

## **Transgender Inclusion in Competition**

The board noted the Guidance for Transgender inclusion in Domestic Sport document issued by Sport England in December 2021 which recognises that there are a number of considerations which need to be taken into account by each governing body including 10 guiding principles (set out below) when determining its policy.

### **1. All of the Sports Councils are committed to the inclusion of transgender people in sport and physical activity.**

In keeping with the findings of this review, the goals of acceptance, social inclusion and physical activity may be best achieved outside of the sex binary in grassroots and domestic sport. The introduction of new and different models within sport offers an alternative option to meet the needs of people across all the strands of the Equality Act.

### **2. Categorisation within the sex binary is and remains the most useful and functional division relative to sporting performance.**

This categorisation acknowledges the broad ranging and significant performance differences between the sexes. Hence, sports should retain sex categorisation, along with age and disability (and weight as appropriate) categories.

### **3. Evidence indicates it is fair and safe for transgender people to be included within the male category in most sports.**

This is on the assumption that the transgender person will generally be using testosterone supplementation, for which a Therapeutic Use Exemption (TUE) will be required in many sports. The NGBs and SGBs of contact, collision or combat sports in which size may impact safety considerations may consider further parameters to ensure safety of transgender people, including transgender men, non-binary and gender fluid people recorded female at birth.

### **4. Competitive fairness cannot be reconciled with self-identification into the female category in gender affected sport.**

This principle is in keeping with the provisions of the Equality Act, and acknowledges the average differences in strength, stamina, and physique between the sexes.

Self-identification through the 'acceptance of people as they present' may be appropriate in those sports which are not gender-affected. In this instance, for clarity and inclusion, these sports may appropriately be considered 'mixed' or 'universal' sports, in which everyone may participate and compete together.

### **5. Based upon current evidence, testosterone suppression is unlikely to guarantee fairness between transgender women and natal females in gender-affected sports:**

a) Transgender women are on average likely to retain physical advantage in terms of physique, stamina, and strength. Such physical differences will also impact safety parameters in sports which are combat, collision or contact in nature.

b) Recent international policy on testosterone limits are set at a level below 5nmol/L in sports which choose to provide entry into female sports for transgender women. This is more

appropriate than the 10nmol/L which is stipulated by the International Olympic Committee and which remains within the normal range for males. The current preliminary 12-month period is unlikely to result in the achievable minimisation of physical capacity.

**6. 'Case-by-case' assessment is unlikely to be practical nor verifiable for entry into gender-affected sports.**

NGBs may wish to consider the following when determining the appropriateness of this:

- It has not been scientifically validated as to whether any parameters of physical capacity or ability can be defined with a certain cut-off point at which someone is considered appropriately 'female' or appropriately 'male'.
- Many tests related to sports performance are volitional. This means a person must try their very best to get an appropriate measurement. It is difficult to foresee how someone could be expected to provide maximal effort when a positive outcome for them relies on achieving a lesser result.
- Panel members are unlikely to be able to manage a situation in which their decisions can determine the suitability of some individuals, and not others. In the absence of a scientific rationale this places the panel members in a difficult situation.
- Case-by-case analysis may fall outside of the provisions of the Equality Act (whereby provision is for average advantage not individual advantage) and may be based on criteria which cannot be lawfully justified. Some transgender people will be included, some will be excluded through criteria outside of their own control.

**7. Categorisation by sex is lawful, and hence the requirement to request information relating to birth sex is appropriate.**

No individual is compelled to provide any information to a sports organisation. However, failure to provide such information would mean that person may not be able to compete in the category of their choice. Sports should provide options for those people who prefer not to advise of their sex or gender.

All data acquired by a sporting agency should be afforded appropriate protection under the Data Protection Act 2018.

**8. There are likely to be times in which some transgender people cannot or choose not to be registered, either in the short or long-term, within sex binary categories.**

It is imperative that gender-affected sports provide other opportunities for participation in these cases.

**9. The ability of NGBs and SGBs to provide the best mix of sporting options for the broader community may be determined by whether a model is intended as physical activity and participation, or whether it represents 'meaningful competition'.**

An assessment of the merits of fairness and/or inclusion can be determined by the sports' stakeholders to inform policy development, and whether this should be different at different levels of sport.

**10. Achieving inclusion across all the strands of the Equality Act is complex and nuanced.**

It is recognised that many NGBs and SGBs may find the task of developing appropriate policy and protocols both difficult and time-consuming. It is important that views of a wide

range of stakeholders are canvassed and that everyone is given an appropriate platform in which to contribute, and that different views and experiences are heard and respected. The Sports Councils are committed to facilitating education and decision making within sports in the UK.

Having discussed the above IT WAS RESOLVED that:

- (a) whilst recognising the overall aim of being open and inclusive to all participants where it comes to competition our sport is gender affected i.e. the average differences in strength, stamina, and physique between the sexes are apparent and affect performance and transgender women are on average likely to retain physical advantage in terms of physique, stamina, and strength; and
- (b) categorisation within the sex binary is and remains the most useful and functional division relative to sporting performance, competitive fairness cannot be reconciled with self-identification into the female category however transgender people will be included within the male category (which should be regarded as open for these purposes).

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