

IMPRESS Code Review: Call for Evidence

Written submission from Fair Play For Women

1. Who we are

Fair Play For Women Ltd is a campaigning and consultancy organisation which raises awareness, provides evidence and analysis and works to protect the sex-based rights of women and girls in the UK.

Founded in 2017, our work is focused on understanding when and how gender-and sex-based rights conflict in law and policy-making. Our aim is to ensure that everyone's needs are fairly balanced and that women and girls are not forgotten in good policy-making.

We believe in compassion and fairness for all. We support the rights of trans people to live in safety and to be treated fairly. We also support the rights of women and girls, and this is our focus. Protecting these rights in law requires that sex is not conflated with gender identity.

We wish to provide input in relation to three of the seven points raised: discrimination and accuracy and public safety.

2. Summary

There are clear circumstances where, in the interests of accuracy and the public good, it may be necessary to report a person's birth sex even if they would prefer this were not stated. This submission will explain what those circumstances are, why it matters, and how IMPRESS should ensure this is reflected in their revised code.

This applies to people who have a transgender identity. Honest and accurate media reporting requires that, in circumstances where a person's birth sex is relevant to the story, an individual's right to privacy about their sex, or to assert their gender identity as if it were their sex, should not be prioritised over the public's right to accurate information about sex. This is not discriminatory.

Despite a widely promoted belief to the contrary, it is almost never illegal to report a person's birth sex, even if that person is transgender and even if they hold a Gender Recognition Certificate. If someone who has been told about the existence of a GRC in a professional capacity reveals that information, they may be committing an offence, but for the vast majority of people and situations, correctly (or incorrectly) stating someone's sex cannot be criminal, no matter what their birth certificate says or whether their transgender status.

3. Elements of the code on which we wish to comment

The key elements of the IMPRESS standards code on which we wish to comment are in relation to the tension between accuracy and privacy, and the need to avoid discrimination or harassment. Specifically,

Re accuracy: "It is also important to note that a story may mislead through the omission of a crucial fact, or facts, as well as through the inclusion of inaccuracies."

Re privacy: "Except where justified by the public interest, publishers must respect people's reasonable expectation of privacy...including relevant attributes of the person"

Re discrimination: 4.2. Publishers must not refer to a person's disability, mental health, gender reassignment or identity, pregnancy, race, religion or sexual orientation unless this characteristic is relevant to the story.

Re harassment: Publishers must only reference a person's protected characteristic(s) where relevant to the story. This is not intended to prevent journalists from providing information about a subject that builds a picture helpful to a reader's understanding of the context.

4. Our primary concern is the misreporting of a person's sex

We are aware that there is a growing expectation that a person's self-reported gender identity will be accepted and used by others, such as in the use of preferred pronouns. Many police forces and the CPS are adopting this practice, resulting in males being recorded as female in the criminal justice system. We are very concerned by this and are actively lobbying for accurate recording of the sex of miscreants, particularly for those accused or convicted of violent or sexual crimes, where the overwhelming majority of perpetrators are male.

We believe that, in the interests of accuracy and public safety, the media should report such a person's true sex wherever possible.

There are two areas of particular concern relating to the misreporting of sex: the reporting of sexual and violent crime and the reporting of sexual reproduction and associated medical matters.

4.1 Reporting of sexual and violent crime

It is an established and well-documented fact that the vast majority of sexual and violent crime is committed by the [male sex](#). For example, in England and Wales there are currently over 80,000 males in prison compared to only about 4000 females. Around 13,000 males are in prison for sexual offences compared to fewer than 150 females. This means that in press reporting of sexual and violent crime it is common-place for the story to involve a male perpetrator. In contrast, stories involving a female perpetrator will be unusual, high-impact and considered more newsworthy. For this reason accurate reporting of the sex of the perpetrator of sexual or violent crime, whether male or female, is both important and relevant. It would indeed be newsworthy if there were a sudden increase in sex crimes women committed by women. This [precise misunderstanding is explored in this article](#), where a BBC radio programme made exactly that error.

When a newspaper presents misleading information regarding the sex of a perpetrator it distorts public perception of the societal reality that most sexual and violent crime is committed by the male sex. This understanding is necessary and important to women and girls so they can effectively evaluate risk in vulnerable situations, and indeed it is the reason the law makes provision for female-only services and spaces. Accurate reporting of the perpetrator's sex will also matter to the victim who experienced the crime. Misleading click-bait headlines and articles that normalise the idea of female violence are quite clearly not in the public interest. [A number of examples are given in this article](#).

We recommend that a male person accused of a typically male crime should be reported as male. If that person identifies as a woman, then a judgement must be made about whether that person's transgender status is reported.

What should not happen in this sort of story is that a trans-identifying male is reported as a woman.

This is a factor in contributing to and maintaining public understanding and ultimately public safety, particularly given the ongoing public debate about single-sex spaces and whether males who identify as women should have access to these, or whether they should be maintained at all.

Several examples of precisely this sort of misleading and inaccurate reporting are included in this article on our website. We have also written about this in [our input to the Home Office consultation](#) on strategy development for violence and women and girls.

4.2 Sexual reproduction and associated medical matters.

The word 'female' has a specific meaning, both scientifically, legally, and in common everyday language in relation to biological sex. This is of particular importance because the word 'female' is becoming a contested term. While the mainstream definition of the word 'female' continues to reference an individual's sex, there is an emerging minority definition based on an ideological position held by some special interest groups that promote the concept of 'gender identity'. The definition of words like 'female' matters because sex is the protected characteristic in the Equality Act that underpins women's rights, and accurate sex-based language is required to name, monitor and address sex-based discrimination.

However, in the case of trans-identifying people, we are seeing some media reporting which contorts the language and reports biological impossibility. For example:

["Transgender man gives birth after getting pregnant with female sperm donor"](#), published by Metro.co.uk on 29 December 2019.

This story involved a transgender person who donated sperm to a couple who conceived and later gave birth to a child. The phrase 'female sperm donor' in the headline is inaccurate, misleading and distorted. Reference was made in the text that the sperm donor was transgender but the inaccuracy that sperm production is part of female reproductive biology was not clarified. We argue that the word "female" is well established and widely known. It describes the reproductive sex of a living organism, being the sex that produces fertilisable large gametes (ova) from which offspring develop. The word "male" refers to the sex that produces small gametes (sperm) that perform the fertilizing function in reproduction. These words describing sex class are not unique to humans and apply to all plants and animals. It is a biological impossibility, and contrary to any meaningful definition of the word female, for a female organism to produce sperm, and as such this headline fails to meet the standard of accuracy. We believe the requirement for accuracy overrides any expectation of privacy on the part of the subjects of this story, whether they have sought this publicity (as in this instance) or not.

5. Recommendations, and further references

We recognise the pressures that the media, and in turn their regulators, face, in trying to maintain appropriate standards which meet the needs of all stakeholders. The question of gender reassignment and transgender identity is a sensitive one. However, legally it is only one protected characteristic alongside others. Whether it is acknowledged or not, there are some potential conflicts of interest and need between the expectations of trans activists and the needs of women. Being a woman is, we would argue, just as entitled to be treated respectfully as being a transwoman. It is disrespectful to women, the victims of most male violent and sexual crime, to write of female rapists or female voyeurs. A range of perspectives, not just those of trans-identifying people themselves, need to be considered in arriving at a sensible and fair code of practice in relation to reporting on sex and gender in the media.

We would of course be willing to work with IMPRESS as you develop your code.

We have developed a [media guide](#) which is available on our website, which may provide a starting point.

Appendix: HOW UK EQUALITY LAW DISTINGUISHES BETWEEN SEX AND GENDER IDENTITY.

UK Equality law ([Equality Act 2010](#)) prohibits unfair discrimination on the grounds of both sex ([Sex](#)) and self-declared gender identity ([Gender reassignment](#)). Sometimes these two rights conflict, so the law sets out circumstances when a person's sex is relevant and can take precedent over self-declared gender identity. It is reasonable to expect that press reporting should follow the same principles.

UK Equality law makes it clear that sex and gender identity are distinct concepts and should not be treated as synonymous. The Equality And Human Rights Commission guidance confirms that:

“ [A comparator for the purposes of showing sex discrimination will be](#) a person of the opposite sex . Sex does not include gender reassignment.”

“... [a trans woman who does not hold a GRC and is therefore legally male \[and\] would be treated as male for the purposes of the sex discrimination provisions.](#)”

While it is clear that people should normally be treated according to their self-declared gender identity there are notable exceptions when an individual's sex is considered relevant and takes priority.

[EHRC Statutory Code Guidance 13.57](#) “If a service provider provides single- or separate sex services for women and men, or provides services differently to women and men, they should treat transsexual people according to the gender role in which they present. However, the Act does permit the service provider to provide a different service or exclude a person from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate aim.

This means it is permissible to treat someone differently because of their sex or because they share the protected characteristic of Gender Reassignment, for reasons of public policy or to protect the rights of others.

So for example, when objectively justified, a transgender woman (who was born male) can be treated differently to a woman (who was born female). This applies even if the transgender woman has changed their legal sex to female.

The lawful exceptions where a transgender woman can be treated differently to a woman include the provision of:

[Schedule 3 Part 7 Paragraph 26-28](#): Single-sex services and spaces (e.g. female-only changing rooms, domestic violence refuges, prisons).

[Schedule 23 \(3\)](#): Communal accommodation and associated washing facilities (e.g. where people are asleep and/or not fully dressed).

[Schedule 9 Part 1](#): Occupational requirements based on sex (e.g. female nurse to provide a cervical smear).

[Section 195](#): Gender [Sex]-affected sports (e.g. due to the difference in stamina and strength between the sexes). These exceptions are necessary to uphold privacy and dignity for both sexes, and safety and fairness for the female sex. They form an integral part of women's sex-based rights.

It is reasonable to expect that press reporting should follow the same principles when balancing the rights of an individual to present their gender identity *as if it were their sex* with the rights of the public to accurate information and to not be misled regarding an individual's sex.