



30 September 2021

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Dear Mr Evans,

My colleagues and I undertake research on the adoption of gender self-identification principles in Scottish public policy and regularly publish briefings and articles on this issue.

Our main area of interest and concern relates to the way that policymakers have often lost sight of the protected characteristic of sex under the 2010 Equality Act, which has typically been either replaced by, or muddled with self-defined gender identity as a basis for policy development. For example, our work has documented a loss of robust data on the protected characteristic of sex, and the introduction of public policies which disadvantage women.¹

In a UK policing context, this includes a loss of reliable crime data, and policies that fail to consider the interests of female officers and staff. In recent weeks, several Police and Crime Commissioners in England and Wales have also voiced similar concerns.² In relation to Scottish policing, we would like to draw your attention to the following issues which we think warrant further attention.

Data collection

We are particularly concerned that Police Scotland has replaced crime recording based on sex with recording based on a person's self-defined gender identity. This shift, which has no effective introduction date,³ has significant data reliability implications for crimes and offences that are rarely committed by women, given it will only take a few misclassified cases to skew the statistics. This means that trend data is likely to be less reliable, and its value for research and policymaking weakened.

See: <https://murrayblackburnmackenzie.org/2019/06/03/mbm-statement-on-recording-in-the-scottish-criminal-justice-system/>

Rape and attempted rape

We currently have a petition before the Scottish Parliament Citizen Participation and Public Petitions Committee which is "*calling on the Scottish Parliament to urge the Scottish*

¹ In 'Losing sight of women's rights: the unregulated introduction of gender self-identification as a case study of policy capture in Scotland' we examine the introduction of policies based on gender self-identification, ahead of any legal change. [https://www.research.ed.ac.uk/portal/en/publications/losing-sight-of-womens-rights\(2016d817-a978-4f1a-8982-3459b9c05fed\).html](https://www.research.ed.ac.uk/portal/en/publications/losing-sight-of-womens-rights(2016d817-a978-4f1a-8982-3459b9c05fed).html)

² See: <https://www.dailymail.co.uk/news/article-9915637/New-Surrey-Police-Commissioner-attacks-Stonewall-promoting-dangerous-transgender-ideology.html>

³ See: <https://forwomen.scot/wp-content/uploads/2019/06/PoliceScotlandFol.pdf>

Government to require Police Scotland, the Crown Office and the Scottish Court Service to record accurately the sex of people charged with or convicted of rape or attempted rape". The petition secured over 12,000 public signatures and is now under consideration by the Committee.

See: <https://murrayblackburnmackenzie.org/scottish-parliament-public-petition-on-recording-sex-accurately-in-cases-of-rape-or-attempted-rape/>

In response to the petition, Police Scotland described its recording practices as "*consistent with the values of the organisation*" and state that it is "*yet to encounter a case whereby the perpetrator of a rape self-identified as a woman*".⁴ We think it is difficult, if not impossible, to defend a policy that allows men charged with such offences to be recorded as female on ethical grounds. Nor are the risks to data reliability hypothetical. While documented instances of females being charged with rape as an accomplice are very rare, between 2012 and 2018, 436 individuals prosecuted for rape in England and Wales were recorded as women.⁵

'Your Police' survey

In an article recently published in Policing Insight,⁶ we examined how the decision to omit sex from the demographic characteristics captured in the 'Your Police' survey is likely to incur reputational risks and to influence who responds to the survey. In particular, we think that the assertion by Police Scotland that 'we only ask questions where it is relevant to do so' delivers an uncomfortable message about whose experiences and views count. We recommend that Police Scotland revise the survey to collect data on both sex and gender identity, and to make its data collection practices consistent with its responsibilities under the Equality Act.

See: <https://policinginsight.com/features/analysis/whose-views-count-losing-sight-of-sex-in-the-police-scotland-your-police-survey/>

Prisoner searches

The Police Scotland 'Care and Welfare of Persons in Police Custody Standard Operating Procedure' (SOP) states that a transgender prisoner should be searched by an officer of the same 'gender' (para. 12.6.7).⁷ In practice this would mean a female officer searching a male prisoner, and vice versa. The SOP recognises that officers may be uncomfortable searching a person of the opposite sex and states that in such circumstances the Custody Supervisor should be informed.⁸ However it is unclear what would happen in such circumstances. This also presupposes that officers will feel sufficiently confident to raise any concerns. Given the heated climate around the gender identity debate, as well as the rank structure, we think this assumption is questionable and that the policy risks placing female officers in a potentially inappropriate and humiliating position.

⁴ <https://www.thetimes.co.uk/article/campaign-to-ensure-all-rape-suspects-are-recorded-as-men-kggzb5w3m>

⁵ See Table 1.

<https://www.ons.gov.uk/file?uri=%2fpeoplepopulationandcommunity%2fcrimeandjustice%2fdatasets%2fsexualoffendingcrownprosecutionserviceappendix%2fcurrent/sexualoffendingcrownprosecutionserviceappendix%2ftables.xlsx>

⁶ An open access copy is available here: <https://murrayblackburnmackenzie.org/2021/08/25/whose-views-count-losing-sight-of-sex-in-the-police-scotland-your-police-survey/>

⁷ See: <https://www.scotland.police.uk/spa-media/t3pp0vle/20-2200-attachment-2.pdf>

⁸ See: Care and Welfare of Persons in Police Custody Standard Operating Procedure.

Single-sex facilities

The 'Transitioning at work' SOP states that 'all members of staff are entitled to use toilet and changing facilities appropriate to the sex in which they are currently living, regardless of whether they undergo gender reassignment, such as hormonal or surgical treatment or having socially transitioned by changing name, appearance, title, clothing etc' (p.11). In practice, this transforms single-sex facilities into mixed-sex facilities and puts female officers and staff at a disadvantage. While the SOP states that additional privacy such as shower cubicle screens or curtains may be provided, this does not compensate for the attendant loss of privacy, dignity, and safety.

We would be grateful if the Scottish Police Authority would consider these issues. In addition to the risks to data reliability outlined above, we believe that the current policy direction has failed to fully account for the interests of female officers and staff. In a male-dominated profession, where equality between the sexes is still a long way off, this feels like a serious shortcoming. It is our understanding that Police Scotland have convened a short life working group to consider sex and gender, although we are not aware whether the group is considering any of the issues we raise here.

If you have any further questions or if we can be of assistance, please do not hesitate to get in touch.

Kind regards,

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