

WHEN DOES INCLUSION ACTUALLY PROMOTE EXCLUSION?

I was reading a report from a local cricket society the other day and was a little surprised to see that one of the major topics for discussion was transgender cricketers. I thought I might have a look into this issue and saw there was an ECB statement on 17th October which no doubt prompted the discussion. Before looking at that statement however we first need to go back a little to see how we got there.

A mere 6 months earlier in late March the ECB issued a paper on this subject which was very long on definitions but a bit short on explanation. It stated that the ECB was “committed to the principles of diversity and inclusion in cricket” which is all well and good but then went on to say it must be “balanced with the ECB duty to ensure fairness and to maintain the integrity of competitions”. Good luck with that I thought. It concentrated on transgender cricketers and provided a useful definition of a trans woman which was someone assigned male at birth but identifies and lives as a woman.

The paper concluded amongst other things that trans women should be allowed to participate in women’s cricket at all levels. However it was made subject to a number of caveats. Specifically trans women would have to apply for written clearance to play women’s professional cricket. There was nothing in the paper stating what considerations would apply in issuing such permission. The other potential restriction was under the Disparity Policy which was announced in 2023.

This policy states that competitors or officials may consider whether there are concerns about the health, safety or wellbeing of any player. Priority to participate must be given to those individuals whose strength, stamina or physique is consistent with the level of the competition. In short, if it is considered that a competitor has a physical advantage over the others and this could cause harm then that player may be excluded from participating. The policy does not specifically refer to trans women playing in women’s matches but clearly it could apply in such a case. As is necessary, the policy also advises those making such decisions that they must take account of discrimination legislation in particular in connection with protected characteristics. I must say I am not sure I would want to be making such decisions ie balancing a health and safety obligation with a discrimination obligation.

The statement on 17th October partially reversed the March policy following consultations. The detailed policy will come later but from 2025 trans women will be banned from playing in Tiers 1 and 2 of the women’s professional game and The Hundred. This levels up with the ICC policy

preventing trans women playing international women's cricket. It is surprising that the policy changed so quickly and I'm not sure why it did. Possibly it was that the clearance policy became difficult to implement and/or that a number of competitors objected. We may never know.

It does however leave trans women still able to play recreational cricket without restriction save for those complex provisions in the Disparity Policy. It must be acknowledged that this is a particularly fraught area for many sports and policy is constantly being challenged and changing. Other sports have acted differently. England rugby have concluded that trans women cannot play in women's contact rugby after the age of 11. Cricket Australia have concluded that generally trans women can play at all levels of women's cricket.

Most of the discussions turn around physical ability. It appears to be widely accepted that male puberty confers certain strength and stamina advantages. Clearly, such advantages could cause health and safety problems or fairness issues if such individuals played against those without those advantages. I rather think that the health and safety issue is a more serious one for administrators who clearly have legal obligations towards the participants. This may be why rugby has gone so far at least in the contact form of the sport. Fairness is a little more difficult to assess however and is subjective.

What is not mentioned is the effect on inclusion. One report that did catch my eye was from Fair Play For Women released in January 2024 - it can be read online and covers a number of sports not just cricket. It essentially makes a case to ban all trans women from the female category in sport. It has taken evidence from women players and parents. A few examples from cricket are included below

"This player hits the ball harder than any other I have seen in this league. Parents will not allow their daughters to play in the matches this player is involved in for the forthcoming season..."

"A parent of a 12 year old girl described fears that she and her teammates would give up on cricket because they became so frightened about having to face bowling and fielding of that force. Many girls at this age are only just starting hard ball cricket and one incident is enough to turn them off the game"

"This is a development league for women and girls cricket, it is therefore of concern that they have been involved in a match against a transitioned man. As father to these girls (aged 14 and 16) I find that unacceptable, uncomfortable and dangerous both morally and physically"

The authors of this report clearly have an axe to grind but on the assumption that the reporting of the comments is accurate then they are concerning. These days everyone worships at the altar of

inclusivity and I am sure we would all wish to include as many groups in our sport as possible. It really cannot be said on the one hand that cricket is inclusive if trans women are banned from playing in women's events. Equally though if the practical effect of including trans women in women's cricket is causing women to leave the game that is not inclusive either.. It may be that

total inclusivity is a mirage and cannot be achieved - this is a shame as we all know the mental and physical health benefits of playing sport but that may just be how it is.

England rugby has clearly chosen safety and fairness over inclusivity by banning trans women from rugby from the age of 11. Cricket Australia have made the opposite choice. I guess most people will line up on one side or the other of this debate. However in both cases at least trans women know where they stand which is I think to be applauded.

The ECB policy on the other hand is neither one thing nor the other. A trans woman may turn up for a recreational women's match but may find themselves excluded under the Disparity Policy. Also they can go only so far in the game as the door will be slammed in their face if they wish to play cricket professionally. This doesn't seem very fair to me. If the evidence from the Fair Play For Women report is to be believed then the inclusion of trans women in recreational women's cricket will deter women from playing the game which is not fair either. It is therefore a policy which has tried to square a circle but has turned out to be something of a fudge and will anger many and please few.

I am not saying that any of this is easy and I doubt we have heard the last word on this issue.

However, to govern is to choose and I think the ECB is trying to duck that choice.

By Phil Reeves