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LGBT+ People in Prisons

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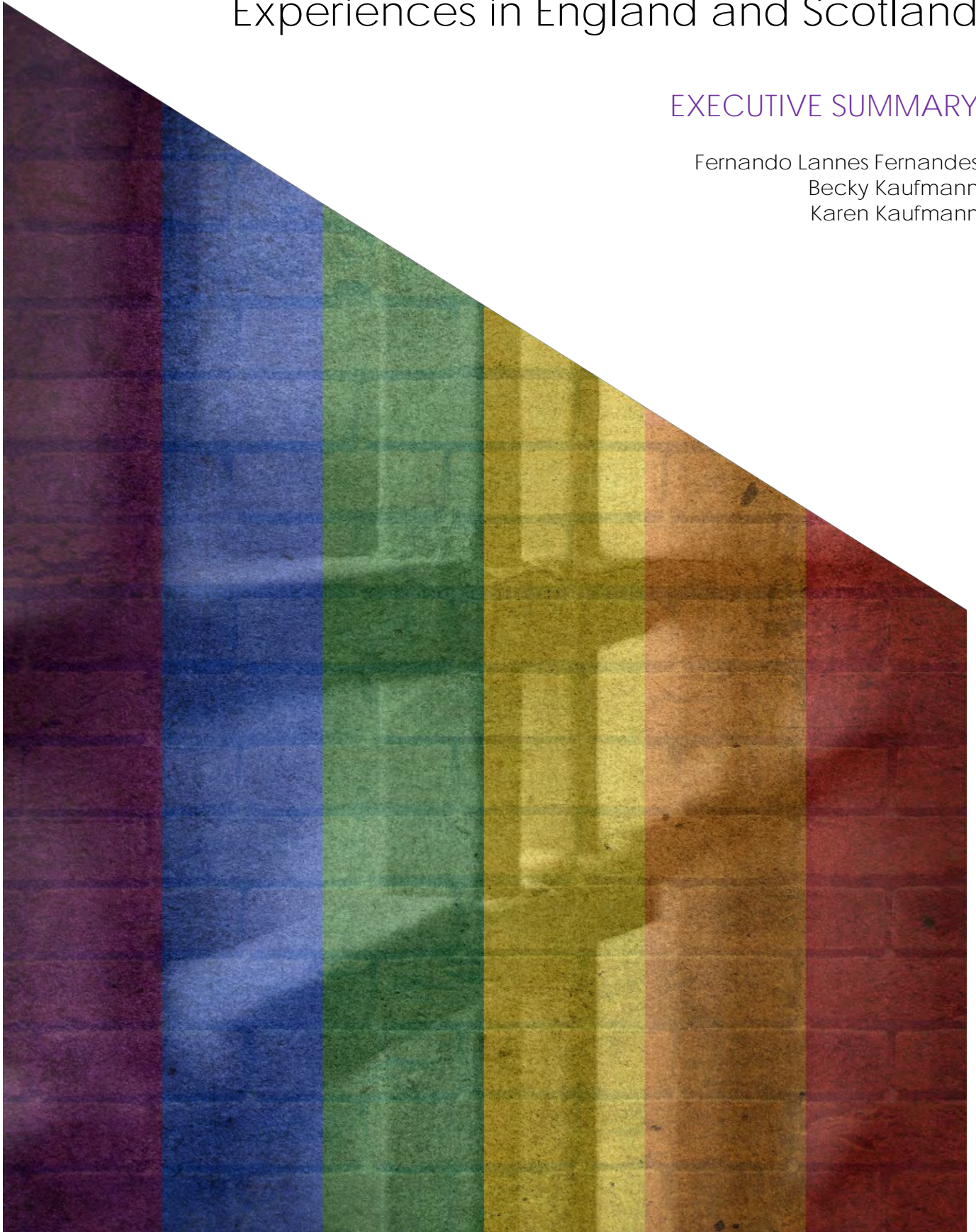
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LGBT+ People in Prisons:

Experiences in England and Scotland

EXECUTIVE SUMMARY

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The views expressed in this report are those of the authors and not necessarily those of Barrow Cadbury Trust.



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A silhouette of a person's head and shoulders in profile, looking out of a large window. The scene is bathed in a deep blue light, with the window panes creating a grid pattern in the background. The person's hair is dark and appears to be blowing or moving. The overall mood is contemplative and somewhat somber.

Hate crimes recorded by the police in England and Wales around sexual orientation increased 25% from 11,592 in 2017/18 to 14,491 in 2018/19
(Home Office, 2019)

EXECUTIVE SUMMARY

I. Introduction

This research project set out to examine current policy and practice regarding LGBT+ people¹ in prison in England and Scotland². It focuses on a wide spectrum of sexual orientations and gender identities, which includes lesbian, gay, bisexual, transgender, queer/questioning, and presents a wide range of personal testimony and voices drawn from in-depth qualitative research.

The research and writing of this report took place before the emergence of Covid-19 and the subsequent measures that have been implemented across the UK to respond to the spread of the virus. This is an area that demands further investigation into the impact of Covid-19 on prisons. Analysis should particularly focus on vulnerable groups, including LGBT+ people, who may have suffered disproportionately from the impact of preventative measures on prison population management as well as the increased isolation caused by the dramatic reduction in access to people not directly working in prisons during this time.

This report draws on the broad research project 'The right to difference: Evidencing the situation of young adult LGBT+ people in the UK prisons', funded by Barrow Cadbury Trust, and developed by the University of Dundee under the coordination of Dr Fernando Lannes Fernandes. This specific research project that focused on people the English and Scottish prison systems, aligns with another similar project that we are involved with, that is looking at the same issues internationally. As part of this broader initiative, we are working together towards international knowledge exchange and policy learning.

Our study sought to examine how individual attitudes and social interactions as well as institutional policies and structures in English and Scottish prisons might be shaped by discrimination and lack of understanding, and how this influences the experiences of LGBT+ people in custody. A key area of interest in our research was to examine existing policies within the English prison system (HMPPS) and Scottish prison system (SPS). We

¹ There is a wide range of acronyms used to describe the LGBT+ community. Each has proponents and detractors. We have chosen to limit our acronym to the core of L(esbian) G(ay) B(isexual) T(ransgender) and to include a + to indicate that we mean to be inclusive of all identities and orientations that could fall under this umbrella without creating an unmanageable alphabet soup of initials. Although we speak throughout the report of LGBT+ people, this is not a homogenous group as we explain in the body of the report. LG & B refer to sexual orientation, while T refers to gender identity (trans people are also L,G,B or straight). It is common usage when speaking of LGBT people to fluidly move between LGB;T and LGBT as dictated by context. Some people including the Scottish Government and the English prison trans policy include I(ntersex) in their acronyms. **Intersex** or **VSC (variations of sex characteristics)** refers to a person's physical characteristics and not their sexual orientation or gender identity. We did not engage with any intersex people in the course of this research and it is important to note that there is much disagreement as to whether intersex issues should be included with other LGBT issues.

² The research originally intended to cover the whole UK (England, Scotland, Wales and Northern Ireland). However, access was not granted in Northern Ireland (we were told there were too many research projects taking place in prisons at that moment). In Wales, despite authorisation from HMPPS, we did not manage to access prisons during the recruitment stage.

looked at how consistent policy frameworks are with the most promising international practices³. We also examined the extent to which prison staff members feel empowered and educated to support LGBT+ people in custody, whether explicitly related to formal policies or through other means. The most important facet of our research, however, was to examine the actual experiences of LGBT+ people in custody in England and Scotland, and to contextualise these experiences within a) what policy says about how they should be treated and b) how their experiences relate to those of LGBT+ people and others in custody in other countries.

Stigmatised groups in society such as LGBT+ people are among those most exposed to acts of violence and discrimination on many levels, some of which are invisible or simply taken for granted within everyday, dominant discriminatory attitudes and practices. In their 2017 LGBTI Hate Crime Report, Equality Network found that 64% of LGB people and 80% of trans people in Scotland experienced hate crime at some point in their lives (Pearson, 2017). In a similar study, Stonewall found that two in five trans people in the UK experienced hate crime in the 12 months leading up to their study due to their gender identity. One in six LGB people who are not trans experienced hate crime due to their sexual orientation during the same period (Bachmann and Gooch, 2017).

Hate crimes recorded by the police in England and Wales around sexual orientation increased 25% from 11,592 in 2017/18 to 14,491 in 2018/19. Transgender-related hate crimes rose by 37% from 1,703 to 2,333 over the same period (Home Office, 2019). LGBT+ individuals are faced with lack of understanding, prejudice and intolerance, even in the UK which has specific laws and practices in place for the protection of their rights and safety. These experiences may be exacerbated within the prison environment. We found that in large measure, English and Scottish prison administrators and managers have good intentions when it comes to promoting equality in general. We also found that many staff have a baseline awareness that LGBT+ people have additional needs and challenges not faced by other people in custody.

It has frequently been stated that the prison system is designed by men, for men, and “hyper-masculinity” (the exaggeration of traditionally masculine traits or behaviour such as violence, or callous attitudes towards women) is an all too common feature of prison life in the male estate. It is arguable that this is reflected in the structure and attitudes of the Prison Service where, although the majority of those working in the system are working towards the best outcomes possible for people in custody, current policies result in a system where if people do not conform to stereotypical male behaviours and attitudes they will experience, to paraphrase Baroness Corston⁴, disproportionately harsh treatment.

³ Frequently, in the UK the term ‘best practice’ is used to refer to the highest quality practices found in a particular context to which all others should aspire. This term is problematic both in its colonial implications (who has determined what is best) and in the assumed presumption that these practices represent the pinnacle of possibility and that success will be achieved by matching these practices. We have chosen instead to use the term ‘most promising international practices’. This acknowledges that these practices are better than the current ones without implying that there are no possible better practices.

⁴ ‘Prison is disproportionately harsher for women because prisons and the practices within them have for the most part been designed for men’ (2007, p3).

We observed evidence of this in some of the interviews we did in both men's and women's prisons. There is a lack of recognition and understanding of sexual and gender diversity, that makes traditional heterosexuality and binary norms of masculine/feminine conformity the rule.

Consequently, there are everyday practices that contribute in many ways to single out LGBT+ people in prisons as different and dehumanise them. Despite the widely accepted ideal that the punishment of deprivation of liberty should not be increased by making the experiences within the prison additionally punitive, many LGBT+ people in prisons do experience additional punishment simply for being homosexual, bisexual and/or transgender.

When we refer to punishment in this context, we are aware that this is a complicated area that has been a subject of much contention. Punishment is a very relative term in rigid, structured environments such as prisons. While formal punishments may be given out as set penalties for infractions of set rules, informal punishment may result from treatment that appears arbitrary, not explained and/or at the whim of those holding power. Such actions may take place at many levels from loss of possessions or privilege, to ridicule or separation from others that affect a person's self-worth, personal agency and dignity. The result is that the affected person feels they are treated less favourably than others and it is therefore experienced as punishment.

II. Intersectionality

Our research shows that LGBT+ people in prison must be acknowledged on their specificities, but within a spectrum of wider societal disadvantages such as social class, race and ethnicity. Given the limited size of our sample and the challenges involved in participant recruitment, it was not possible to look at those issues more in depth. However, it can be expected based on other research, that a sample large enough to be analysed would show the confluence of lower education, fragile family status and precarious socio-economic status as issues that combine with gender identity and sexual orientation to increase vulnerability in the life trajectory of the research participants (Day and Gill, 2020). While the unique and often complex experiences and needs of LGBT+ people in prisons have begun to be recognised, particularly regarding intersectional forms of discrimination targeting ethnic or economic background, much of the research into the experiences of LGBT+ people in prisons is relatively sparse and exploratory. This is especially true for younger LGB+ and all transgender people.

III. Structural Context

Our research took place in England and Scotland. The criminal justice system in Scotland is devolved from the UK Government, and the prison system there is managed separately with its own internal policies and procedures. We found that for the most part specific policies do not exist for LGB people. LGB issues are most often addressed through Equality Impact Assessments rather than stand-alone policies. Both England and

Scotland have robust policies for trans people⁵ which have been in place for a number of years now. These policies are currently under pressure because trans women in women's prisons have become one of the central points of contention in the current political debate around gender recognition reform in both England and Scotland. It is worth noting that in spite of media characterisations that large numbers of trans women are housed in women's prisons, there are actually very few trans women housed in women's prisons. In November 2019, England and Wales reported that there were 163 transgender prisoners of whom 4 were trans women without legal gender recognition housed in women's prisons, compared to an overall female population of approximately 3,800 (Ministry of Justice, 2019). In Scotland there are 4 trans women housed in women's prisons.⁶

IV. Approach to data collection

Data collection took place across five prisons in Scotland and four prisons in England from June to November 2018, using semi-structured and conversational qualitative interviews with self-declared LGBT+ people in custody, focusing on themes of discrimination, stigma and social isolation, lack of support, and areas where they were able to reclaim autonomy and build resilience. Focus groups and interviews were conducted with front line prison officers and management staff to explore staff perceptions and attitudes towards LGBT+ people in prison and issues around the challenges of everyday work and perceived 'good practice' regarding LGBT+ people in custody. In total 30 LGBT+ people in prison were individually interviewed; 29 prison officers took part in five focus groups; five management staff were individually interviewed.

We examined, through the voices of LGBT+ people in custody as well as prison staff, those views and attitudes that impact LGBT+ people in prison and the implicit or explicit oppressive systems which affect LGBT+ people in prisons. We also looked at the challenges for LGBT+ people in prisons to transition back to the community once released. We focused on four major themes.

- LGBT+ people in prisons' experiences of discrimination, stigma and isolation
- LGBT+ people in prisons' experiences around access to appropriate support
- How LGBT+ people in prisons share experiences and strategies to build resilience and self-esteem
- How institutional structures and individual initiatives are enabling LGBT+ people in prisons to reclaim autonomy and improve their experiences within the prison system

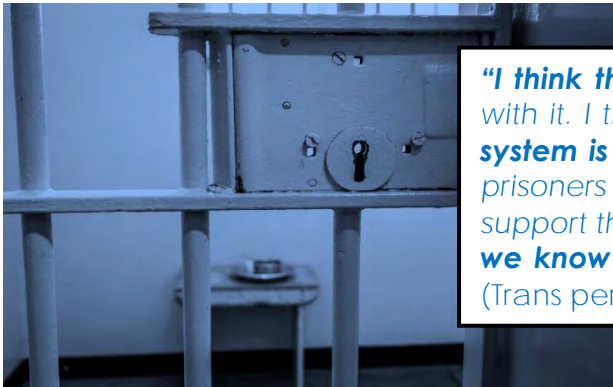
⁵ The full SPS policy can be found at <http://www.sps.gov.uk/Corporate/Publications/Publication-2561.aspx> and the full HMPPS policy can be found at <https://www.justice.gov.uk/offenders/probation-instructions/pi-archive-2016>. The 2019 HMPPS policy and guidance can be found at <https://www.gov.uk/government/publications/the-care-and-management-of-individuals-who-are-transgender>

⁶ The Scottish Prison Service does not publish accurate statistics on the number of trans people in custody, however one of the authors of this report works directly with trans people in Scottish prisons and is aware of their numbers.

V. Key Findings

Lack of support

LGBT+ participants reported a lack of access to appropriate support related to being LGBT+, which led to people feeling isolated, misunderstood and mistrustful towards the justice system. The system was perceived as inflexible and uncompromising and participants questioned the logic and appropriateness of what appear to be arbitrary rules.



“I think that management is only a small problem with it. I think the bigger problem is how the prison system is set up, like it’s not set up to support LGBT prisoners as an independent unit. It’s set up to support them almost kind of half assed like yeah ok we know what you are, but we don’t really care.”
(Trans person in custody)

The lack of support isn’t limited to trans people, and staff are also aware of it as a problem.

Our respondents felt that they are doubly disadvantaged by lack of staff knowledge and understanding around LGBT+ issues, and lack of knowledge and understanding regarding their own rights.

Barriers to more inclusive practices

While we did find some aspirational elements to some policies, and instances where individual staff were supportive and trying hard to make things better, we found that overall individual and institutional barriers exist that make being LGBT+ in prison particularly difficult. In many cases we found this adds to an already negative experience. Among these are practices and attitudes that value masculinity and being heterosexual.

As part of both institutional and individual mindsets, these tend to be overlooked and normalised in the functioning of the prison environment. These can be difficult to tackle as they are pervasive and, in many ways, invisible.

“so imagine in this environment, which is already tense, already, you’re already, away from your family, you haven’t got the support of a loved one, apart from on visits. I imagine coming out in this environment is very difficult and living as a gay man.” (Prison officer)

Segregation and institutional discrimination

Homophobia, biphobia, transphobia and explicit violence directed at LGBT+ people in custody is often dealt with by segregating the affected individual for their own

protection. English and Scottish prisons often use the same physical spaces for disciplinary and protective segregation. The segregation units have particular routines and limitations on space and freedom, with the result that people being segregated for administrative reasons do not have substantially different experiences of these spaces than those who have been segregated for punitive reasons (Mogul et al., 2011; Read and McCrae, 2016). As a result, this is considered a punishment in itself by people in custody (Stevens, 2015).

Segregation is a reactive response rather than a challenge to the institutionalised nature of the prejudice itself. Regardless of any assertions by prison managers and

“I dare say it, I know they’ve got somebody goin’ through the journey (transition)... but he’s kept in segregation unit all the time, for his own protection [pause] so, I dare say it is still happenin.”
(Prison Officer)

administrators that they are acting in the best interests of the LGBT+ person, the reality of the experience of the person is that they are being punished for their identity, and this has a chilling effect on both their willingness to disclose anything about themselves and on their overall mental health. Unfortunately, it is far less draining on the resources of an already

overtaxed prison system to segregate an individual or small group of people than it is to change the underlying culture of a whole institution.

Concerns about disclosing sexual orientation and gender identity

In this study, we only recruited people in custody who self-declared as LGBT+. Because of this, we were unable to capture a full understanding of the constraints experienced by those who chose to keep their identities secret. We did not recruit only LGBT+ staff, although some of them were openly LGBT+. Some people in custody reported that they were not open about their gender identity and sexual

“To go into prison and that and then be in an environment I’ve never been in before and hearing all these stories about prison and like the showers and stuff like that, it was quite scary. So I never came out when I first came to prison.” (Lesbian woman in custody)

orientation, due to fears of discrimination or abuse. As reported by some of our participants, this influenced the way they engaged with others. At times they were selective about whether to disclose their identities or not. This created emotional distress through a lack of trust towards both peers and staff and a fear of violence.

An example of this was the use of jokes and banter as ways to stigmatise and belittle LGBT+ people. In several cases individuals felt disempowered to challenge this discrimination or highlighting of difference because such interactions had been normalised. Issues affecting transgender people in prison

Transgender people in particular had difficulty in accessing trans related support. Even where assistance is given, it is often perceived as a favour rather than a right, and policies and procedures were often not fully adhered to. Furthermore, transgender people in custody experience difficulties accessing support for their transition because

staff do not have enough knowledge, yet they are unable to take control of their own transitions. In spite of the fact that prison policies related to LGBT+ people are most heavily weighted towards trans people, they remain largely misunderstood and subject to bias both conscious and unconscious based on negative historical stereotypes and lack of overall awareness.

Building awareness and resilience

People in custody

"I'm the rep for like obviously sexual orientation, so if anyone has ever got any problems they'll come to me, we'll go to meetings and bring up any issues that come around, anything they feel is wrong." (Lesbian woman in custody)

LGBT+ people often find practical ways to deal with feelings of powerlessness and build the skills to advocate for themselves in the prison system. A number of participants who had an awareness of LGBT+ rights often held positions such as LGBT+ representatives in their respective prisons. Where possible LGBT+ people form

groups and extend support to each other, but this is not overly common, and some LGBT+ people feel that they are being asked to do more than they are qualified to do.

Institutional changes

Both research participants in custody and prison staff felt that the prison system needs to start accepting and treating those in custody as the diverse human beings that they are, and that the responsibility for LGBT+ support should not be placed solely on the shoulders of LGBT+ people in prisons.

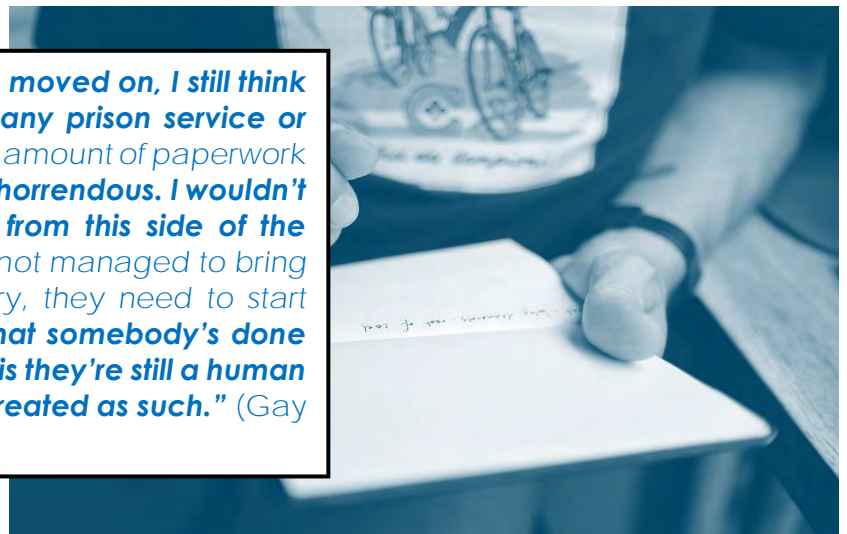
"one issue that I've noticed with, with LGB in prison is that LGB prisoners don't necessarily understand T, non LGB prisoners definitely don't understand T, just think it's a man wearing a bra for the thrill of it or to get an easy life in prison." (Gay man in custody)

Prisons have added awareness and Pride events which improve visibility, but there remains frustration that the overall culture is still unwelcoming. Staff also recognised their power to influence change.



"I wouldn't say I'm an expert, but they seem to think I am, they've got me supporting all these trans women and men in other jails and I'm like okay..." (Trans person in custody)

"although the Prison Service has moved on, I still think there's a bit of apathy there... any prison service or any prison officer will tell you the amount of paperwork that is generated in this place is horrendous. I wouldn't like their job but I'm seeing it from this side of the fence... it's just that they've still not managed to bring themselves into the 21st century, they need to start accepting that regardless of what somebody's done and it doesn't matter how bad it is they're still a human being and they still need to be treated as such." (Gay man in custody)



"I think everybody, whatever role they do, whatever job, we're all influencing, influencers. (...) from the minute (you) get up in the mornin' to the minute (you) go to bed, you influence other people everyday by your behaviour and your attitudes. So, I don't know if educate, is it the same thing? Maybe? But, yes, I think that we all influence people..." (Prison Officer)



VI. Conclusion and Recommendations

While the prison system itself can be intractable and resistant to change where someone doesn't conform to rules and norms, both participants and staff agreed on the need for a more person-centred approach that includes the individual as *part* of the system rather than as something to be *contained* by the system. We found evidence that the prison services in both England and Scotland have an awareness of LGBT+ people's issues and needs, such as having robust policies dealing with transgender people, and allowing Pride events in certain prisons. Research evidence nonetheless shows that prisons are inherently traumatising, rigid and frequently dangerous places, particularly for those who identify as LGBT+, and that LGBT+ needs are often ignored or minimised.

We believe that deprivation of liberty should be the last resort adopted by states to deal with crime. We argue that it is necessary to find ways to make the prison system less rigid and dehumanising and to enable staff and people in custody to have increased level of autonomy and voice. The involvement of LGBT+ individuals is necessary inside and outside prison. We believe that the prison environment should create mechanisms to protect LGBT+ people from discrimination and harm. As such, it is necessary to develop systematic and reflexive learning approaches in which the whole system (staff, people in custody, institutional rules and procedures, policy and legislation) incorporates LGBT+ rights and needs into everyday practice. We believe that can lead to new and better institutional cultures within prison.

As a result of our findings, we have formulated a list of recommendations that should be taken forward to improve the experiences of LGBT+ people in UK prisons:

- Tailored training and awareness resources must be developed to increase knowledge and improve understanding of specific LGBT+ issues by policy makers and prison governing structures. Existing training must be improved or replaced with more effective options.
- LGBT+ people in prisons should be given a voice to feed back their experiences to prison management. This should include not only traditional formal mechanisms within the prison system, but also the adoption of more dialogue between those in custody and staff that can enable LGBT+ individuals to be heard and understood within their own contexts, language and socio-cultural codes.
- Organisations working with LGBT+ human rights must be adequately resourced and given access to speak on behalf of people in prisons who may be less able to articulate their own needs. This should be in conjunction with increased awareness of LGBT+ people in prison's rights.
- Resources should be invested in building bridges to the community so LGBT+ people in the system do not lose touch with the broader LGBT+ community, their families and friends.
- Further research needs to be done, for example, with regard to LGBT+ people in female prisons as well as the experiences of LGBT+ young people; and how

transgender policy is being translated into practice across UK prisons. There is also a need to further understand issues related to prison staff attitudes towards LGBT+ individuals, and how institutional discrimination can be tackled. Finally, we believe that research needs to focus on international comparison, through identification of promising practices, and the use of newly created international exchange forums on the issue of LGBT+ people deprived of their liberty.⁷

- Young Offender Institutions should be more aware and better prepared to support LGBT+ young people. Special measures and mechanisms should be considered to create institutional environments where LGBT+ young people can build trust and feel safe. This is also a matter of consideration for LGBT+ adults, but given the specific stage in social and psychological development of young people, more attention should be given to prevent increased vulnerability in adult life.

⁷ Efforts are being made by the authors of this report (Fernandes, Kaufmann and Kaufmann) to create an international policy & knowledge exchange initiative. Currently two research projects are being developed in Brazil and India (GCRF funded) and a range of local and international partners are being mobilised towards common agendas for collaborative work.

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LGBT + People in Prisons:
Experiences in England and Scotland

EXECUTIVE SUMMARY REPORT AUGUST 2020



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