**Submission from Fair Play For Women, UK
January 2023**

1. *What are the actual or perceived points of tension (if any) between the right to manifest one’s freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Are there any areas in which they are mutually exclusive?*

Everyone should be free from violence and discrimination. This includes women and girls, for whom single-sex spaces and services are an important part of reducing the risk of harm. Female people must be free to manifest their belief that sex is real, binary and immutable, and that male people should not be in spaces and services designated as for females only. This does not represent any comment on the gender identity of other people, but it is being widely treated as if it does. There is a perceived tension between the right to manifest that belief and the wish of transgender people to be permitted to operate in the world as if they are of their desired sex rather than their birth sex. While sex is irrelevant in many parts of daily life, there are situations where it is relevant. Pointing this out and seeking to protect single-sex spaces and services is not violence or discrimination towards transgender people. Whilst it may be unwelcome, that is because it is a manifestation of a belief in the reality and immutability of sex which is in conflict with their belief that they can change sex, or that gender can transcend sex.

1. *Are there any ways in which the right to freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity are mutually reinforcing?*

It should be possible to create a more tolerant society in which conflicting religions or beliefs can co-exist. To a large extent this has been achieved in some countries, such as the UK where we operate. However, there is a growing intolerance of those who reject the belief that gender identity determines a person’s sex and that female people must accept male people with a claimed female gender identity as having an equal right of access to female-only spaces, services and sport. This also affects sexual orientation, as same-sex attracted people are being told they must accept people born the other sex if those people have a transgender identity. Same-sex attracted people should be free to define their sexual orientation as sex-based, as has always been the case. We must take great care not to reintroduce intolerance of belief around sexual orientation and gender identity, this time in a different direction.

1. *Are there examples where gender and sexual diversity has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of LGBT+ individuals, or protects LGBT+ individuals from violence and discrimination? Has this informed any legal interventions or public policies?*

N/A

1. *What are the key trends or significant instances of discriminatory or abusive practices by individual providers of goods or services in the public sphere against LGBT+ and gender-diverse persons that rely on religious narratives?*

There is no evidence of conversion therapy driven by religious narratives being practised in the UK in the past thirty years. However there is a risk that requiring an affirmative-only approach to children and young people claiming a transgender identity could be a form of conversion therapy on gay and lesbian people. Young people who are unhappy about their emerging same-sex attraction do sometimes consider a transgender identity as an alternative to being gay. While this option should not be closed down, it should not be affirmed as preferable to being same-sex attracted in their natal sex. Same-sex attraction does not require medical intervention whereas affirming a transgender identity in a young person commonly leads to medical interventions which are not without risk and commonly have negative side-effects, such as the loss of sexual function. There is not a religious narrative at play here. There is however a trend in affirming a cross-sex identity in proto-gay young people which is potentially harmful to them. Data from the UK’s Gender Identity Development Service for young people shows a very high level of same-sex attraction among those referred there. It is essential that therapy to explore their feelings about their same-sex attraction is not prevented or even outlawed as conversion therapy. Instead it should be understood as an essential part of affirming and protecting same-sex attracted people.

1. *Has the State adopted, in public policy, legislation or jurisprudence, norms purportedly based on protecting freedom of religion or belief that promote, enable and/or condone violence and discrimination against individuals based on sexual orientation or gender identity? If so, please give examples, with commentary as needed to explain context, scope, and application.*

None for those wishing to express their gender identity. However there is a threat to those wishing to express a same-sex attraction, in that they are being expected to make this a same-gender attraction based on gender identity and not on natal sex. The government in Scotland has proposed a hate crime law which could make it an offence to acknowledge the natal sex of a transgender person if they find that offensive. This constitutes a threat to the freedom of expression of those who believe that sex is immutable, and in particular to those who are same-sex attracted.

1. *Has there been any legal challenge to these policies/provisions under any domestic, regional, or international human rights provisions? If so, state the outcome and rationale of the case. If not, provide your opinions as to why such a challenge has not yet been brought.*

N/A

1. *Are there any examples of State restrictions based on preventing violence and/or discrimination against LGBT+ persons that prohibit or limit practices undertaken in the name of the religion or spirituality, such as public accommodation non-discrimination protections? If so, have they been legally challenged on the basis of freedom of religion or belief? If yes, explain the outcome and rationale of the case(s).*

Not by the state but employers have done this. There have been several instances from the commercial world and from the state education system where people have been sanctioned in a variety of ways for failing to adhere to gender identity or for questioning gender affirmation in young children. The result of the Employment Appeal Tribunal in the case brought by Maya Forstater against CGD and CGD Europe was that those who do not believe in gender identity and who believe in the immutability of sex are protected from discrimination. Other cases remain outstanding, and the freedom to hold and express this belief is not yet re-established in practice.

1. *What role (if any) has the concept of conscientious objection played in limiting the full enjoyment of the right to freedom from violence and discrimination on the basis of sexual orientation and gender identity?*

None.

1. Has the scope and application of conscientious objection been sufficiently defined, limited, *and/or regulated so as to strike a fair balance between manifestation of one’s freedom of religion or belief, and freedom from violence and discrimination based on SOGI? Where the doctrine is invoked to permit the withholding of goods or services to members of the LGBT+ community (such as in the context of sexual and reproductive healthcare, provision of marriage licences, access to consumer goods, etc.), do State laws provide alternative access to goods or services?*

LGBT+ people are well-protected in UK law. However there have been cases of people being prosecuted for harassment for correctly observing a person’s natal sex. It is acknowledged that this could constitute harassment in some situations. But the case of a young person with learning difficulties who asked whether a transgender police officer was a man or a woman is concerning, because that young person was asking a genuine question in a situation where the answer was not obvious to them. If such a question were asked about a police officer who was not transgender, it seems improbable that the case would have ended up in court. This is discriminatory against the young person with learning difficulties, as a result of extra protections being given to the transgender person.

1. *Where State legislation or policy requires the reasonable accommodation of religious beliefs, practices, and/or institutions, are there instances where such laws or policies limit freedom from violence and discrimination against LGBT+ and gender-diverse persons? These may include but are not limited to exemptions from non-discrimination legislation, and/or accommodations within the workplace, educational institutions, healthcare-settings, the justice system, etc. Are there reports of violence, spiritual abuse, and/or other forms of discrimination against LGBT+ and gender-diverse persons because of these practices?*

The right to express one’s belief in the reality and immutability of sex in human beings is under threat in the UK. This is partly for social reasons and partly because transgender people are increasingly protected by the police as a special minority. Non-crime hate incidents against transgender people are recorded by police forces. There is a growing view that complaints made to the police by transgender people get more attention than those made by women. Free speech for those who do not subscribe to belief in gender identity is under threat. In Scotland this will manifest additionally in the new hate crime law which has been passed but not yet enacted.

1. *Good Practices:*
	1. *Provide any examples of good practice – at the international, national or local level – where State and non-State actors (including faith leaders, groups and organisations, international organisations, civil society organisations, and the UN human rights system) have taken effective measures to protect and promote freedom of religion or belief of LGBT+ and gender-diverse persons, and made efforts to prevent, mitigate and respond to any violence and/or discrimination justified in the name of religion.*
	2. *Provide any examples of measures by State or non-State actors to ensure effective participation of people with diverse gender identities and sexual orientations in religious, cultural, social, and public life. Please provide relevant examples where LGBT+ people have asserted their individual or collective rights to access (or establish) religious or spiritual frameworks and institutions.*

There is increasing freedom in the UK for those with transgender identities to express themselves and to participate fully in public life. This is to be welcomed. However there is a serious threat to LGB people’s freedoms to do the same. In particular, in their ability to organise as same-sex attracted people, whether in male, female or mixed sex groups. There is a serious conflict between the expectations of transgender people to access the single-sex spaces and social groups of people of their target or identified sex and the preferences of some people to maintain natal sex as the basis for admission to single-sex spaces and services. This tension is currently unresolved in the UK.

**About Fair Play For Women**

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 those areas where gender-and sex-based rights conflict in law and policy making. Our aim is to ensure everyone’s needs are fairly balanced and women and girls are not overlooked 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.

Dr Nicola Williams

Director

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