transition and had surgery to change their reproductive organs... then I have no issue but if they still have their biological organs, then no” – Man responding to Question 1 Free Text

“The person should have started hormone treatment before going to a prison that matches their identity. This will show that the person is genuine” - Man responding to Question 1 Free Text

“I think that until a person is fully change to the gender of choice, they should remain in the establishment that suits their gender from birth. This would prove the intention is there and they are serious about it, as I feel that for some individuals are doing it for the wrong reasons, and it ruins it for the people who are truly genuine about changing their gender” – Woman responding to Question 1 Free Text

“If it is proven that they live that way and have for some time it really wouldn’t bother me. We all have to have an open mind” – Woman responding to Question 1 Free Text

As such, we can categorise these 14 responses across the free text answers (6.43% of total responses), placing this consideration at the same frequency of agreement as those who responded to the survey agreeing with response 2 which would prevent transgender people accessing an establishment which aligned with their gender identity.

Looking at the 70 free text responses generally, 30 of the 70 responses included a reference to an appropriate assessment of the safety implications of making any decision, to ensure that everyone that would be impacted by the move (both the transgender person, and the people they would be living alongside) would be safe once that move was made. These views were spread across the different response to the question, and as such, underpinned the notion that, regardless of which option SPS arrive at for the placement of transgender people, both women and men are conscious of the need for there to be an appropriate assessment of the risks and needs that are inherent in the placement of anyone into the prison estate.

“There is not an easy answer to this, as there are various factors to take in consideration, like the seriousness of their crime, the length of time they have been transitioning, etc.” – Woman responding to Question 1 Free Text

“You have to really assess the risks that the person may or may not commit further offences” – Man responding to Question 1 Free Text

“SPS should check that transgender people are not just playing the system and could pose a real danger to officers and other prisoners” – Woman Responding to Question 1 Free Text

23 of the 70 responses included a reference to the need to take the transgender person’s mental health and wellbeing into account as a factor which informed any decisions about placement in custody.

“The safety of the individual being considered for placement is paramount, however, it’s extremely important for the SPS to really listen to the individual’s own thoughts and feelings, to understand how well they might cope” – Man Responding to Question 1 Free Text

“The SPS should only concern itself with the trans person’s need. The views/opinion/concerns of prisoner from either side of the estate are not relevant” – Woman Responding to Question 1 Free Text

Question 2

Non-binary people do not identify as either male or female. When we are accommodating non-binary people, how should we make this decision?

1. An establishment that matches their birth sex
2. We should ask the non-binary person where they would prefer to be housed
3. We should have a dedicated/exclusive space for non-binary people
4. Don't Know

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Response 1	80	35.24%	48	35.55%	21.15%	32	34.78%	14.09%
Response 2	55	24.23%	29	21.48%	12.78%	26	28.26%	11.45%
Response 3	46	20.26%	29	21.48%	12.78%	17	18.48%	7.49%
Response 4	46	20.26%	29	21.48%	12.78%	17	18.48%	7.29%
Total Valid Response	227	-	135	-	59.47%	92	-	40.52%
	Freq	% of total	Freq	% of Men response total	% of total responses	Freq	% of Women response total	%of total responses
Non-Response/Not Valid	11		8	5.59%	3.36%	3	3.16%	1.26%
Total Responses	238	-	143	-	-	95	-	-

There were less clearly “preferred” responses to question 2 than there was to question 1 when considering proportion of responses for each category, however, this may be due to the fact that there have been less non-binary people identified in custody than there have been transgender people, and those answering the survey may not have experience or context for answering this particular question with a degree of confidence. The largest proportion of both men and women responding to the survey was to place a non-binary person into custody based on

the sex assigned at birth, and more context for this was provided in the comments included by respondents in the free text boxes (see below). The only notable difference between the response from both men and women is that women were slightly more likely to be in favour of asking the preference of the non-binary person in making the decision about their placement.

80 respondents chose to provide additional detail in the free text box. These answers were thematically coded, and key themes, concepts and keywords generated into thematic categories into which the answers could be organised.

30 of the 80 responses included comments about safety, and the need to have considered the impact that placing the non-binary person into custody might have on the safety of the individual themselves, or those already in custody. Slightly more women than men highlighted this in their comments, with 17 of the 30 comments which mentioned safety being made by women who responded to the survey. Safety was thematically the most common concept discussed in the comments, aligning with comments to the previous question related to transgender people and their placement. It highlights the general linkage that respondents make towards gender identity and security, and the need for the SPS to ensure that the decisions are made in light of the risks associated with individual placement.

“The most important thing to consider is the risk to the person, and the other prisoners they are housed with. A non-binary person that is born a man and has committed a violent crime, for instance, I don’t think should be given the option to be housed with women” – Woman responding to Question 2 Free Text

“Risk is the most important thing the SPS should think about here, and how the individual feels they are being treated” Man responding to Question 2 Free Text

23 of the 80 responses reflected the impact that these decisions might have on the wellbeing or mental health of a non-binary person, particularly in relation to “othering” or being made to feel different. It speaks to the answers given above to question 1 (above) about the need for SPS policy and practice to reflect a wider cultural acceptance of transgender people, and the impact that practice could have on making someone feel othered or isolated. Notably, there was a large overlap with this thematic category and a range of others, and the comments suggested a link between the needs and wellbeing of the non-binary person being impacted by a range of different factors or practices which the SPS should remain attentive to. For example, 7 of the comments tied directly to the impact of assessing risk and safety, and the relationship between that process and the wellbeing of the non-binary person.

“Other than on grounds of safety, separating them will do more harm than good, as this will be segregating them from others, it’s like excluding them from society” – Man responding to Question 2 Free Text

“The person will surely have an opinion on where they want to or should be housed so ask and if they are suitable let them be where they desire.” – Woman responding to Question 2 Free Text

19 of the 80 response included comments about birth sex being the best criteria against which decisions about non-binary individuals should be made. 11 men and 8 women highlights that it seemed to be the sensible options, specifically because the SPS estate was currently gendered in its configuration, and that a non-gendered space perhaps presented other difficulties which an exclusive wing may not. This provides more context to the answers given above – which suggest SPS should use birth sex for the placement of non-binary people, but there is more support to allow affirmed gender to dictate the placement of transgender people (as suggested in the responses to question 1 above).

“There are two genders in the SPS, and if they don’t choose to identify with either, legally they still have a birth sex.” – Man responding to Question 2 Free Text

“Even though the person doesn’t identify as male or female I think it’s safer to keep them in the prison that matches their birth sex. It doesn’t seem like they should get a choice if no one else does, and strict rules like this would promote safety for everyone” - Woman responding to Question 2 Free Text

Responses to Question 3

Question 3.1: Agreement with the statement “Transgender women should be allowed to live in a female prison”

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	40	17.49%	20	14.59%	8.73%	20	21.74%	8.73%
Agree	79	34.49%	48	35.04%	20.96%	31	34.07%	13.54%
Neither Agree nor Disagree	44	19.21%	26	18.98%	11.35%	18	19.56%	7.86%
Disagree	32	13.97%	17	12.41%	7.42%	15	16.30%	6.55%
Strongly Disagree	19	8.26%	18	13.14%	7.86%	1	1.09%	0.43%
Don't know	15	6.56%	8	5.84%	3.4%	7	7.6%	3.06%
Total Valid Response	229	-	137	-	59.83%	92	-	40.17%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	9	3.78%	6	4.19%	2.52%	3	3.16%	1.26%
Total	238	-	143	-	-	95	-	-

More respondents agreed or strongly agreed with the statement that transgender women should be allowed to live in a female prison than those who disagreed or strongly disagreed with the statement. There were slightly more women than men (around 56% and around 50% respectively) agreed with the statement, with slightly more men than women (around 26% and around 17% respectively) disagreeing or strongly disagreeing. However, and most notably, the highest proportion of overall responses, and the highest proportion of men responding to the survey, answered that neither agreed nor disagreed with the position, with just over 2% of women agreeing with the statement rather than taking this neutral response. This may be indicative of the complexity of the subject, or the fact that the statement itself requires contextualising and clarifying with additional information. For example, it could be the case that

there would be less “neutral” responses if there were qualifying criteria attached to the statement with looked at the transgender person’s needs, or the impacts that their placement could have on safety. There is an implication that people in custody see an approach grounded in assessing other features or factors about a transgender woman’s case before deciding about their placement in any estate.

Question 3.2: Agreement with the statement “There should be separate accommodation for transgender people in prison”

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	46	20%	31	22.3%	13.48%	15	16.48%	6.52%
Agree	47	20.4%	25	17.98%	10.86%	22	24.18%	9.57%
Neither Agree nor Disagree	56	24.3%	36	25.89%	15.65%	20	21.98%	8.4%
Disagree	46	20%	26	18.71%	11.3%	20	21.98%	8.4%
Strongly Disagree	28	12.17%	17	12.23%	7.39%	11	12.09%	4.78%
Don't know	7	3%	4	2.8%	1.7%	3	3.29%	1.3%
Total Valid Response	230		139	-	60.4%	91	-	39.57%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	8	3.3%	4	2.79%	1.68%	4	4.21%	1.68%
Total	238	-	143	-	-	95	-	-

As with the previous statement, the highest proportion of respondents across the data set neither agreed nor disagreed with the use of separate accommodation for transgender people. Slightly more women “agreed” with the statement than gave a neutral response, but across both men and women, there was little difference in both groups’ overall agreement and disagreement with the statement. Again, perhaps this is due to the lack of experience that the people in custody have with the idea of creating segregated space for individuals based on protected characteristics like gender, but could, as with the above responses to the previous question, potentially indicate that there needs to be more qualifying information to sway respondents one way or another in terms of agreement.

Question 3.3: Agreement with the statement “Allowing transgender men to live in male establishment would be unsafe”

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	33	14.41%	21	15.22%	9.17%	12	13.19%	5.24%
Agree	57	24.89%	27	19.57%	11.79%	30	32.97%	32.97%
Neither Agree nor Disagree	56	24.45%	34	24.64%	14.85%	22	24.18%	9.62%
Disagree	47	20.52%	32	23.29%	13.97%	15	16.48%	6.55%
Strongly Disagree	17	7.42%	13	9.42%	5.68%	4	4.39%	1.7%
Don't know	19	8.29%	11	7.97%	4.8%	8	8.79%	3.49%
Total Valid Response	229	-	138	-	60.26%	91	-	39.74%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	9	3.7%	5	3.6%	2.1%	4	4.39%	1.6%
Total	238	-	143	-	-	95	-	-

Women were more likely than men to agree that allowing transgender men to live in male establishments would be unsafe, with around 10% more women agreeing or strongly agreeing with the statement than men who responded to the survey. Whereas a large proportion of both groups still feel into the neither agree nor disagree category, more men disagreed with this position than women did. There is a question here that related to the “fear of the unknown”, where women have a perceived understanding of the environment in the male estate, and therefore perceive a transgender man’s experience in that prison as an unsafe one. We might expect, through this lens, that there would be more risk adverse attitudes within the women’s cohort’s responses to this question. The inverse would suggest that men could provide more contextualising information about the environment in male estate, but their mixed response across all of the categories, with only 1-2%

difference between their “neutral” and “disagree” responses suggests, again, that there is a complexity involved in the transgender man’s experience that can’t be boiled down to one particular statement. Generally speaking, however, around 10% more of the survey’s respondents believed that placing a transgender man in the men’s estate represented a risk to safety.

Question 3.4: Agreement with the statement “Transgender people in custody should always be accommodated according to birth sex”.

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	35	15.42%	23	16.66%	10.13%	12	13.48%	5.27%
Agree	36	15.86%	23	16.66%	10.13%	13	14.61%	5.72%
Neither Agree nor Disagree	43	18.94%	26	18.84%	11.45%	17	19.10%	7.48%
Disagree	61	26.87%	32	23.19%	14.09%	29	32.58%	13.78%
Strongly Disagree	38	16.74%	25	18.11%	11.01%	13	14.61%	5.73%
Don't know	14	6.1%	9	6.52%	3.96%	5	5.62%	2.20%
Total Valid Response	227	-	138	-	60.79%	89	-	39.21%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	11	4.62%	5	3.63%	2.10%	6	6.74%	2.52%
Total	238	-	143	-	-	95	-	-

From the overall responses, around 44% of the respondents disagreed or strongly disagreed with the statement that transgender people should always be placed in custody according to birth sex, as opposed to around 31% who agreed that this should be the basis for accommodation. Additionally, the overall response to the “disagree” category (around 27%) was 8% more common than the second most frequent response, with these other responses sitting between 15 and 19%. It implied a general sense, as with the other statement responses, that there are

complexities to decision making in this area, and that more information might be required for respondents to reflect more accurately on this statement. However, there is a tendency across respondents to disagree with this statement, which could suggest that relying on birth sex as the primary consideration for decision making around transgender people's accommodation is considered appropriate across the respondents.

Question 3.5: Agreement with the statement “I would feel unsafe if there was a transgender person living the same hall as me”.

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	18	7.69%	10	7.09%	4.27%	8	8.6%	3.42%
Agree	11	4.7%	4	2.83%	1.71%	7	7.5%	2.99%
Neither Agree nor Disagree	46	19.65%	25	17.73%	10.68%	21	22.58%	8.97%
Disagree	65	27.77%	40	28.36%	1.71%	25	26.88%	10.68%
Strongly Disagree	82	35.04%	54	38.28%	23.08%	28	30.11%	11.97%
Don't know	12	5.1%	8	5.67%	3.42%	4	4.30%	1.21
Total Valid Response	234	-	141	-	60.27%	93	-	39.74%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	4	1.68%	2	1.3%	1.8%	2	2.11%	0.84%
Total	238	-	143	-	-	95	-	-

There was a clear disagreement across respondents that living alongside a transgender person would make them feel unsafe. This is perhaps linked to the high numbers of individuals (particularly in the women's estate) who have had experience of living alongside a transgender person. Whereas there is a general disagreement with the statement that respondents would personally feel unsafe if living alongside a transgender person, around 6% more women than men agreed that they would feel unsafe, and around 10% less women than men disagreed with the statement, pointing towards a higher degree of discomfort across women with the idea of being placed alongside a transgender person in custody. Whereas around 40% more respondents within the women's cohort disagreed with the statement than agreed with it, the differences

between the male and female responses reminds us that we should consider the way we place and manage transgender people in custody having a different impact on men in prison than it does on women living in custody.

These responses should not avail us from the fact that 10% of the survey's respondents believed that placing a transgender man into a men's establishment was viewed as a risk to safety. Whereas there appears to be agreement that living alongside a transgender person does not represent a risk to the feelings of safety generally, in the case of transgender men (from the findings above), the implications for safety and security for that group of transgender people represents a higher perceived risk.

Question 3.6: Agreement with the statement "Transgender men should not be accommodated in male establishments".

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	40	17.09%	26	18.44%	11.11%	14	15.05%	5.98%
Agree	49	20.94%	27	19.15%	10.26%	22	23.66%	9.4%
Neither Agree nor Disagree	49	20.94%	31	21.99%	13.25%	18	19.35%	7.69%
Disagree	44	18.80%	25	17.73%	8.55%	19	20.43%	8.12%
Strongly Disagree	38	16.24%	23	16.31%	9.83%	15	16.13%	6.41%
Don't know	14	5.98%	9	6.38%	3.85%	5	5.38%	2.14%
Total Valid Response	234	-	141	-	60.26%	93	-	39.74%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	4	1.68%	2	1.39%	0.84%	2	2.11%	0.84%
Total	238	-	143	-	-	95	-	-

Again, this statement elicited mixed responses across the general cohort of respondents. Whereas the most frequently answered options for all respondents was split between “agree” and “neither agree or disagree”, roughly the same proportion of men and women agreed or strongly agreed that transgender men should not be placed in male establishments, and only 3% more women than men disagreed or strongly disagreed with the statement. As with the above to the question above, even though there is a general disagreement that the presence of a transgender person in custody would make respondents feel unsafe, there is tension that remains with the idea of placing transgender men into the men’s estate. Taken with the above findings, it suggests a perceived risk associated with placing transgender men into custody alongside other men, as opposed to the transgender person themselves representing a risk to the people they are living alongside.

Question 3.7: Agreement with the statement “The SPS should make people in custody aware when a transgender person is accommodated in their hall”.

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	28	12.07%	22	15.6%	9.4%	6	6.59%	2.59%
Agree	41	17.65%	22	15.6%	9.4%	19	20.88%	8.19%
Neither Agree nor Disagree	53	22.84%	33	23.40%	14.22%	20	21.98%	8.6%
Disagree	59	25.43%	33	23.40%	14.22%	26	28.57%	11.21%
Strongly Disagree	29	12.5%	19	13.48%	8.19%	10	10.99%	4.31%
Don't know	22	9.48%	12	8.51%	5.17%	10	10.99%	4.31%
Total Valid Response	232	-	141	-	60.78%	91	-	39.22%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	6	3.36%	2	1.39%	0.84%	4	4.21%	1.68%
Total	238	-	143	-	-	95	-	-

Again, the findings against this particular statement suggest a mixed response across both cohorts, with more people generally disagreeing with the statement than agreeing (with around 30% agreeing or strongly agreeing, and around 38% disagreeing or strongly disagreeing). Slightly more women than men agreed or strongly agreed with the statement rather than remained neutral when compared to the men's responses, but this difference was not substantial.

Question 3.8: Agreement with the statement “It would be safe to place transgender women in the same hall as other women”

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Strongly Agree	30	12.93%	14	10%	6.03%	16	17.39%	6.89%
Agree	66	28.45%	33	23.57%	14.22%	33	35.87%	14.22%
Neither Agree nor Disagree	59	25.43%	35	25%	15.09%	24	25.81%	10.34%
Disagree	29	12.5%	18	12.86%	7.76%	11	11.96%	4.74%
Strongly Disagree	22	9.48%	19	13.57%	8.19%	3	3.26%	1.29%
Don't know	26	10.92%	21	15%	9.05%	5	5.43%	2.16%
Total Valid Response	232	-	140	-	60.34%	92	-	39.56%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	6	2.53%	3	2.09%	1.26%	3	3.16%	1.26%
Total	238	-	143	-	-	95	-	-

A slight majority (around 51%) across all responses received agreed or strongly agreed that placing a transgender woman in the same hall as other women would be safe, as opposed to those that neither agreed nor disagreed (around 25%), and those who disagreed or strongly disagreed (around 21%). When taking agree and strongly agree response together, women were more likely to agree (around 53% of women compared to around 34% of men), and less likely to disagree (around 15% of women compared to around 27% of men) with the statement. This speaks to the data in the above response related to the safety of transgender men being placed in male halls, and the “fear of the unknown” concept discussed above. It could be the case that the experience of women in custody, and their understanding of the women’s

establishment contextualises their responses, and perhaps leads to men responding in a way that is more risk adverse than women on this statement, which is a factor that should be considered.

Response to Question 4

Question 4.1: Important considerations in placing transgender people in custody.

Item	Total (% of total responses)	Men (% of Men total responses)	Women (% of Women total responses)
The safety of the transgender person	165 (69.33%)	95 (66.43%)	70 (73.68%)
The safety of other people in custody	157 (65.97%)	95 (66.43%)	62 (65.26%)
How long the person has been living in their transgender identity	135 (56.72%)	69 (48.25%)	66 (69.47%)
Whether the person transitioned before or after they started their sentence	133 (55.88%)	72 (50.35%)	61 (64.21%)
The type of offence the transgender person committed	141 (59.24%)	81 (56.64%)	60 (63.16%)
The transgender person's behaviour whilst in custody	135 (56.72%)	79 (55.24%)	56 (58.95%)
The transgender person's opinion on their own accommodation	132 (55.46%)	78 (54.54%)	54 (56.84%)
The opinion of people living alongside the transgender person	121 (50.84%)	72 (50.35%)	49 (51.58%)

For both men and women, “the safety of the transgender person” in custody was selected as an important feature in the placement of transgender men in women in custody more than any other (69.3% of all respondents), with around 8% more women selecting this as an important feature than men (around 74% of women compared to around 66% of men).

For men, this feature was considered at the same frequency as “the safety of other people”, with the next most frequent response being “the type of offence committed by the transgender person”, which was around 10% less common to be selected as an important feature than the other two factors involving safety.

Women generally selected more individual factors than men as being important features of decision making for transgender people's management. Like men responding to the survey, women were most likely to consider the transgender person's safety as an important feature, but notably selected features related to the transgender person “authenticity” at a significantly higher rate than men responding to the survey.

The features “how long the person has been living as a transgender person” and “whether the person transition in custody” were included as indicators of “authenticity” following data collected from interview with staff and transgender people and have been included to gauge the importance of assessing a transgender person’s authentic gender identity in decision making. These features were much more likely to be selected as important for women, highlighting a need for the SPS to put in place processes for distinguishing genuine transgender people from individuals that claim to be transgender to victimise women.

Other than this significant difference in responses, women were more likely than men – other than “the safety of other people in custody” (where they were only 1% less likely than men to consider it important) – to consider all of the features on this list as important in decision making for transgender people. It suggests a desire from women to ensure that SPS gather as much information and evidence as possible when making decisions about transgender individuals in custody. Taken with the above point, this points towards women seeking an assessment process based on evidence, which allows SPS to consider whether or not a transgender person in custody is seeking disingenuously to claim a transgender status to victimise others – with a comprehensive consideration of all of the factors considered below.

Question 4.2: Important considerations ranked Most Important by Respondents

Ranking from all Respondents	Consideration	Number of responses for most important (% of total responses for most important)
1	The safety of the transgender person	133 (20.21%)
2	The safety of other people in custody	123 (18.69%)
3	The type of offence the transgender person committed	103 (15.65%)
4	The transgender person's behaviour in custody	68 (10.33%)
5	How long the person has been living in their transgender identity	65 (9.88%)
6	Whether the person transitioned before or after they started their sentence	61 (9.27%)
7	The opinion of people living alongside the transgender person	54 (8.21%)
8	The transgender person's own opinion on their own accommodation	51 (7.75%)

Individuals were asked to mark a star next to up to 3 of the considerations from the list above which they considered to be the most important things on the list that the SPS should consider in making decisions about transgender people in custody. This allowed reflection on whether there were considerations that either men or women believed to be more important in relation to the management of transgender people.

Ultimately, safety – of the transgender person (20.21%) and of others in custody (18.69%) – received the most stars from respondents overall. The two lowest considerations for respondents as a whole were opinion based – with the opinion of other people in custody and the opinion of the transgender person being the least likely to be seen as one of the most important considerations (8.21% and 7.75% of participants respectively)

Ranking from all Men's responses	Consideration	Number of Men's responses for most important (% of total men's responses for most important)
1	The safety of the transgender person	87 (22.66%)
2	The safety of other people in custody	68 (17.7%)
3	The type of offence the transgender person committed	54 (14.06%)
4	How long the person has been living in their transgender identity	39 (10.16%)
5	The opinion of people living alongside the transgender person	35 (9.11%)

6=	Whether the person transitioned before or after they started their sentence	34 (8.85%)
6=	The transgender person's behaviour whilst in custody	34 (8.85%)
8	The transgender person's opinion on their own accommodation	33 (8.59%)

When considering the responses from men in isolation, the safety of the transgender person and the safety of other remained as the top two considerations from the list (22.6% and 17.7% respectively). Notably, the opinion of other people in custody was considered to be more important for men than it was when considering overall responses, perhaps indicating that environments and atmospheres within prison halls can have an impact on the experiences that transgender people have in custody. However, as with the overall responses, the opinion of the transgender person was the least frequency chosen consideration from the list. Taken together, this speaks to the assumption that men look for safety first, bound in the context of the rules and processes they are subjected to in prison. As with anyone in prison, if a person is deemed to be a risk, or is at risk, then decisions about their placement become more limited. It is in keeping with the higher ranking given to other people's opinions living in the transgender person hall – prisoner opinion and atmosphere can be a good indicator of how an individual will be received in a particular hall and what the impact of their presence might be. Taken together, it suggests a view from men in the study that process trumps preference, and the SPS should consider safety and other evidence about the impact that transgender person will have on the order of the hall ahead of considerations of individual preference and opinion.

Ranking from all Women's responses	Consideration	Number of Women's responses for most important (% of total women's responses for most important)
1	The safety of other people in custody	55 (20.07%)
2	The type of offence the transgender person has committed	49 (17.88%)
3	The safety of the transgender person	46 (16.79%)
4	The transgender person's behaviour in custody	34 (12.41%)
5	Whether the person transitioned before or after they started their sentence	27 (9.85%)
6	How long the person has been living in their transgender identity	26 (9.49%)
7	The opinion of people living alongside the transgender person	19 (6.93%)
8	The transgender person's own opinion	18 (6.57%)

When considering the responses from women, we see that the safety of other people in custody comes first (20.07%), and ahead of the safety of the transgender person (16.79% which appears in 3rd position). For women, their own safety and the risk presented by anyone being placed in their hall takes precedence over other considerations – which also explains the consideration of the transgender person's offence type as the second most chosen feature (17.88%). The opinions of both the transgender person and others in custody – like with overall responses – appear at the bottom of the list (6.93% and 6.57% respectively). This points towards an opinion across women in custody that decisions about transgender people being placed in custody should be informed by evidence of safety and risk first, and opinions from individuals in custody second.

This speaks to considerations about related women's concerns that individuals will seek to adopt a disingenuous transgender identity to victimise others, and the SPS should seek to eliminate that risk. Placing personal preference lower on the list of considerations than the other factors which point to evidence of the individual's transgender is in keeping with this, as well as placing the consideration of the transgender person's behaviour in custody at a higher ranking than men responding to the survey (12.41% of women's responses, and 8.85% of men's)

Question 5: John's vignette

John is a transgender male, who has been living as male in his community for 20 years. He is sentenced to custody and is placed into a male establishment to live alongside other male people in custody.

Question 5.1: Do you think John should be placed in custody alongside other male people in custody?

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	132	57.14%	78	56.52%	33.76%	54	58.06%	23.38%
No	56	24.24%	37	26.81%	16.08%	19	20%	8.23%
Don't Know	43	18.61%	23	16.66%	16.66%	20	21.51%	8.66%
Total valid response	231	-	138	-	59.74%	93	-	40.26%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	7	2.94%	5	3.49%	2.1%	2	2.22%	0.84%
Total	238	-	143	-	-	95	-	-

In the main, both men and women agreed that John should be placed alongside other people in custody. The high frequency of “don't know” in this example perhaps points to a requirement for more contextualising considerations that people in custody might want to know before making the decision – John's behaviour, the atmosphere of the prison they will be entering, etc.

John is worried about his safety in the hall he is living in. A couple of men in John's establishment have made comments about the fact he is a transgender man, and that they are not comfortable with him living alongside them. John feels like he should be moved for his own safety.

Question 5.2: Do you think John should be moved for his safety in this scenario?

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	158	68.1%	92	66.19%	66.19%	66	70.97%	28.44%
No	41	17.67%	26	18.71%	18.71%	15	16.13%	6.46%
Don't Know	33	14.22%	21	15.11%	15.11%	12	12.9%	5.17%
Total valid response	232	-	139	-	59.91%	93	-	40.09%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	6	2.52%	4	2.79%	1.68%	2	2.11%	0.84%
Total	238	-	143	-	-	95	-	-

The majority of respondents indicated that they think John should be moved for his own safety in their scenario. Notably, almost 10% of women were provided a yes/no answer to this over “don’t know” when compared to the previous question, which may speak to the idea that people in custody do require contextualising considerations in order to be swayed to one opinion or the other in relation to this topic.

Question 5.3: Comments about John’s vignette

105 respondents chose to add further detail about their answer in the free text box, which included 56 men and 49 women. These answers were thematically coded, and key themes, concepts and keywords generated into thematic categories into which the answers could be organised.

The most frequently coded free text responses were categorised under the heading of “tackling the problem”, which in these answers involved a solution that involved managing John’s safety through the management of other prisoners, his own security, or a transfer to another part of the men’s estate, rather than moving him to the women’s estate. This vignette was left openly vague to consider if this sort of scenario would prompt discussion about moving John to the women’s estate, which matched his birth sex. but this was not the case across responses. Solutions were sought out using standard prisoner management, and when a transfer was mentioned by a respondent, the men’s estate was

largely mentioned rather than seeking a move to the women's estate. 72 respondents gave free text answers coded under this category, which include 36 men and 37 women.

"The SPS should respond to the fact John has needs and is in distress, in a proactive and humanitarian manner" – Man Responding to Question 5 Free Text

"I would move the men that are making him feel uncomfortable" – Man Responding to Question 5 Free Text

"If his safety is an issue then of course he should be moved, but not to a woman's jail if he want to live as a man. Just because he feels vulnerable shouldn't mean that he comes to a women's jail if he is a man" – Woman responding to Question 5 Free Text

"John obviously identified as man, and it seems like its other people's attitudes to transgender people that is the problem here. People need to be educated more about this topic, so they understand better and don't judge so quickly" – Woman responding to Question 5 Free Text

23 respondents (19 men and 14 women) highlighted that safety and risk should be the most important feature of the decision made to manage John – that could involve a move to either estate, or to protection within the establishment John is currently in. For this group, the suggestion from the answers was that risk trumps gender in relation to maintain the safe order of the prison and keeping John (and others) safe.

"If it is risk assessed and deemed appropriate that he is at risk then certainly move him however he should have a voice in this as well and a say in where he wants to stay and if he feels at risk." – Man responding to Question 5 Free Text

"A person's safety comes first; everyone is different and therefore we can't judge everyone the same" – Woman responding to Question 5 Free Text

The next most frequent thematic code (20) considered the "transness" of John, including discussion about John's anatomy and whether they had "fully" transitioned, which they felt should make a difference in how they were managed. If the threat in the vignette that John experienced was a fear of being sexually assaulted, then respondents were more likely to consider John's anatomy as a feature of their decision making. Women were more likely to respond in this category (13), with 7 men falling into this profile.

"Because John has been transgender for 20 years, he should be placed in a male's jail however if other males are making sexual comments he should be moved for his safety or the person making comments should be moved or put on a rule [to separate them from others in custody] of some sort." – Woman responding to Question 5 Free Text

"If someone is unsafe or feels unsafe, they should be placed into protection. John's anatomy should be considered, as it might increase the risk of sexual misconduct" – Man responding to Question 5 Free Text

Question 6: Alice's Vignette

Alice is a transgender woman. She began her transition during her sentence and has been living as a woman for about a year. She is currently living in a men's establishment.

Question 6.1: Do you think that Alice should continue living in the male establishment where she was first accommodated?

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	158	68.11%	92	66.19%	39.66%	66	70.96%	28.45%
No	41	17.67%	26	18.71%	18.71%	15	16.13%	6.47%
Don't Know	33	14.22%	21	15.12%	15.11%	12	12.93%	5.18%
Total valid response	232	-	139	-	59.91%	93	-	40.09%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	6	2.52%	4	2.79%	1.39%	2	2.11%	0.84%
Total	238	-	143	-	-	95	-	-

Overall, individuals believe that Alice should remain in the male estate based on the information provided. Again, there are similar numbers of “no” and “don’t know” responses in this example, which implies that more information might be required for some to decide. Notably, a much higher percentage of both men and women, when compared to the previous vignette, selected yes rather than don’t know, which provides an indication that transitioning whilst in custody, and time spent living in that chosen gender has an impact on respondents’ opinions about transgender people’s management. Particularly for women, who (as discussed above) imply that these are indicators of a transgender person’s authenticity and committed to live in that identity, which they want SPS processes to capture.

Alice tells staff that she does not want to move to a female establishment. She feels like she would not fit in with the other females in custody and doesn't want to leave behind the support that she has amongst other people in custody she is living alongside.

Question 6.2: Should Alice choose in which establishment she is accommodated?

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	111	47.64%	68	48.92%	29.18%	43	45.74%	18.45%
No	86	36.91%	51	36.69%	21.89%	35	37.23%	15.02%
Don't Know	36	15.45%	20	14.39%	8.5%	16	17.02%	6.87%
Total valid response	233	-	139	-	59.66%	94	-	40.34%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	5	2.1%	4	2.79%	1.68%	1	1.05%	0.42%
Total	238	-	143	-	-	95	-	-

Perhaps surprisingly when compared to the data relating to “most important” considerations, a higher percentage of respondents believed that Alice should choose in which establishment they should be accommodated in this scenario. Whereas the opinion of the transgender person was consistently ranked low on that list, it becomes a consideration in this scenario. It is perhaps implied that respondents see Alice’s current situation as a “safe” one, appealing to the consideration of safety which was important for all respondents, and Alice’s choice does not disturb that safety – and could be seen to improve Alice’s own quality of experience.

Question 6.3: Comments about Alice’s vignette

103 respondents chose to add further detail about their answer in the free text box, which included 57 men and 46 women. These answers were thematically coded, and key themes, concepts and keywords generated into thematic categories into which the answers could be organised.

The largest frequency of categorised responses fell under the heading of “Choice”, which implied that Alice’s preference should be considered at some point in the decision-making process. 41 (22 men and 19 women) believed that understanding Alice’s own situation and preference should be accommodated, but in many cases that choice was caveated by other thematically coded parts of their response. For example, 13 of these were also coded alongside the category of “Wellbeing” – responses which implied that the wellbeing of the transgender person should be the first consideration, and that involved communication and the preference of the transgender person. Conversely 11 of the responses fell under the “Safety” category, which implied that Alice’s preference was only important in the decision-making process after risk and security had been considered as the most important factor in their management.

“As long as Alice is happy in the establishment then the choice should be hers.” – Man responding to Question 6 Free Text

“It’s a hard one because she has a good support network in a male establishment but then if she moves, she’s worried that she will be judged for who she is and also she is worried about her safety if she was to move to a female establishment.” – Man responding to Question 6 Free Text

“It is her choice. If she has support that’s great. For the most part women are very supportive and she would find that in a women’s prison too” – Woman responding to Question 6 Free Text

“I think Alice should have an opinion as everyone is entitled to an opinion, however they must go with the staff’s opinions and previous behaviour and risk assessment as well.” – Woman responding to Question 6 Free Text

This “Safety” category represented the second biggest response across the categories, with 38 respondents (21 men and 17 women) thematically coded against it. That category implied that there was a prescriptive rule based on security that would be the primary factor in the decision-making process which trumped the priority of others.

“This all comes down to safety and where is best for Alice. If the establishment can accommodate Alice’s transition and provide reasonable safety measures, then there’s no need to move her... While Alice may feel safe, at some point she may come across others who do not agree she should be in a male establishment... in the female estate, she would be supported and have far less problems than living in the male estate.” Woman responding to Question 6 Free Text

“This would be a strong matter to think about for Alice’s safety and other females if she was to be moved to a female jail. Depends on the crime she has committed and if she has become a ‘she’ whilst in a male jail and feels safe enough to stay and the other prisoners are comfortable with her, I don’t see any problem.” – Man Responding to Question 6 Free Text

“As long as her safety and the safety of other women is considered, then Alice should be allowed to be in a women’s establishment” – Woman responding to Question 6 Free Text.

Again, the notion of “fully” transitioning, and the stage of the transgender person’s journey was important for respondents and made up the third most frequently coded response. 24 respondents, including 13 men and 11 women, believed that how far the person was along in their transition, and whether they had undergone gender reassignment surgery was a dominant factor in decision making for managing Alice.

“Although Alice presents herself as female and living as a woman is still in reality physically a male. Only after fully transitioning to female should she be offered transfer to a female unit.” - Man responding to Question 6 Free Text

“If you’re fully transitioned and have had all operations then you should be in the establishment your gender now matches regardless of what you were before. If you still have your “private parts” then you should stay in the estate that matches your gender until operations have been done.” – Woman responding to Question 6 Free Text.

The “Wellbeing” (mentioned above) category was the fourth most frequently coded against, with 21 respondents (8 men and 13 women). This assumed that the needs and vulnerabilities of the transgender person factored into the decisions being made about Alice’s placement and would have a material impact on the outcome of those decisions.

“Every individual should be assessed on a case-by-case basis. Also, ‘Alice’s’ say/voice should be listened to at all costs.” – Woman responding to Question 6 Free Text.

“As long as it’s safe Alice should be allowed the freedom to do so given that she is already dealing with the very real challenges of being trans in custody.” – Man responding to Question 6 Free Text.

Question 7: Dawn's Vignette

Dawn was sentenced to custody with a life sentence. She is a transgender woman who was originally placed in a male hall within her establishment. Dawn inquires about moving to a female hall within her establishment. Some of the women in that hall are anxious about Dawn's transfer. Given Dawn's long sentence and transgender status, these women believe she represents a risk to their safety.

Question 7.1: Do you think that Dawn should be moved if the women at the establishment she is to be moved to are worried about her transfer?

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	78	33.33%	39	27.86%	16.66%	39	41.48%	16.81%
No	90	38.46%	59	42.14%	25.21%	31	32.98%	13.03%
Don't Know	66	28.21%	42	30%	17.94%	24	25.53%	10.08%
Total valid response	234	-	140	-	59.83%	94	-	40.17%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	% of total responses
Non-Response/Not Valid	4	1.68%	3	2.09%	1.26%	1	1.05%	0.42%
Total	238	-	143	-	-	95	-	-

Notably, there is a difference between the responses of men and women here when compared to the overall responses. Men were more likely to say that Dawn should not be moved if the women at the establishment that they are being moved to are concerned about the move (around 28% agreeing with move, and around 42% disagreeing). Women, however, were more likely to agree that Dawn should be moved despite the opinion of women in custody (with around 41% agreeing and 33% disagreeing). This difference between men and women may be contextualised of the ranking of important considerations in previous question, where men placed higher importance on the opinions of others and the subsequent environment and atmosphere of the hall than women did.

Dawn was sentenced for a violent crime. Some women in the other establishment believe that this should be a factor in stopping her from living at their establishment.

Question 7.2: Should a transgender person's crime and history impact decisions made about where they can be accommodated

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	124	52.77%	78	54.93%	33.19%	46	49.46%	49.46%
No	65	27.66%	36	25.35%	15.32%	29	31.18%	31.18%
Don't Know	46	19.57%	28	19.72%	11.91%	18	19.35%	19.35%
Total valid response	235	-	142	-	60.43%	93	-	39.57%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	% of total responses
Non-Response/Not Valid	3	1.26%	1	0.69%	0.42%	2	2.11%	0.84%
Total	238	-	143	-	-	95	-	-

Overall, there is general agreement that a transgender person's crime and history should be a consideration that impacts decision made about their accommodation. We may have expected to see a higher rate for women in this category given the importance that they placed on the transgender person offence type when ranking important considerations in the previous questions, however, taken generally, criminal history and offence type are considered important in decision making for respondents.

Question 7.3: Comments about Dawn's Vignette

97 respondents chose to add further detail about their answer in the free text box, which included 46 men and 51 women. These answers were thematically coded, and key themes, concepts and keywords generated into thematic categories into which the answers could be organised.

Overwhelmingly, the responses to this free text box focused on “Safety” as the most frequent coded response – 75 of the 97 respondents (39 men and 36 women) included an element in their response about risk assessment and considering the safety of those in custody.

“A person’s crime and history should be included in the decision making when considering where to place them. I don’t see a problem with a person with a violent crime being situated in with others who have probably been sentenced for similar offences. However, they should be monitored closely to see how they interact with fellow prisoners at the start. They should also be told any kind of threat or disturbances then it will be revoked to go to a male establishment.” – Man responding to Question 7 Free Text

“The vagueness of the scenario causes my personal opinion to be cautious. Dawn has her rights to protect her identity as a woman but also the women in the hall who feel anxious also have the right to feel safe. As the scenario we don’t know Dawn’s offence history, if there were a history of violence to women specifically this should be considered, in terms of motive for requesting a move, this would only be in this specific scenario where she is in a male population asking to be move to a female population.” – Man responding to Question 7 Free Text

“Many cisgender women commit horrendous crimes, but do they get refused entry into a female establishment? For safety of all, it’s important to determine if a trans person’s crime will impact the hall, however, it shouldn’t be a decision-making factor, unless the crime is related to a sexual offence against women or serious assault then careful decision making should occur.” – Woman responding to Question 7 Free Text

“Sexual crimes should be considered as someone who has repeated violence towards women or raped women shouldn’t be living with them even if they become transgender.” Woman responding to Question 7 Free Text

These responses were contextualised in part by the other responses. For example, 14 (8 men and 6 women) of the respondents were categorised under the category “Fear”, which place emphasis on the needs of the women that would be impacted by Dawn’s transfer. 11 of those categorised in this response also were categorised under “Safety”, placing a link between those that wanted women’s perceptions to be considered into the context of safety and security, and the need for assessment of Dawn’s impact on the safety of those women.

“Allowing Dawn and the women to mix for short periods of time for trust to be built up is the best way forward as she will be accepted in time. People change something the SPS can’t accept, and it was outside she committed her crime not in prison so getting to know her as a person would be a good start and what caused her to use violence.” – Man responding to Question 7 Free Text.

“If they have committed a violent or sexual crime like rape it should definitely be a factor in considering where they are put as it would make others unsafe and scared.” – Woman responding to Question 7 Free Text.

“Dawn should be given more supervision in the female unit. Some (natural) women can also be violent. Some people complain about anything if they feel they have a reason to!” -Woman responding to Question 7 Free Text.

“I would personally not feel comfortable living with someone trans who is in for sexual offences.” – Woman responding to Question 7
Free Text.

Question 8: David and Ian's Vignette

David and Ian are two transgender men in custody.

David is living in a female estate and began transitioning whilst in custody. He is told that the prison service is creating a specific unit for transgender men and women to live in. David is happy with this decision. He feels as though this would give him the opportunity to prepare him for moving to the male estate.

Question 8.1: Do you think there should be a specific unit where transgender people in custody are accommodated?

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	117	49.79%	71	50.53%	30.31%	46	48.93%	48.94%
No	69	29.36%	41	29.08%	17.45%	28	29.78%	29.79%
Don't Know	49	20.85%	29	20.57%	12.34%	20	21.28%	21.28%
Total valid response	235	-	141	-	60%	94	-	40%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	3	1.26%	2	1.39%	0.84%	1	1.05%	0.42%
Total	238	-	143	-	-	95	-	-

Generally, respondents believed that there should be a dedicated space for transgender people in custody. With just over 20% of responses selecting “don't know” for this response, it could be reflective of points raised earlier when looking at the idea of a dedicated unit for transgender people – that some respondents might not have a frame of reference for what that might look like in practice and therefore don't feel like they have enough information to answer the question.

Ian is a transgender man living in the male estate. He had transitioned before being sentenced to custody and has been living as a male most of his adult life. He is told about this specific unit for transgender people, and he is not happy about the idea of moving. Ian feels that he would be moved away from the people he has lived with for a long time and doesn't like the idea of having a unit where only "people like him" are allowed to live.

Question 8.2: Do you think that Ian should be made to move to the new transgender specific unit?

	Total		Men			Women		
	Freq	% of valid Total	Freq.	% of Men valid response	% of valid Total	Freq.	% of Women valid response	% of valid Total
Yes	67	28.51%	41	29.08%	17.45%	26	27.66%	11.06%
No	116	49.36%	67	47.52%	28.51%	49	52.13%	52.13%
Don't Know	52	22.13%	33	23.4%	14.04%	19	20.21%	20.21%
Total valid response	235	-	141	-	60%	94	-	40%
	Freq	% of total	Freq	% of Men total responses	% of total responses	Freq	% of Women total responses	%of total responses
Non-Response/Not Valid	3	1.26%	2	1.39%	0.84%	1	1.05%	0.42%
Total	238	-	143	-	-	95	-	-

As with the previous question, there are high numbers of "don't know" responses to this particular question, which could be indicative of the need for more information about the composition of the dedicated units for respondents to make decisions. However, generally, the same proportion of respondents that saw the dedicated units as a good idea in the previous question, also shared a sentiment that Ian should not be made to go to that unit if they were not comfortable with the idea.

Question 8.3: Comments about David and Ian's Vignette

84 respondents chose to add further detail about their answer in the free text box, which included 45 men and 39 women. These answers were thematically coded, and key themes, concepts and keywords generated into thematic categories into which the answers could be organised.

The most frequent code in this section was “Choice” (44 respondents; 23 men and 21 women), and largely focused on the second part of the vignette. Respondents implied that Ian’s reluctance to go to a transgender specific unit was enough to determine that he shouldn’t need to move to that unit. This is compounded by the high numbers of responses (30 respondents; 17 men and 13 women) that fell into the “Fairness” category, which in this vignette considered the impact that the dedicated unit might have on those that do not want to live within it, and the potential for individuals feeling isolated from others in custody, as well as stigmatised and othered by the decision to move they.

“The person/individual should and must have a say in which prison (male/female) they want to be housed. If they feel more comfortable in their original prison as in Ian’s case, then I feel it is right and proper for him to have a say.” – Man responding to Question 8 Free Text

“Prison should mirror the community outside if its abhorrent to segregate people on the outside, its unacceptable in custody. Notwithstanding it further alienates people and reinforces certain prejudices about being trans.” – Man responding to Question 8 Free Text

“Again, some people are happy to live with a label and some don’t. It’s a situation that each individual will feel differently about and deal with differently too.” – Woman responding to Question 8 Free Text

“If this prisoner is happy to remain where he or she is and has remained problem free within the wing or prison – then what’s the harm? This should be reviewed if things change?” – Woman responding to Question 8 Free Text

Similarly, to the other vignettes, the “Safety” category still featured, with 19 respondents (7 men and 10 women) highlighting that the safety and security of both the transgender person and other people in custody should be considered before deciding about David or Ian’s management, regardless of the dedicated unit.

“If there was a specific unit, then it should be an option rather than be forced unless there are safety concerns.” Man responding to Question 8 Free Text.

“If he feels safe in a male prison he should be left there. A specific unit may bring more problems.” – Man responding to Question 8 Free Text.

“Safety of that person should be put first. And any move explained.” Woman responding to Question 8 Free Text.

Demographic Questions

Question 9: What age are you?

Age Bracket	Total	Men	Women
18-24	19	16	3
25-30	45	27	18
31-35	39	24	15
36-40	52	29	23
41-50	48	22	26
51-60	22	16	6
61 and over	10	6	4
Rather not say	2	2	-
Valid Total	237	142	95
Non-response/Invalid Response	1	1	-
Total Responses	238	143	95

Question 10: What is your Gender?

Gender	Total (% of total)
Male	143 (60.08%)
Female	95 (39.92%)
Total	238

Question 11: Have you ever lived alongside a transgender person in custody?

	Total (% of valid total)	Men (% of valid total Men)	Women (% of valid total Women)
Yes	146 (61.3%)	67 (47.52%)	79 (83.16%)
No	77 (32.35%)	64 (45.39%)	13 (13.68%)
Rather Not Say	1 (0.4%)	1 (1.05%)	-
Don't Know	12 (5.04%)	9 (6.38%)	3 (3.16%)
Valid total	236	141	95
Non-response/Invalid Response	2	2	-
Total Response	238	143	95

Question 12: Before coming into custody, was anyone in your life transgender (family, friends, colleagues, etc.)?

	Total (% of total)	Men (% of total Men)	Women (% of total Women)
Yes	54 (22.68%)	25 (17.48%)	29 (30.53%)
No	165 (69.33%)	104 (72.73%)	61 (64.21%)
Rather Not Say	6 (2.52%)	5 (3.49%)	1 (1.05%)
Don't Know	13 (5.4%)	9 (6.29%)	4 (4.21%)
Valid total	238	143	95
Non-response/Invalid Response	-	-	-
Total Response	238	143	95

Responses to question 11 and 12 provide a degree of context to the findings. The intention of this survey was to capture the impacts of managing transgender people from the perspective of the people living in custody alongside them. The highest frequency response from both men and women indicated that they had lived alongside another transgender person in custody but did not have anyone in their life before coming into custody who identified as transgender. Around 83% of women indicated that they had lived alongside a transgender person in custody – around 35% more than men who answered the survey. This could be a result of there being less establishments or spaces assigned for the accommodation of women across the estate given their smaller population, and therefore a higher probability that a women would encounter another person accommodated in that population than there would be across male establishments. However, it does mean that the responses provided by women in this survey are informed by a higher degree of lived experience of these impacts, which places emphasis on their experiences expressed in the findings.

Additional comments free text

49 respondents (20 men and 29 women) provided additional comments at the end of the survey. There were more than 49 responses received, but some of these were comments on the survey, some notes of thanks, and other messages that were not thematically relevant to the policy review. The 49 comments were thematically coded, and key themes, concepts and keywords generated into thematic categories into which the answers could be organised.

The largest of these thematically coded categories (23 responses; 6 men and 17 women) emerged exclusively in this particular part of the survey response and was coded as “Individual”. This code was focused on basing decisions about transgender management on the individual cases, and that different cases might require a different approach.

“Having lived with a transgender female living in a male establishment it’s difficult to know where to place the person. If risk factors are low the individual should be allowed to live in the establishment they identify with. People must accept individuals are different and should be allowed to live as they choose” – Man responding to Additional Comments Free Text.

“I feel that every case should be looked at individually not one size fits all.” – Woman responding to Additional Comments Free Text.

“In all of this topic mental health and personal safety should be paramount I believe. Everyone needs time and space to adjust and adapt and this should be a consideration for any prisoner coming into custody. Transgender or not.” -Man responding to Additional Comments Free Text.

“This is dependent on the individual trans-persons situation and whether they put anyone else at risk. Everyone had the right to feel safe, secure, and accepted, mentally, and physically in their own skin and their own home.” – Woman responding to Additional Comments Free Text