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# **Supporting Trans and Non- Binary Detainees in Custody in England and Wales: Vulnerability, Discretion and Policy Grey Areas.**

**Practice Report 2026**

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## **Abstract**

This practice report explores the experiences and understandings of custody professionals, in relation to navigating transgender and non-binary detainees within police custody suites. This research took place across 2023 – 2024 within England and Wales and was funded by the UKRI Policy Fund. The project provides important context and insight into professional understandings and policy driven decision making on gender minorities within a heavily gendered space. The work provides a foundation for assessing knowledge, awareness, and potential implementation of changes in practice. Themes such as ‘fear of getting it wrong’, ‘out of date legislation’, and ‘calls for training’ underscore the need for further evaluations into professional awareness and understanding, as well as necessary changes to policy and training documents.



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## Introduction

The treatment and recognition of transgender and non-binary people continue to be a contested and heightened topic across England and Wales. Despite recent focus on public institutions and gendered spaces, the navigation of trans and non-binary people through the criminal justice system is relatively under-explored. This means it is unclear how current debates impact professional understandings and contexts. Custody suites have been subjected to various levels of scrutiny and critique, but little is known in relation to how gender minorities are treated and understood once their detainment has been authorised. This project captures the experiences and understandings of professionals working within this setting. By interviewing police officers, custody trainers, liaison and diversion workers,

appropriate adults, and appropriate adult managers/coordinators, the findings evidence how professionals working within custody contexts understand and translate policy into practice.

As an umbrella term, 'Trans' is often used to refer to either an identity or as an adjective for a group of gender diverse people (Wilchins, 2002). For the purpose of this report, we use this term to refer to people whose gender identity differs from the sex assigned at birth. We use non-binary to refer to people with identities outside of the binary roles of 'man' and 'woman'. This can mean rejecting binary understandings of gender, identifying with both or neither (Stonewall, 2024).

## Context

### **The role of the custody suite in England and Wales:**

The police custody suite is a pivotal space within criminal justice, serving many purposes regarding the detainment of a person suspected of committing a crime, as well as the collection of legal evidence to inform decision making (Charman, 2014).

The custody suite is dynamic and unpredictable. The physical environment and procedures which take place alongside the effect of other detainees in the space, can all shape how the custody environment is experienced. Once arrested, a person will encounter a range of protocols which aim to ensure their safety and dignity whilst detained. A risk assessment performed by the custody sergeant at the booking desk will authorise their detainment and identify any potential risks to be managed. This might include the need for biometrics, searches and sampling, and sometimes the removal of clothing if deemed

necessary (McKinnon and Finch, 2018). Depending on the risk assessment, a detained person can encounter various professionals. If the risk assessment has identified a person to be 'vulnerable', an appropriate adult will be actioned to accompany the detained person through custody protocols, the interview, and decision making around charges and bail (PACE, 1984). Appropriate adults are separate to the police force and can either be a trusted responsible person (e.g. family, caregiver, or existing support practitioner), or from a professionalised scheme (National Appropriate Adult Network, N.D). Where possible and needed, those identified as vulnerable may also be referred to the liaison and diversion service that is based within the custody suite. This team is also independent from the police and commissioned through the NHS. They provide a service that can support through potential referrals and diversionary routes out of criminal justice (NHS England, N. D). Despite working independently, police staff, appropriate adults, and liaison and diversion teams operate

in parallel to one another around the safeguarding and wellbeing of the person detained.

## Gendered Nuances and Governing Documents:

Experiences can also be shaped by a person's identity and characteristics. Custody suites are heavily gendered spaces, with gendered nuances existing in relation to where a person will be detained, who they encounter during procedures such as strip searches, how they will be addressed and documented, and what they receive during their stay in terms of clothing and hygiene products (Acker, 1990; Panter, 2018).

Whilst work has been conducted to examine inequalities within police custody, for example gender and ethnicity, transgender and non-binary detained people have not received the same attention. Police forces have been critiqued for poor recording and reporting on characteristics like gender identity (Ali and Pittaway, 2021). A range of legislation and guidance exists within this setting, forming a playbook of parameters (National Police Chief's Council, 2022). Yet, ambiguities and gaps exist within such documents when considering the treatment of transgender and non-binary detainees. The Police and Crime Evidence Act was implemented in 1984 in response to public appeals and concerns in relation to the use of police powers and inconsistency of treatment for those detained and interviewed. The act provides overall governance, and Code C focuses on detention and treatment. Within PACE Code C, Annex L exists to support in 'Establishing Gender of Person's for the Purpose of Searching and Certain Procedures'. It provides guidance particularly to custody officers on how to navigate trans detainees through custody processes and procedures. Focusing on dignity, the annex provides guidance on considerations, documentation, disclosures, and searches. Whilst the annex considers legislative frameworks such as the Gender Recognition Act (2004), there is tension between this and developing legal understandings of gender identity. For example, whilst the Equality Act (2010) encompasses anyone within the stages of transition, Annex L is more stringent:

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*"In law, the gender (and accordingly the sex) of an individual is their gender as registered at birth, unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's gender is their acquired gender. This means that if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman, and they must be treated as their acquired gender."*

**(Police and Crime Evidence Act, Code C, Annex L, page 88).**

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The annex includes ambiguous and subjective language that allows officers to use their discretion where there is doubt as to a person's gender identity. As an officer cannot ask directly if a person has a GRC, the onus is on the detainee to disclose, and the outcome depends on the officer's interpretation of the situation. Whilst the annex aims to protect detainees and signpost officers, it does not align with the open interpretation of 'trans' in the Equality Act and contributes to tension across existing legislative outlines.

As governing documents put an onus on custody sergeants to use their discretion to ascertain a person's identity and therefore their overall care, there is a reliance on professional judgement which is at odds with other elements of the custody process. Professionals are working in a highly regulated setting, yet with legislation and governance that can often overlap and/or contradict.

Despite a complex history between police officers and LGBTQ+ communities (Panter, 2018), little is known in relation to how professionals are supported and trained in relation to processing and navigating trans and non-binary people once detained.

## Methodology

This project focused on capturing knowledge, experiences, and understanding around the navigation of policy documents and training in relation to trans and non-binary people within

police custody. To do so, a qualitative approach was adopted to explore varying perspectives and realities, as well as the situational factors that may influence knowledge and experience (O'Leary and Tennent, 2025). Ethical clearance was granted by the University of Sunderland in December 2023. All participants received a participant information sheet and consent form ahead of opting into the research. Participants were advised that their participation was based on their personal experiences and understandings, rather than speaking on behalf of their affiliated organisation. Participant confidentiality was achieved through redacting identifying information from transcripts and amending any specialist job titles to more generic outlines of roles and responsibilities.

Semi-structured interviews were used to provide participants the space to discuss things that they found relevant to the topic. Interviews explored themes around training, policy, awareness, and experiences within practice. The project was advertised across social media forums, professional networking sites, and through snowballing techniques where gatekeepers and stakeholders shared the research across policing, liaison and diversion and appropriate adult intranets or forums. The project recruited 18 participants between January – September 2024, who ranged in roles and geographical location. Once data collection was complete, a thematic analysis was employed to identify and analyse patterns within the data (Braun and Claire, 2022). The findings are presented below with illustrative quotes, some of which have been carefully edited for brevity or clarity.

## Key Findings

The following section presents an overview of the key themes identified during the analysis and reflects the patterns in experiences and understandings of policy into practice. The themes presented are not exhaustive and more detailed publications will follow.

### The Custody Setting:

Space and place were identified as integral to a person's experiences of custody. Across the interviews, participants described the custody

setting as high risk, chaotic, and fast paced. Participants within policing, AA, and L&D roles acknowledged working in custody as challenging and complex. One police officer and trainer said:

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*"The very nature of custody is so complex and there are so many variables, I think if we try and narrow it down too much, I'm not sure that it could almost work"*

#### [Custody Trainer 2]

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Due to service demand, it can also be an extremely busy space, where police staff must work through a range of responsibilities including authorising arrests, identifying any potential risks or harm, and actioning other services where necessary. This can impact on the treatment of individuals.

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*"I think with custody, it always comes down to the police officer saying, 'we are really busy'. There's no time and maybe this is not being disrespectful on purpose, maybe this is not intentional. They are just busy, but at the same time the DPs [detained person] are human beings... dependent on those police officers"*

#### [AA Scheme Manager 5]

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Participants also outlined that custody is already an unknown and often frightening space for those detained, but this can be amplified further for those who feel particularly vulnerable. From this, our findings identified the experience of custody is impacted by factors such as officer attitude and understanding, ability of the detainee to disclose privately, access to advocacy and the professionals encountered.

### Booking Desks and Disclosure:

The custody reception desk is often situated in a highly visible location in the main public facing area of the custody suite. The physical setting of custody can influence emotional responses and feelings whilst detained (Wooff and Skinns, 2017), and this was raised by participants in relation to the non-confidential set-up of booking desks, and a lack of privacy for sensitive discussion.

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*"The risk assessment is done, you know, at the custody desk, with Uncle Tom ... wandering past... We've got DO's [Detention Officer's] milling about the place. We've got solicitors, we've got parents, we've got other detainees. You know, L&D healthcare professionals. We've got it, you name it"*

#### [AA Scheme Manager 2]

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Participants discussed how this initial interaction with the custody sergeant can be paramount in how a person experiences custody, particularly how comfortable they feel to disclose personal information.

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*"So, if you're treating them [detained person] really, really badly, or if you're being rude and discourteous, do you think a transgender detainee is going to make a wilful disclosure at the custody desk with lots of other people? They're not going to do it."*

#### [Policy Maker 1]

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Participants also highlighted the implications when disclosure and privacy may not be achieved. In one example, a detainee was processed as the wrong gender identity as the individual did not share this information at the custody desk but later disclosed this to their appropriate adult. In another example, a person was fully processed through custody and charged as the incorrect gender identity, something which was picked up later by another criminal justice agency. In both situations, the person did not disclose at the booking desk.

Private booking areas are available for sensitive cases or vulnerable people (College of Policing, 2024). Across the interviews, very few participants mentioned this resource. Officers who did described it as invaluable in allowing the booking in to be completed in a private, and therefore, dignified manner. Despite this, availability and the approach of officers was identified as key in whether such private spaces were utilised.

## The role of interpretation: 'Passing'

A lack of consistency was identified, with participants highlighting "who are you going to get?" at the custody desk as key in determining treatment and experience. Some of this linked to whether a detainee was able to 'pass' as their given gender, with lifestyle and appearance being used as an indicator.

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*"I think there's probably a lot of stigma. Maybe stigma is not the right word, but I think how you present is probably really important, so they're judging you on what you look like, how you behave"*

#### [Appropriate Adult 2]

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Stigma and awareness were emphasised with some participants raising concerns on how gender identity may be perceived:

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*"I think it totally depends on which individuals are on shift in custody. I think if you look at the overwhelming majority, I think will be quite dismissive of individuals sort of identified differently because I think it's viewed as a bit like ...a fad or like just attention seeking or whatever. I've heard that within custody, which is not good to hear. I'm hoping that the younger sergeants coming through who are of a new generation, they're more open to, you know, people having difficulties such as this."*

#### [Liaison and Diversion Professional]

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Annex L places an onus on individual officers working as custody sergeants to interpret and action discretion within operational contexts. This expectation within a practical context places officers in a difficult position when they have not received any formalised training. Participants raised concerns with this, as this means that gender acceptance depends on the officer's personal understanding and views around gender identity. With the phrasing of Annex L suggesting a level of gender performativity and a person passing as their gender identity, participants highlighted concerns with how gender may be understood from both personal and operational contexts. One appropriate adult

discussed this in relation to a male-dominated custody space.

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*“Here, they are male custody sergeants. You may get the odd female, but I'm talking about an odd one. It's predominantly men. And I'm not saying all of them have got preconceived ideas, but I think sometimes it is a bit of a lottery as to who you get”*

### **[Appropriate Adult 3]**

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This raised questions on how a male-dominated space may also impact how gender is both ‘read’ and understood at sites such as the booking desk. Due to the ambiguities within Annex L and the power placed on officers without formalised training, this raised themes on the need to ‘pass’ by looking and acting in stereotypically gendered ways

In addition, non-binary people are not acknowledged within Annex L or throughout the Police and Crime Evidence Act. This reflects a further compounded issue created by policy and gender. Legal and policy frameworks that operate with a rigid binary approach to gender, result in non-binary people being either invisible or forced to ‘choose’. As outlined above, should a non-binary person refuse to ‘choose’ then this decision will be made for them by the custody sergeant.

### **‘Fear of Getting it Wrong’**

As noted, custody is a high-pressure environment where officers hold dichotomous roles, both pursuing suspects during interview and holding responsibility for detainee welfare. Across this research, participants expressed their hopes to do the right thing and wanted to ensure that both the detained person and the professionals involved in the custody procedures were respected, treated with dignity, and kept safe.

A recurring theme emerged around a fear of getting it wrong, which manifested in different ways for different roles. This feeling was held by various practitioners in relation to how to approach new situations.

For those working as appropriate adults or working within that space, concerns of using the

right terminology, fully understanding a person’s needs, and being confident in their advocacy and intervention was highlighted.

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*“How am I showing up in this? ... Gender, non-binary gender. What did we learn in training about gender? ...if that's what's going on for me internally ...there's a chance that's going to show up in the way that I engage with someone”*

### **[Policy Maker 2]**

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While there were intentions of good practice, further fears of potential disciplinary action were expressed. This theme fed into wider discussions around blame cultures within the police:

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*“Nervousness of being investigated or struck off, or having complaints made against you and then being subject to a lengthy professional standard investigation and inquiry, being suspended because [of] the nature of it.”*

### **[Custody Trainer 2]**

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Past and present custody officers outlined feelings of being in a no-win situation. Concerns of vague guidance, uncertainty, and pre-existing blame cultures tied into this.

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*“If you look at the essence of what's in PACE and what's in APP (Authorised Professional Practice), is there an acknowledgement that sometimes you can't win because you are assuming you're doing the right things? but is that different to other areas of policing”*

### **[Custody Trainer 1]**

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*“That's what they call it, the pension killer. So basically, when a detainee comes into custody, officers kind of go, oh, my God, this person's only going to get promoted or they're going to kill my pension”.*

### **[Policy Maker 1]**

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Fears of getting it wrong for policing staff focused predominantly on broader fears of disciplinary action. In contrast, AAs identified concerns of how their fears may present to the person that they

are aiming to safeguard and support. Similar concerns were raised across interviews in relation to how uncertainty in guidance and practice can impact those detained, focused on strip searches, identification, and overall attitudes towards transgender and non-binary people within police custody. Concerns of same sex mapping and identifying the appropriate personnel to conduct searches were included in this:

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*"I've spoke to a couple of sergeants about it in preparation, really, to see what their views were on it. And they say that the guidance is quite woolly because it's quite a new subject for them, but the gist of what they were saying was that... detainee will be searched by somebody of a gender which the detainee identifies as. They'd had some difficulties around putting officers in difficult positions. So, for example, say you are identified as female, born a male but aren't fully transitioned yet. Then this puts an officer in a difficult position"*

#### **[Liaison and Diversion Professional]**

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Another participant highlighted the need for clarity to support understandings of language and terminology to enhance practice. For example, the following AA Coordinator highlighted issues with using the right language around gender:

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*"I don't think we've got the language. And I think where we do have some of the language there's massive assumptions around what we mean by it"*

#### **[AA Scheme Manager 1]**

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## **Concerns around the strip search and same-sex mapping:**

Participants were particularly concerned around strip searches. Practitioners acknowledged the necessity of the search but outlined the issues raised when focusing on sex. The procedure was referred to as 'traumatic', 'sex-obsessed', and a factor that can further vulnerabilise an already vulnerable community.

In relation to trauma, concerns were raised around presumptions that a person would feel more comfortable based on sex mapping, with some emphasizing how this would depend entirely on a person's lived experience. One AA described the disproportionate representation of mental health issues, sexual assault, and trauma amongst the LGBTQ+ community, and how past experiences could negatively impact gender minorities during the searching process, particularly when the detainee has little say in who carries this out. Participants linked this to the focus on sex.

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*"It's the same sex thing. So, the premise with a strip search is that the sex of the detained person should be the same sex as the officers. So, you have two officers on a strip search. And it's just sitting in a really binary place of, it's male and female"*

#### **[Appropriate Adult 2]**

*"Strip searching, which is really where PACE suddenly kind of becomes interested in sex in a way that it's generally not particularly that interested in"*

#### **[Policy Maker 2]**

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With binary-based guidance that does not consider transgender and non-binary people, this leaves officers in an uncomfortable position of trying to align with governing documents, navigate discretion, but also ensure the search is conducted in a safe and dignified manner. Whilst the importance of communication during searches was highlighted in some interviews, as well as trying to adopt a person-centred approach to each case, this did rely heavily on the person passing as the gender identity that they stated.

When asked around existing guidance and policies, understandings of Annex L and the Police and Crime Evidence Act in a wider sense were poor:

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*"I haven't read PACE and even if I had, I probably wouldn't bloody understand it because it's very confusing"*

### [Appropriate Adult 2]

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This is troubling given that PACE is a key piece of legislation concerned with custody. There was general agreement that current laws and guidelines are insufficiently nuanced in this area, leaving some practitioners feeling ill-prepared, uncertain, or dissatisfied with the support available to them. The need for PACE to be updated was a central theme.

### Requests for Further Training and Discussions:

Overall, participants advocated for further training and discussions within their roles in relation to navigating transgender and non-binary detainees. The interviews showed that training and understanding ranged across participants, and often understanding was gained through knowing a trans or non-binary person in personal lives. Outside of lived experience, some practitioners had completed initial EDI training either in their current or past roles. Comments were also made around police training which covered topics such as racism repeatedly but no other characteristics.

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*“The trans work or the trans agenda has never really filtered down to me at operational level”*

### [Policy Maker 1]

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Practitioners offered fairly simple solutions to the knowledge gaps identified.

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*“So, I think the solution is very, very simple. What we need is that legislation to support us. We need good guidance. We need an academic evidence base to support that and we need training, we need to get our officers off the frontline and have conversations around lots of things, particularly around this particular topic and give the officers those tools and the knowledge”*

### [Policy Maker 1]

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An overarching request for more comprehensive training for practitioners was underscored, with some outlining the importance of embedding

lived experiences into such training. This included comments on avoiding the ‘train the trainer models’ and ensuring all professionals received awareness training from subject matter experts.

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*“Well, it would be probably getting somebody with some firsthand knowledge, as in somebody who've been through custody. To actually come in and talk about their experience”*

### [Custody Trainer 1]

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## Discussion and Recommendations

There was a strong desire amongst participants to act respectfully and appropriately, but this was undermined by vague guidance and a lack of information and training. Whilst a range of legislative frameworks exist, practitioners disclosed gaps in understanding in relation to key policies designed to ensure dignified and respectful approaches within the custody setting.

Concerns were raised by various participants in relation to how such ambiguities could impact the experiences of those detained who identify as transgender and non-binary. Further concerns were highlighted about the reliance on officer discretion and the potential implications this can have on their practice and careers. This intersected with existing tensions around blame cultures within custody settings for practitioners due to the high-risk nature. The research also highlighted a desire from practitioners to enhance their understandings, training opportunities, and the wider legislative frameworks in place to further develop practice in this setting. Although uncertainty was prevalent, each participant expressed their commitment to detainee care.

Within 2025, discussions have already begun in response to the UK Supreme Court Ruling and its implications in relation to same sex-mapping for detainees and custody professionals. From the existing legislation, there is not enough clear guidance to support practitioners within this setting. Custody is already a high-pressure space, and custody sergeants already have a range of variables that they must consider in their role in

authorising detainment and safeguarding those detained within the suite. Practitioners represented here already felt unsupported, and it is likely that the current climate will exacerbate that. This further reinforces the need for updates to the Police and Crime Evidence Act, to ensure it aligns with existing and new legislation, and offers clear guidance for practitioners, particularly around gender identity

By utilising the experiences and considerations of the practitioners who have taken part in this project, the following recommendations have been offered to address the key challenges raised.

- **Prioritising lived experience perspectives:** Further research is needed to capture the voices and experiences of trans and non-binary people. By centring around lived experience, future research will be able to deepen understanding and highlight the realities of gender minority groups within these spaces. This will support the development of more meaningful and inclusive discussions and changing when considering custody contexts and gender.
- **A call for further training:** Many participants requested specialised training to enhance awareness and understanding of the needs of transgender and non-binary communities. There should be a move away from generic EDI training, which is often experienced as a tick box exercise, and emphasis placed on the incorporation of lived experiences.
- **Updates to the Police and Crime Evidence Act (PACE):** The existing Police and Crime Evidence Act, whilst valuable in its implementation, is over forty years old. Based on the voices of participants, PACE needs to be updated to reflect the changing cultural and legal landscapes.
- **Clarity on discretion:** Due to the legal complexities of this subject matter, clarity is needed in relation to officer discretion. Across the Equality Act (2010), the Gender Recognition Act (2004), and the existing

guidelines of Annex L of the Police and Crime Evidence Act, there are inconsistencies. Detained people become vulnerable due to not being believed or recognised if their gender does not match with the expectations of an officer. Practitioners are placed in difficult situations as they make important decisions with little supporting guidance, leading to fear of getting it wrong.

- **Recognition for non-binary people:** Non-binary people continue to be absent within UK law. Whilst non-binary people can be encompassed within 'gender reassignment' under the Equality Act (2010), this is flawed and there remains a lack of acknowledgement of identities beyond the gender binary.

Our recommendations aim to support further work in improving practice, policy, and overall understandings. By taking such action, this practice report recommends further examination of existing legislation and training to support those working within these spaces. In doing so, this will help to ensure that custody does not exacerbate the vulnerability of trans or non-binary detainees. Further research is also required. Whilst our project provides a starting point to reflecting on professional perspectives, it is essential to hear and learn from those affected.

## Conclusion

This practice report provides an overview of the research project completed across 2023 – 2024 in England and Wales. It provides recommendations for future practice within the current cultural and legal landscape for transgender and non-binary people in relation to police custody. The findings underscore a need for attention and further developments in this space to protect transgender and non-binary people within the criminal justice system, and to support practitioners when navigating policy and practice.

The data presented here is a part of a wider project and future publications will follow.

## Acknowledgements:

This research project was funded by the UKRI Policy Support Fund 2023 – 2024 and represents a starting point for future research. We thank all participants who have taken the time to offer their experiences and insights on a sensitive and timely project.

## Feedback:

Thank you for your interest in this research. We would be interested in hearing about how this work has affected you or your work. If you would like to provide your feedback, please use the below QR code:



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