

CENTRE FOR CRIME
AND JUSTICE STUDIES

You don't need to be a prisons expert to understand why housing male and female prisoners together is a bad idea.

Separate prisons for men and women have been the default assumption since at least 1823, when the Gaols Act established the principle of sex-segregated provision.

The 2007 *Corston Report* made the modern case for distinct provision for women. The 2018 *Female Offender Strategy* took separate male and female prisons for granted. This year's Women's Justice Board report was crystal clear on the distinctive needs of women

"Women are a minority in the criminal justice system... comprising just 4% of the prison population and 17% of those serving community sentences. The case for a gendered approach to women in, or at risk of, contact with the CJS – different to that in use for the male majority – is well documented."

At the same time, some male prisoners who identify as women have, for many years, been housed in women's prisons. Female prisoners who identify as men are rarely, if ever, placed in men's prisons, for reasons that hardly need spelling out.

Following last year's Supreme Court Judgment on the meaning in law of "woman" and "man", this policy no longer appears legally sound. The Court was clear that, for a service to qualify as women-only (or men-only), it has to be operated on the basis of birth/biological sex. In setting this out, the Court did not create new law. It clarified the law as it is.

The specific implications for women's prisons are set out in an Opinion by Ben Cooper KC, one of the most respected lawyers in equality law, and Myles Grandison, an expert in public law, [which we published last week](#). In line with the Supreme Court Judgment, the Opinion concludes that women's prisons can only lawfully operate as single-sex services if they exclude all male prisoners.

To do otherwise leaves the Prison Service open to unlawful sex discrimination claims from several directions: from male prisoners who might prefer to be placed in women's prisons because it would be safer for them — former prison and police officers, for instance — and from female prisoners who experience anxiety, distress or loss of privacy through the presence of male prisoners, regardless of how they identify.

Some of the thinking behind the current policy comes from a good place: a wish to accommodate male prisoners who may have concerns about being housed alongside other males. For others, it is a question of recognition of a person's gender identity.

Whatever one's personal view on this sensitive area, this is where the law currently is. The Prison Service faces a complex task in both addressing that sensitivity and operating in line with the law.

I hope the Opinion is received as intended: as a helpful contribution to that end.



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