



LETTER SENT BY E-MAIL ONLY

Dr Kath Murray
Lucy Hunter Blackburn
Lisa Mackenzie
Murray Blackburn Mackenzie



17 December 2021

CO/105/2021

Dear Dr Murray, Ms Blackburn and Ms Mackenzie

Recording of sex and gender identity

I write in response to your correspondence of 30 September 2021 regarding the recording of sex and gender identity by Police Scotland, in which you asked the Authority to consider the issues raised. We have taken some time to review and seek clarity from Police Scotland on current recording and custody practice as they relate to the issues laid out in your letter.

Data Collection

The Authority expects Police Scotland to comply with any relevant legislation and Scottish Government's Chief Statistician's guidance on data recording. We also expect all data collection to be consistent with the European Statistics code of practice that data collection needs to be carried out in a way that treats people with dignity and respect.

At present, Police Scotland's current and operational recording practice is that sex and gender will be used interchangeably. The sex/gender identification of individuals who come into contact with the police will be recorded on police systems, such as crime management and custody databases on how they present unless an alternative gender is disclosed. This is the case for all offences.

Officers do not routinely ask for the sex or gender of the people they interact with and officers require no evidence or certification of proof of biological sex or gender identity. Police Scotland has highlighted that there are circumstances where the issue of biological sex may require to be explored for a legitimate policing purpose. This includes Common Law Rape and Common Law Sodomy (pre-2010) and more specifically reports of contraventions of Sections 1 and 18 of the Sexual Offences

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(Scotland) Act 2009. In these cases, self-identified gender is of no relevance to the charge. In order to charge a suspect accused of rape, the police must ascertain whether the individual has a penis or surgically constructed penis.

The Authority takes the evidence based view that Police Scotland's current recording practice makes every effort to comply with the law, the guidance from the Chief Statistician for public bodies on the collection of data on sex and gender (September 2021) and the European Code of Practice.

For further assurance, there were no issues in this regard raised regarding the independent inspection of the reliability of current crime recording data by HMICS in its 2020 Crime Audit.

In recognition of the public interest in this matter, Police Scotland has conducted analysis and provided data in respect of females recorded as a suspect/accused for the crime of rape between 2016 and 2021. A total of 28 relevant recorded crimes were reviewed (which equates to less than 1% of all reported rapes in each year included in the review). None of the females recorded for the crime of rape were involved in the physical act itself - their part related to aiding and abetting the perpetration of the crime. This review has helped the service to understand the potential impact that gender identity recording may have on overall figures. We take assurance from this review and its findings, which I understand Police Scotland has shared with you directly.

This is an area of significant public interest and Assistant Chief Constable Gary Ritchie has asked Police Scotland's Data Governance Board to review internal policies and recording procedures. The Authority's Policing Performance Committee, which is the relevant committee to consider issues related to data and crime trends, expects to receive reports on this work in due course. The committee will consider any improvements identified through the review.

The Authority's Policing Performance Committee considers, on a quarterly basis, Police Scotland's performance against the Strategic Outcomes in the Joint Strategy for Policing. This includes data on public confidence as gathered from the 'Your Police' survey. Committee members seek to understand variations in performance, trends over time and the insights gathered through the survey, which may inform improvement activities or changes in practice.

In addition, any concerns raised by the public about data recorded through the 'Your Police' survey will be considered by the Policing Performance Committee. I have also shared your correspondence with members of the committee to ensure they are sighted on your concerns and can monitor the situation.

In respect of procedures for the searching of detainees, the Authority is not aware of any incidences or concerns being raised by either a detainee or a member of staff regarding the current standard operating approach. While I note your concerns around potential reluctance by officers and staff to raise concerns, there are a number of routes open to staff to raise concerns both formally and informally. To this end, I have copied this letter to the staff associations and unions to bring your concerns for their members to their attention.

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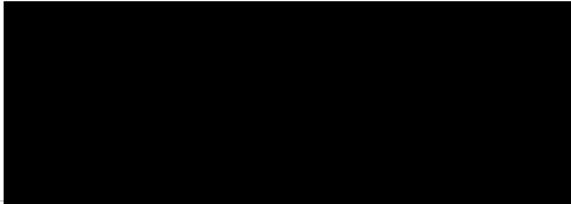
I would also take this opportunity to highlight the Authority's Independent Custody Visiting Scheme (ICVS). This scheme offers an additional layer of independent assurance in respect of individuals detained by Police Scotland, and specifically that they are treated appropriately and their rights and welfare upheld while in police custody. The ICVS reports regularly to the Policing Performance Committee and annually to the Board. There have been no concerns raised by detainees to our ICVS in respect of the sex/gender of the officer or staff member carrying out the search. There have also been no concerns raised by detainees to the ICVS in respect of the sex/gender of the officer or staff member that has facilitated the detainee showering.

Related to this, the Authority is not aware of any concerns raised by officers or staff in respect of the loss of privacy dignity or safety in single sex facilities.

Once again thank you for your letter. We will continue to take a close interest in, and seek evidence based assurance on the accuracy and validity of crime reporting, the maintenance and enhancement of staff and officer welfare and the protection of the welfare of all those in police custody. Police Scotland's values of fairness, integrity and respect for human rights are supported and promoted by the Scottish Police Authority and drive the approach to these issues.

I would be very happy to have further discussions on the legal compliance of Police Scotland's crime recording and procedures for ensuring staff and citizen welfare if you think that would be of value.

Yours sincerely



MARTYN EVANS
SPA Chair

Copy to: Staff Associations and Trade Unions