

## **Briefing on the Scottish Prison Service ‘Gender Identity and Gender Reassignment Policy for those in our Custody’: Impacts of female prisoners and prison officers.**

**August 2023**

### **1. Scottish prison population**

The SPS is [currently holding](#) around 324 women and 7,501 men in custody. The SPS accommodate male trans-identified prisoners in both estates. Seven trans-identified males are currently held in the female estate (2%). Of these, three are on remand. All seven are held in relation to [non-sexual crimes of violence](#).

### **2. SPS Gender Identity and Gender Reassignment policy**

The SPS published its [Gender Identity and Gender Reassignment Policy for those in our Custody](#) in 2014. This allows prisoners to be accommodated on the basis of self-declared gender identity, subject to a case-by-case assessment. This included those with histories of violent offending against women. Female prison officers are expected to search male trans-identified prisoners, including those with male genitalia, and vice-versa.

The SPS did not consider the needs of female prisoners and officers in developing the policy. It did not consult with any groups representing women’s interests, nor consider documentary evidence on women’s imprisonment, or the experiences of female offenders. The [Equality Impact Assessment](#) (EQIA) concluded female prisoners and prison officers would not be affected.

In late 2019, in response to media queries, the SPS stated in the press that it intended to review the policy.

#### **Interim measures**

Following the Adam/Isla Bryson controversy, the Scottish Government introduced more restrictive [interim measures](#). These require that male offenders with a history of violence (including sexual violence) against women are, by default, placed in the male estate (subject to exceptions). The measures are premised on the belief that a male with a history of violence against other men does not pose a risk to women. We think this is exceptionally naïve.

The measures remain much more permissive than the equivalent Ministry of Justice policy. This states that trans-identified males ‘will not be held in the general women’s estate if they retain male genitalia or have been convicted of a violent or sexual offence – unless in the most exceptional cases’ ([Ministry of Justice, 2023](#)). The seven trans-identified males currently held in the Scottish female estate would not be eligible to be held in the female prison estate in England and Wales.

A finalised updated SPS policy is expected in the autumn. We are concerned that the SPS [does not intend](#) to publish a revised draft for scrutiny before it is adopted.

### 3. Risk assessment on the placement of transgender prisoners

The SPS uses a case-by case approach to accommodate and risk assess transgender prisoners. The risk assessment template and a directive explaining its introduction is [here](#). The template is weighted towards mitigating risks to transgender prisoners. It does not refer to women or sex as a protected characteristic (see further [here](#)).

The following non-exhaustive list shows some of the offences committed by male prisoners held at some stage in the female estate. These include murder, torture, and sexual assault.

#### Currently held in custody

- Murder (Alan Baker/Alex Stewart): Held in the female unit at Greenock prison ([here](#)).
- Murder (Daniel/Sophie Eastwood): Held in women-only units at HMP Edinburgh and HMP YOI Polmont, and at HMP YOI Cornton Vale ([here](#)). Whilst still housed in the male estate, Eastwood terrorised a female officer, who left her job as a result ([here](#)).
- Murder and torture (Peter Laing/Paris Green): Held at Cornton Vale women's prison and HMP Edinburgh women's section ([here](#) and [here](#)).
- Murder, assaulting (biting) a female officer (Richard McCabe/Melissa Young): Held in remand at Cornton Vale ([here](#)).

#### No longer held

- Assault, robbery, racially aggravated harassment, dishonesty and threatening police officers. (Stuart Kelly/Katelyn Findlay). Held at Cornton Vale (see [here](#), [here](#))
- Voyeurism and sexual assault (Katie Dowlatowski). Held at Cornton Vale ([here](#))
- Assault, robbery and threatening police (Joseph/Nicola Wilson). Held at Cornton Vale ([here](#), [here](#) and [here](#))
- Threatening and abusive behaviour (Alan/Alannah Morgan). Appeared in court as both male and female. Held on remand at Cornton Vale ([here](#)).

### 4. Female offenders and trauma-informed care principles

Female prisoners have distinctive needs and vulnerabilities. In 2012 the [Commission on Women Offenders report](#) ('the Angiolini report') documented very high rates of mental health problems among Scotland's female prison population (80% of those housed at Cornton Vale) and 'higher lifetime incidences of trauma, including severe and repeated physical and sexual victimisation'.

[Research](#) by McMillan et al. (2022) demonstrated the complex needs and high levels of victimisation among those housed in the Scottish women's estate.<sup>1</sup> Based on a sample of 109 participants (around a quarter of the female estate):

- 70% reported childhood sexual or physical abuse.
- 85% reported adult sexual or physical abuse.
- 83% reported problematic alcohol or drug use.
- 92% reported mental health difficulties, most commonly anxiety and depression.
- 78% reported a significant head injury (SHI) and 65% reported repeat head injuries.
- Of those with SHI and/or repeat head injuries, domestic violence was the most common cause, reported by 63 individuals.

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<sup>1</sup> Based on interviews with 104 female prisoners and five trans-identified males. Unfortunately, the researchers do not disaggregate these two populations, which means that the findings need to be read more cautiously.

The Angiolini report [led to](#) a 'trauma-informed' approach to female custody and care. The SPS [New Model of Custody for Women](#) (2019) recognised that, 'women who have suffered some type of physical or emotional trauma are often hyper-aware of possible danger' and that 'survivors of trauma may find it difficult to trust others' (p.7).

The [SPS Strategy for Women in Custody 2021-25](#) aims to establish 'an environment in which women feel safe and can have space to heal' (p.9), and 'a climate of dignity and respect', where privacy is protected. It states that its services and facilities should 'promote physical, emotional and psychological health and wellbeing' (p.11).

## **5. The impact of SPS gender identity policy on female offenders**

The placement of any male offender in the female estate, irrespective of gender identity or offending history, is fundamentally at odds with a trauma-informed approach to dealing with women offenders.

The policy undermines women offenders' sense of physical and psychological safety, as well as their dignity and privacy. It fails to take seriously the fact that female offenders are often repeat victims of male sexual and physical violence, or that some women may be re-traumatised by male bodies or voices.

In a [BBC interview](#) in February 2020, the former governor of Scotland's women's prison Rhona Hotchkiss stated that in her experience, it is "*always an issue to have trans women in with female prisoners*" and that the presence of a male bodied person among vulnerable women caused them distress and consternation.

Academic [research](#) undertaken by a former SPS employee, although supportive of self-declaration policy, nonetheless revealed multiple concerns raised by female prisoners. These included:

- The placement of biological males with full male genitalia in the female estate.
- Confusion as to whether these males retained full sexual function.
- Differences in size and strength between male and female prisoners, and female vulnerability.
- Housing biological males with female victims of child abuse.
- Fear that males who pose a threat to women may move to the female estate.
- Scepticism about prisoners' motives for requesting placement in the female estate, including a desire to avoid the male estate, and opportunities for sexual access.
- Inappropriate overly sexualised conversation.
- The appearance of trans prisoners, for example, presenting with a full beard.
- Family members concerns about daughters/sisters being housed with male prisoners.

In a recent media interview, a former prisoner spoke about her experiences of being accommodated alongside two male offenders, convicted of murder and domestic violence respectively. She stated:

"My whole time in prison on constant high alert, my nerves were frazzled with fear. These incredibly violent men were walking around the communal shower area naked and sometimes clearly aroused. Myself and other women were in cubicles with only a curtain to protect us. I was shaking with fear. In the end I went to the prison clinic and had a coil fitted because I believed I could be raped at any time. I didn't want one, I felt forced to do it." ([Daily Record](#), 29 January 2023)

## 6. Impact on prison officers

The SPS Gender Identity policy also impacts on female prison officers, particularly in relation to searching requirements. The policy states:

'People in custody should be **rubdown and body searched in accordance with the social gender in which they are living**, rather than according to their physical body... The genital appearance of a transgender person in custody **must not** be used to determine which gender of Prison Officer should search them.'

([SPS 2014: 6.5](#) emphasis in original)

Unpublished research ([available](#) via a Freedom of Information request) based on interviews with prison officers shows the clear discomfort felt by some female officers, when required to search male prisoners. Note that this research was undertaken by the same former SPS employee as noted above and is similarly supportive of self-declaration. As such, the views expressed below are broadly treated as outdated and transphobic.

"I know that some staff are uncomfortable, female staff are uncomfortable searching a transgender prisoner who was previously a male."

"I would say probably every female member of staff that I work with feels the same; uncomfortable with it. But just get on with it. I know there's other ones that have went and specifically said, I'm not under any circumstances doing it."

"No. I wouldn't, personally. Unless I was ordered to do so. And if I'm ordered to do so, I'll do that. I'll then put a paper in [submit a formal grievance] at the end of it saying that was...it took me totally out my comfort zone. And I felt vulnerable in that type of situation."

The following comment by a line manager, suggests some female officers feel unable or unwilling to express their discomfort to senior staff:

"Luckily so far nobody has refused with me, but I have had staff sort of, I hear them in the background saying oh that's not right, I'm not going to do this, I'm not going to do that. But I've been fortunate so far that they've all carried out the jobs I've asked them to carry out."

Similarly, male officers felt uncomfortable about searching female prisoners.

"It was to be male staff to search him. Which, all the male staff said...refused point blank. Uh-huh. Every single one said...uh-huh...no. Absolutely not."

A recent [press article](#) (4 February 2023) stated female prison officers were ordered to carry out intimate searches on an exceptionally violent trans-identified male prisoner, housed in the male estate. A Scottish Prison Officers Association spokesman stated he was concerned that female staff felt pressurised to carry out intimate searches.