

## **Mermaids' Response to the Ministry of Housing, Communities and Local Government's 'Toilet provision for men and women: call for evidence'.**

Mermaids (Registered charity no.1160575) has been supporting transgender (trans), non-binary and gender-diverse children, young people up to the age of 19 (inclusive) and their families since 1995.

Mermaids has evolved into one of the UK's leading LGBTQ+ charities. Our online support group for parents has over 2000 members, and almost 800 young people in our youth group. We ensure the voices of trans, non-binary and gender-diverse children and young people nationwide are heard, with the aim of helping to create a future society that is void of transphobia so young trans, non-binary and gender-diverse people can be themselves without fear of discrimination and prejudice.

We will be responding to this inquiry within this context and wish to give oral evidence to this inquiry.

### **1. Our Response: An Introduction**

- 1.1. Toilet facilities, both in municipal and private locations, provide an enclosed space where individuals can meet their daily, personal and private needs.
- 1.2. As the Government has specified, for certain demographic groups within society, for example, 'women, those with children, older people and disabled people', toilet facilities, if not accessible and inclusive of people's needs, may present a barrier to these groups, effectively disadvantaging them. For example, if toilet facilities did not provide a changing table, those with children would be placed at a disadvantage. They may have to leave the building prematurely to search for changing facilities elsewhere, make alternative arrangements to their detriment, and can make them feel excluded from the larger space the facilities are located in.
- 1.3. Another demographic within society which often faces difficulties in accessing toilet facilities, and is often put at a disadvantage, is the trans, non-binary and gender-diverse community. Some trans people are women, children, older people and/or disabled also and we ask that the government consider this area of policy remembering that many people are subject to layers of difficulty, often referred to as 'taking an intersectional approach'.
- 1.4. We hear from our service users that too often trans, non-binary and gender-diverse people are not made to feel welcome, or even safe when using toilet facilities. We have heard from service users that young trans people can be refused access to a toilet that makes them most comfortable because they are transgender, non-binary or gender-diverse. We have heard sobering accounts of young people who have resisted eating and drinking to limit the need of using the toilet for the fear of being harassed or outed. We have received accounts of young people being so fearful of using the toilet due to the risk of harassment that they don't go to the toilet and have wet themselves as a result.
- 1.5. We are in a situation whereby a culture of prejudice and exclusion has been established to the point of it now resulting in a population of young people being paralysed by fear to the point of urinating on themselves. We cannot think of another situation in which this would be tolerated. It is unacceptable that any child should be put in this position.
- 1.6. All children, including those who are trans, non-binary and gender-diverse, should feel safe and comfortable using the toilet that they want to. The human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity. We are hearing that young transgender, non-binary and gender-diverse people are experiencing a violation of this right still today and action must be taken to ensure this does not continue. 'Ensuring dignity and respect for all' must include the respect and dignity of trans, non-binary and gender-diverse young people.

## 2. Providing a Trans Context to this Inquiry

- 2.1. A frequent scenario we encounter when speaking with our service users is trans young people wanting to use the toilet facilities which align with their gender identity, and being denied by their school or other authoritative bodies. For many young trans people, using the toilets which align with their gender identity, rather than the toilets which align with their gender assigned at birth or gender-neutral alternatives, is not only preferred, but evokes feelings of euphoria in these young people. Feelings of gender euphoria are experienced when trans individuals are affirmed in their gender, and can be defined as a “sense of fulfilment or joy that comes from living as the gender you feel yourself to be” ([Guardian](#), 2019).
- 2.2. However, as will be discussed in further detail in the next section, too many trans young people face discrimination and harassment when using gender-specific toilets, which can exacerbate trans young people’s gender dysphoria. As the NHS website [explains](#), gender dysphoria can ‘lead to depression and anxiety and have a harmful impact on daily life’. As one [study](#) has found, 85% of trans and non-binary young people who had faced bathroom discrimination reported depressive mood, with 60% seriously considering suicide.

***“I prefer gender neutral toilets because I am not allowed to use the men’s toilets and every time I go into the women’s toilets it feels like a piece of my soul gets shattered”*** (A trans boy, Mermaids survey respondent, Jan 2021)

- 2.3. As can be seen clearly from the quote below from one of our service users, many trans people may wish to use the gender-specific toilet that aligns with their gender identity, but due to a well-founded fear of using gender-specific toilets, the rationale of which we will discuss in more detail further on, means compromises are made, and many trans young people see gender-neutral toilets as the only safe alternative. As one of our service users, a trans boy explains, they prefer:

***“Disabled toilets or gender neutral/inclusive toilets as I don’t have to worry about getting stared at or people thinking I’m in the wrong toilets. Sometimes [I use] the men’s when I feel safe, [when] they’re quiet or I’m with friends as it makes me feel euphoric to be using the right toilets.”*** (Mermaids survey respondent January 2021).

- 2.4. This context must be appreciated and we ask that the Committee acknowledge the distinction between those who wish to use gender neutral toilets because they identify outside of the binary and those that prefer gender neutral toilets because they feel unwelcome in gender specific toilets. The latter is unacceptable and does not lend itself to the Committee’s objective of ‘dignity and respect’. We believe that every young person should be able to access the toilet that makes them feel respected and affirmed. We want a future whereby every young person can choose a toilet with freedom and autonomy; for some this would be a gender neutral toilet and for others it would be a gender specific toilet.
- 2.5. In preparation for our submission, we reached out to our service users via our online forums and social media channels in order to hear their experiences and thoughts around toilet facilities, specifically their experiences with ‘gender-specific’ single sex toilets compared to gender-neutral toilets. An overwhelming majority of our service users were in favour of gender-neutral toilet facilities, with the following headers setting out the main reasons as to why:

## 3. The Perceived Need to ‘Police’ Toilets and the Harm Caused

- 3.1. Many of our service users spoke about their experiences with other individuals ‘policing’ toilets. ‘Policing’ refers to instances where decisions around a person’s gender identity were assumed

based on their outward appearance, and this assumption then being used to make a person feel uncomfortable, or even scared. 'Policing' toilets has created instances where individuals have been stared at, outed, verbally assaulted and physically assaulted. The Committee can empathise that anyone who holds the prospect of being victim to any of the above will naturally feel unwelcome and unsafe.

- 3.2. The consequence of this 'policing' has meant that many trans, non-binary and gender-diverse people experience anxiety and fear around using public toilet facilities. This in turn can lead to many of these young people having to make distressing decisions on which gender-specific toilet to use based on outdated stereotypes of whether they could 'pass' as a man or as a woman rather than their gender identity, which may exacerbate the gender dysphoria one may be already struggling with.
- 3.3. As a result of not feeling safe, many trans, non-binary and gender-diverse people may not feel comfortable ever using public toilet facilities, including in school (a place that we expect to provide safety to all children), and they have to wait until they are at home. As the government has mentioned, not having access to public toilet facilities can be a serious detriment to trans, non-binary or gender-diverse people who menstruate, who have children, who are elderly, or who are disabled.
- 3.4. Specifically, non-binary individuals whose gender identity is not accommodated by gender-specific toilets, would always have to make a decision which ultimately acts to misgender them, weighing up which facility would be the safest, where they weren't likely to be questioned or attacked by other users of the toilet facility. All the while knowing whichever decision they make will not affirm their gender identity, which may exacerbate the gender dysphoria one may be already struggling with.
- 3.5. Gender-specific toilet facilities may generally present situations that do not work with the multitude of gender identities and gender expressions of people in the 21st century. For example, a trans-masculine person may fear using the gender-binary men's toilets in the likelihood they're questioned or harassed about their gender identity. They may feel more comfortable therefore in using the 'female toilets', however, we hear that this may again cause them to become a victim of harassment or questioning if the other occupants question their presence.
- 3.6. It is also important to voice that trans women and girls, especially, have borne the brunt of practices of 'policing' toilets due to the unkind, prejudicial and harmful rhetoric that trans women and girls are inherently, due to their trans identity, a danger to cisgender women. This rhetoric produces misogynistic and transphobic prejudice and discrimination which underlies many 'policing' practices which target trans women and girls in wider society. We hear that this particular form of misogyny is taking place in our schools today.
- 3.7. As one service user said, gender-neutral toilets provide many with relief from the "*constant stress of worrying if they're going to be safe whilst using the toilet*" (Mermaids survey respondent, January 2021).
- 3.8. We understand through listening that gender-neutral toilets negate the perceived need to 'police' toilets, and rather provides spaces which are catered to make everyone comfortable regardless of their gender identity.
- 3.9. However, as discussed in the previous section, many young trans people wish to use gender-specific toilets, as it brings them feelings of joy and happiness by being able access facilities which affirm their gender identity. The fact that gender-neutral toilets are preferred by many trans people, despite this, is because they view it as the only 'safe' option. This is an extremely distressing reality. As long as trans people view gender-specific toilets as unsafe, a truly autonomous decision around which toilet facilities they prefer, whether it be gender-specific or

gender-neutral, is unlikely. More needs to be done to ensure that trans people are able to access whichever facilities they wish to without fearing for their safety.

#### **4. Gender-Neutral toilets and those who identify outside of the gender binary**

- 4.1. Unlike trans people who identify within the gender binary, those who identify as non-binary, or outside of the gender binary may prefer gender-neutral toilets, not only because as we have discussed previously, they provide a safer space for those who may not outwardly conform to society's gendered expectations, but also because gender-neutral toilet facilities align with, and affirm their gender identity.
- 4.2. Non-binary and gender-diverse people outside of the gender binary can also experience gender dysphoria, and such feelings can be exacerbated by having to misgender themselves by using gender-specific toilets which do not align with their non-binary gender identity.
- 4.3. Alongside this, it is hugely important to note that non-binary people can also experience gender euphoria. In order to ensure 'everyone is served fairly', and that everyone can feel comfortable using public toilet facilities, not only are gender-specific facilities in which trans people can feel safe in using vital, but gender-neutral facilities are also greatly necessary to ensure non-binary people's experiences with toilet facilities are one of comfort.

#### **5. How to 'ensure everyone is fairly served'.**

- 5.1. We also asked our service users the following question, 'Can you tell us about toilet facilities you've used where you felt most comfortable? What was it about those facilities that made you feel so comfortable?'. The responses we received focused on certain aspects of toilet facilities, such as the general layout and design, the amenities they offer etc., and why they made our service users feel more comfortable. We will outline these responses below:
  - A large majority of our service users advocated for cubicles which have 'full' doors without negative space below and above the door. This ensures that the cubicles themselves are fully private, and the user would not have to worry about that safe space being disturbed.
  - Cubicles on a whole were greatly favoured, over the use of urinals, as this would be more inclusive of trans men, non-binary individuals.
  - Examples of comfortable experiences of using toilets facilities cited single-accessible toilets, if the premises allowed it.
  - Many of the responses spoke about the need for sanitary bins in all toilet facilities, acknowledging that not all those who require sanitary bins will identify as a woman or use a single-sex female gendered toilet, the location sanitary bins are typically found.
- 5.2. The above responses were directed at toilets facilities more generally, both gender-neutral and gender-specific toilets, and provides helpful recommendations on how both toilet facilities can be revised in order to encourage trans, non-binary and gender-diverse people to feel more comfortable using them.
- 5.3. Private, enclosed cubicles, or single-accessible toilets ensure that everyone is provided with more space. Our service users also pointed out that the usual overlong queues for the women's toilets are often not an issue when gender-neutral facilities are provided as well. It is widely acknowledged that with gender-specific toilets, the queue for the women's toilets is overly long compared to men's toilet queues, and as a Guardian [article](#) has identified, gender-

neutral toilets are also a cost-effective alternative to architectural changes to address the inequity of long queues for those who use the women's toilets.

## **6. Concluding Remarks**

- 6.1. As the government recognises, 'dignity and respect' should be ensured for all. The Equality Act 2010 legislates that those with protected characteristics have a legal right to be treated with dignity and respect, and therefore should be protected against discrimination, harassment or victimisation.
- 6.2. Trans, non-binary and gender-diverse people face high levels of discrimination and harassment within gender-specific toilet facilities due to their gender identity. In order to address this, and provide protection for those with the protected characteristic of gender reassignment, as one [study](#) has advised, "policies and procedures need to be in place to ensure that all youths have equal access to appropriate bathrooms".
- 6.3. Gender-neutral toilet facilities provide trans and gender-diverse people with a 'safe space', free from such discrimination and harassment, as well as provide non-binary people with facilities which align with their gender identity. However, significantly more needs to be done to ensure that all toilet facilities, especially gender-specific facilities are safe and comfortable for *all*, including trans, non-binary and gender-diverse people, to use.
- 6.4. Simply, some people require gender specific facilities and some require gender neutral facilities. We want a future whereby these options are freely available to all, without fear, prejudice and discrimination.
- 6.5. In order 'to ensure that everyone is fairly served', and that 'different voices are heard' we would strongly urge the government to speak with trans, non-binary and gender-diverse young people and could support you with direct engagement.

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