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cc: Sir Robert Chote, Sir Bernard Silverman

14th November 2023

Dear Mr Humpherson

The ONS has released the final report on its investigation of the quality of the 2021 census's gender-identity data together with a statement saying it has **"confidence in the gender identity estimates at national level"**. The report offers the following conclusions in support of this.

- **On collecting and processing the data:** "This strand of our research ... provided no evidence that the design of the question or the statistical processing of the collected data had an adverse effect on the quality of the published statistics".
- **On respondent error and misunderstanding:** "There are patterns in the data that are consistent with some respondents not interpreting the question as we had intended... However, for the reasons outlined in this report, we cannot say whether the census estimates are likely to be an overestimate or an underestimate of the true value, given other sources of uncertainty, not least the potential impact of question non-response. Therefore, the overall impact on the data of any misinterpretation of the question cannot be determined."

We find that the ONS's investigation has been inadequate and its conclusions are not supported for five reasons.

1. The investigation does not address the core issue concerning consistency or not between an individual's answers to the sex question and gender-identity question.
2. Implausible explanations are accepted ahead of more likely interpretations of misunderstanding for answering NO to the question about whether they match.
3. Given the small numbers of transgender people and the likely level of misunderstanding the statement that the ONS has "confidence in the gender identity estimates at national level" is not supported.
4. The classification of people by the terms "trans man" and "trans woman" by the ONS is not in line with the Census (England and Wales) Order 2020.

Sex Matters is a human-rights organisation campaigning for clarity about sex in law, policy and language | sex-matters.org | info@sex-matters.org

Directors: Michael Biggs, Rebecca Bull, Julia Casimo, Naomi Cunningham, Maya Forstater, Emma Hilton

5. The design of the question relies on the whole population making a declaration based on the idea of gender identity in order to estimate a minority that identify as transgender.

Furthermore the focus in the ONS statement on the numbers being plausible at the national level implies (but does not make explicit) that it is not confident they are plausible at the subnational level.

Attached to this letter are further details on each of these concerns.

Our conclusion is that data on gender identity (including the sex of the people identified as transgender) is not fit for purpose. It was driven by the adoption of concepts and questions promoted by lobby groups that seek to replace sex with gender identity.

The lack of clarity and certainty about the meaning and interpretation of the sex question and the gender identity question also has knock-on effects for interpreting how the sexual orientation question, the sex and the gender identity question interact.

This investigation by the ONS is inadequate and undermines confidence in national statistics. It lays the groundwork for further erosion of clarity on sex, and the wider adoption of a gender-identity question, and use of associated data, that has been demonstrated to be unreliable.

The ONS has proved itself unwilling to accept clear indications that the gender-identity question produced unreliable answers, and has adopted a “self-identified” approach to the definition of sex even after the High Court judgment in 2021. We therefore have no confidence that the ONS will adequately address the need for clarity and accuracy about sex and transgender identity in its development of the harmonised questions on sex and gender identity.

We call on the Office for Statistics Regulation to take regulatory action in order to secure public confidence in national statistics, and to prevent the faulty question being replicated.

- **The question should be officially retired**, with an apology and an explanation to discourage others from using the same wording.
- **A warning should be put on the data and it should not be designated as national statistics.** The OSR must determine whether the national headline figure and the sub-national figures should have national statistics designation.
- **The ONS definition of “sex” for the 2021 census** should be corrected to reflect the guidance given to respondents following the FPFW challenge, and the question of whether actual sex should be routinely and clearly collected for population demographics should be reviewed.

The ONS should also:

- publish the free text answers broken down by sex
- publish details on the number of people in the telephone survey who did not confirm their answers to the gender-identity question
- analyse the pattern of households which they classify as having more than one trans member (which may indicate a misunderstanding of the question)
- investigate whether it is possible to cross-check sex and self-identified gender for this section of the population with other data sources such as administrative data from the NHS and the birth and gender reassignment registers.

We would like to know whether the response from the ONS was seen or agreed by the OSR before the ONS sent it and whether it has been discussed by the UKSA board. Is the ONS report the view of the National Statistician? Has it been seen by the Methodological Assurance Review Panel or any other methodological group?

We are publishing this letter and we request that it and any response are also published on the UKSA website and linked to in a way that makes it findable to users of the gender-identity data.

Yours sincerely



Maya Forstater
Executive Director



Helen Joyce
Director of Advocacy



Michael Biggs
Advisory group member

Inadequacies with the investigation of the quality of the 2021 census gender-identity data

Background

The statutory authority for taking a census in Great Britain is the Census Act of 1920. The Act gives power to the government to make an order directing that a census be taken on a particular day and setting out the particulars to be collected.

The particulars for the 2021 census for England and Wales were set out in The Census (England and Wales) Order 2020. These included in schedule 2 paragraph 8 “sex” and at paragraph 26: “Whether the person describes their gender as being the same as the person’s sex registered at birth (and if not stating the gender identity that they ascribe to themselves”. Each matter was then formulated in the census questions prescribed by the Census Regulations, which were agreed after development and recommendations from the ONS.

There was debate and controversy about what the term “sex” means, and about the guidance the ONS proposed to give to respondents. The ONS’s poor track record of user engagement and institutional capture by gender-identity lobby groups have been documented by Alice Sullivan¹, Murray Blackburn Mackenzie², Michael Biggs³ and Jane Clare Jones.⁴

The guidance to the sex question was challenged by grassroots group Fair Play for Women Ltd. At the permissions hearing for the judicial review the ONS argued that “sex”, as used in the Schedule to the 1920 Act and Schedule 2 to the 2020 Order, was an “umbrella term” that “is to be read as referring to any of biological sex, sex recognised by law, a person’s self-identified sex and indeed, any answer as to the person’s sex recorded in any document issued by the State.” This reading was rejected by the High Court (*Fair Play for Women Ltd v UKSA & Ors. EWHC 940 2021*).

Following that hearing the ONS conceded and the matter was settled by agreement that the guidance would state “If you are considering how to answer, use the sex recorded on your birth certificate or your Gender Recognition Certificate” (*Fair Play for Women Ltd v UKSA & Others. Consent Order 2021*).

¹ Sex and the Office for National Statistics: A Case Study in Policy Capture

<https://onlinelibrary.wiley.com/doi/full/10.1111/1467-923X.13029>

² MBM review of the ONS paper ‘Methodology for decision making on the 2021 Census sex question concept and associated guidance’

<https://murrayblackburnmackenzie.org/wp-content/uploads/2021/03/mbm-review-of-ONS-marp-paper-e28098methodology-for-decision-making-on-the-2021-census-sex-question-concept-and-associated-guidance-7-march-21.pdf>

³ Gender Identity in the 2021 Census of England and Wales: What Went Wrong?

<https://osf.io/preprints/socarxiv/yw45p/>

⁴ The Political Erasure of Sex: Sex and the Census (October 2020).

<https://thepoliticalerasureofsex.org/>

We know that the number of people living who had obtained a gender-recognition certificate at the time of the census is no more than 6,000.

It therefore follows that:

1. Apart from the c.6,000 living people who have changed their recorded sex via a GRC the accurate answer to the sex question is the same as a person's sex registered at birth.
2. People who identify as having a gender which is not the same as the person's sex registered at birth will, if they answer accurately, give different answers to the questions on gender identity and sex (unless they have a GRC).

However, this clarified meaning of the sex question is not reflected in the ONS's published definition of sex for the 2021 census data, which simply states: "This is the sex recorded by the person completing the census." The ONS thus sidesteps the issue of whether the answer a person gives to the sex question is accurate (that is, true or false since it is a binary question) according to its own guidance based on the High Court's ruling, by defining the answer as the answer.

Reasons why we do not have confidence in the investigation conclusion:

- 1. The investigation does not address the core question concerning consistency between an individual's answers to the gender-identity question and the sex question.**

If a person answers "No" to the question "Is the gender you identify with the same as your sex registered at birth?" it follows that their answers to the sex question and gender-identity question should be different, unless they have a GRC.

The ONS reported on 25th January 2023 that 66.16% of the people it recorded as "trans woman" answered "female" to the sex question (31,000), and 67.50% of those it recorded as "trans man" answered "male" to the sex question (33,000).

Thus the ONS have reported 64,000 people who describe their gender as being the *same* as their sex (based on giving two matching answers) as having a gender identity which is *different*, and do not comment on this ambiguity at all.

This suggests (taking into account GRCs) that approximately 58,000 people out of the reported trans total of 262,000 (22% of the total) must by logical inference either have given a false answer to the sex question, or else misunderstood the YES/NO gender-identity question (we do not mean to imply that the other 78% answered the questions accurately; they may or may not have).

The detailed data from the write-in answers further supports this concern. Of those whom the ONS records as "trans man", 38,815 in fact filled in their gender identity with the word "male". Of those whom the ONS records as "trans woman", 38,115 in fact gave the word "female". A further 2,695 of those counted as "trans man" gave answers that were a variation on male or man. A further 3,285 of those counted as "trans women" gave answers that were a variation on female or woman.

Only 7.4% of those counted as "trans men" and 6.4% of those counted as "trans women" gave answers that suggest unambiguously that they understood the question to relate to gender identity (such as transwoman, male-to-female), rather than being non-transgender people answering the question with male or female as their sex.

Investigating this issue would require the ONS also to consider whether its guidance on the sex question was clear and adequate, and indeed whether it would have been more useful for coherence to ask people to give their actual sex (disregarding the effects of a GRC) in order to

provide data that was unambiguously about a specific important demographic variable.

The ONS should provide data broken down by sex and by written-in answers.

Sex at birth or on a gender-recognition certificate	Written-in gender identity	Likely interpretation
Female	Female or similar	Wrong answer to the “No” question (unless possibly has a GRC)
Female	Transwoman or similar	Correct answer to the “No” question wrong answer to the sex question, unless has a GRC
Female	Male or similar	Correct answer to “No” question, no GRC
Female	Transman or similar	Correct answer to “No” question, no GRC
Male	Male or similar	Wrong answer to the “No” question (unless possibly has a GRC)
Male	Transman or similar	Correct answer to the “No” question wrong answer to the sex question, unless has a GRC
Male	Female or similar	Correct answer to “No” question, no GRC
Male	Transwoman or similar	Correct answer to “No” question, no GRC

It is notable that in response to the Fair Play for Women challenge the ONS argued in court:

“If the Claimant’s argument about the meaning of the 1920 Act and the 2020 Order is correct, it would be possible to reverse-engineer data that ought to have been provided in response to Question 3 [sex] by reference to information provided in response to Question 27 [gender identity].”

Mr Justice Swift concluded

“The extent to which such an exercise may be possible must be somewhat speculative as Question 27 is a voluntary question and, depending on the answer given, the process of working back to establish the person’s legal sex may be difficult. ... in any event, what the ONS suggests seems to me to be like an exercise where a cart tries to pull a horse. I can see little benefit in a state of affairs which requires such a task to be performed.”

In fact what can now be seen is that reverse engineering is impossible with this combination of questions, and we cannot reliably know, for the people who answered the gender-identity question “NO” and gave an ambiguous answer (or none at all), either what their actual sex is, or whether

their intention was to indicate that they were transgender or not.

2. Implausible explanations are accepted ahead of more likely interpretations of misunderstanding

The ONS investigated the finding of the linkage between “NO” answers and weak English proficiency, including that around 13% of those who indicated their gender identity was different from their sex registered at birth and who did not give a further answer did not speak English well. The ONS admitted the possibility that this pattern was consistent with some respondents not interpreting the question as intended.

Its alternative theory that “trans migrants might have specifically chosen the UK because of its civil rights legislation and greater social acceptance than many other countries” is implausible as an explanation for these findings. If anything approaching 2.2% of residents of boroughs such as Newham, Brent, Oxford and Norwich who do not speak English well were individuals who lived as transsexuals, this phenomenon would have been observed by local services such as healthcare, schools and local government. By contrast, the finding of higher proportions of LGB people in cities such as Brighton, Manchester and Central London is in keeping with expectations.

The ONS also dismisses the low level of agreement between telephone and written answers revealed by in the Census Quality Survey for those who answered “No” to the gender-identity question. It does not say how many of the 300 people who recorded that they were trans on the census and also took part in the telephone survey did not confirm it as accurate. The suggestion that “there is a risk of others in a household overhearing a person's responses” is implausible. If someone is living as a transsexual, it would be impossible for anyone in their household not to know this.

3. The statement that the ONS has “confidence in the gender identity estimates at national level” is not supportable.

A simple analysis shows that rates of misunderstanding (where respondents misunderstood the question) from just 1 in 1,000 (well within the realm of plausibility) would likely yield inflated levels of “NO” responses sufficient to undermine reasonable confidence in their estimates at national level.

These hypothetical levels of misunderstanding of the question are not implausible for census data in any case, but are especially credible given the issues we raise.

Misunderstandings appear to be most frequent among non-native English speakers. However, the data that has been released (in particular the free-text responses and the answers to the sex question) suggest that misunderstanding may also be sufficiently frequent across the general population to significantly affect the national estimate of the number of trans people.

		Census estimate of total 'NO' population as inflated by misunderstood responses (based on three assumptions for rate of misunderstanding)							
		Hypothetical true subgroup sizes		M1: 1 in 1000		M2: 1 in 500		M3: 1 in 250	
Hypothetical population	True 'NO' population	True 'YES' population	Estimate	Inflation %	Estimate	Inflation %	Estimate	Inflation %	
H1	25,000	48,541,000	74,000	196%	122,000	388%	219,000	776%	
H2	50,000	48,516,000	98,000	96%	147,000	194%	244,000	388%	
H3	100,000	48,466,000	148,000	48%	197,000	97%	293,000	193%	
H4	200,000	48,366,000	248,000	24%	296,000	48%	393,000	97%	

Some combinations of answers give greater confidence that the person has understood the question. Examples include those indicating “non-binary”, or where the person answered “NO” and filled in the free-text box with a gender identity that did not match their declared sex. However, these were not the majority of the total of 262,000.

Nor can the data be used to draw confident conclusions regarding the relative frequency of non-binary versus binary trans identification, since it is the binary trans identification where the uncertainty lies.

4. The classification of people by the terms “trans man” and “trans woman” is not in line with the Census (England and Wales) Order 2020

Language around trans identification is contested. For example, the same person may be described as a “male transsexual”, “trans identified man”, a “transwoman” or a “trans woman”, terms which all have particular philosophical and political flavours. The term “trans woman” indicates a conceptual belief that a man has become a woman which many people with “gender critical” views reject. Those who believe in the primacy of gender identity may reject the term “trans identified man” because they believe that “trans women are women”. None of these terms were debated by Parliament or established in the census order. .

The order clearly stated that the question should ask about “the gender identity that they ascribe to themselves”. The vast majority of those to whom the ONS has applied the label “trans woman” and “trans man” ascribe to themselves the terms “male” and “female”. It would therefore be more accurate to report that these people’s self-described gender identity was male and female (including other similar terms as subsidiaries).

Suggesting that these individuals described themselves as “trans woman” and “trans man” both gives official status in national statistics to neologisms that have never been debated or defined, and presents a false impression of accuracy when in practice most of these individuals described themselves as female sex and female gender identity or male sex and male gender identity and it is

not clear whether this ambiguous set of answers was wishful thinking about their sex, or misunderstanding the question about gender identity.

Just as the ONS should not identify as “pansexual” people who did not record themselves as pansexual, and has now corrected this mistake, it should not record a group of people as “trans woman” or “trans man” when the vast majority did not describe themselves in that way.

5. The design of the question relies on the whole population making a declaration based on the idea of gender identity in order to estimate how many identify as transgender

The ONS states in its investigation that one of the reasons that it cannot say whether the census estimates are an over-estimate or under-estimate of the total number of trans people is because of the non-response rate.

Non-response may be for many people the only legitimate answer to what is an ideological question.

Providing a clearer explanation of the meaning of the sex and gender-identity question (i.e. that sex means whether you are male or female, while gender identity relates to the idea that people have feelings of being male, female or “non-binary” regardless of their sex) might lead to greater rates of non-response as people opt out of what they see as a sexist or anti-scientific idea.

An effective question for capturing data on the small proportion of the population that identifies as transgender would do this without pushing the rest of the population to make ideological declarations. The simplest way is to ask people if they are trans. This clear question might also have a lower non-response rate, as well as a lower misunderstanding rate.

The additional uncertainty about the overall number of trans people generated by the predictably significant non-response rate is not a good excuse for this poorly designed question to continue to be used.