

Jo Farrell  
Chief Constable  
Police Scotland  
*By email*

11 October 2024

Dear Chief Constable,

## **POLICE SCOTLAND REVIEW OF SEX AND GENDER POLICY**

Further to your comments at the SPA board meeting on 25 September, we are writing to ask for a meeting with Assistant Chief Constable Paton about the current review of Police Scotland policies related to sex and gender.

As background to that, we would be grateful for clarification of a number of points, including the scope of the review and plans for consultation. We would also like to ask some specific questions in relation to data recording, where we think greater clarity is still needed.

### **1. Scope of the review**

DCC Speirs described the proposed review as “fulsome” to SPA Board members. We would be grateful to know how far it extends beyond data recording. Specifically, will it cover the wider impact across Police Scotland’s activities of adopting policies based on gender self-identification principles? We think that it should do so, in order to provide a coherent assessment of the impact of adopting this approach across the organisation as a whole. Relevant policies here include Care and Welfare of Persons in Police Custody and Transitioning at Work.

### **2. Consultation**

DCC Speirs also told the Board Members that Police Scotland intended to consult with women’s groups. We very much welcome this commitment and would be happy to provide contacts if helpful.

We also strongly recommend that the review team consult with independent legal experts, who can advise on Police Scotland’s obligations under domestic and international law. In respect of its data recording policies, Police Scotland should meet with independent senior statisticians. Again, we can provide contacts if useful.

### 3. Clarity on the meaning of ‘man’

With specific reference to Police Scotland’s recording practice, the SPA was informed that:

“You can be assured that a man who commits rape or serious sexual assaults will be recorded by Police Scotland as a male....

Let me finish by being absolutely clear - a man who commits rape or serious sexual assaults will be recorded by Police Scotland as a male.”

We would be grateful for absolute clarity on the meaning that Police Scotland is attaching to “man” here. Specifically, under Police Scotland policy, for such offences:

- What sex would the holder of a Gender Recognition Certificate giving “gender” as “female” be recorded as?
- What sex would a person who is male and identifies as a woman, but does not hold a Gender Recognition Certificate, be recorded as?

### 4. Clarity on recording sexual offences other than rape

Your statement to the SPA said:

“To be clear - a male rapist cannot demand to be called a woman and further traumatise his victim – this would not happen. To my knowledge, this has never happened...”

I would only emphasise that the discussion around decision making on the operational frontline remains hypothetical - to my knowledge, we have never faced this scenario.”

This part of the statement appeared to be limited to the offence of rape. We note, however:

- Multiple reliable press reports that the serious sex offender known as Katie Dolatowski has at times been treated throughout the criminal justice system as if he were a woman.
- Within the last few years, there have been several further cases of men charged with sexual offences identifying as women no later than the time of trial. We have listed those we are aware of from press reports since 2019 at Annex A. Most of these men appear to have identified as women by the time of arrest.

Again, for clarity, can Police Scotland confirm if it has recorded *any* sexual offence as perpetrated by a woman, where the officers involved will have been aware the perpetrator was (biologically) male?

## 5. Clarity on recording where a rape suspect is arrested but not charged

In his letter of 24 September to the Criminal Justice Committee DCC Speirs said (emphasis added):

“There is no instance or record on police systems of a male having been arrested **and charged** with rape whose gender has been recorded as female. This has not happened.”

Can you confirm whether a male who has been arrested, *but not charged*, with rape, has ever been recorded as a woman?

## 6. Clarity on recording non-sexual crimes

In the interview with Sky News, broadcast on 25 September, you appeared to suggest that a person’s sex may only be relevant for “very, very violent crimes perpetrated against women”. We urge you to reconsider this position.

It is well established, for example, that lower-level sexual offending is still distressing for victims and can also indicate risk of more serious offending. Moreover, an offence such as housebreaking can be more threatening and traumatic where it involves male offenders and female victims. Police Scotland needs to understand the negative impact on victims from treating male perpetrators as women, for any crimes where, for whatever reason, a *victim* may perceive the perpetrator's sex as relevant.

We are also concerned that Police Scotland sees no distorting effect on *female* offending data in recording male offending as female offending, generally. Violent offending against women, children of both sexes and men is perpetrated overwhelmingly by men. Almost all forms of recorded offending, in fact, skew heavily towards perpetration by males.

To illustrate that this is not a hypothetical concern, Annex B provides several recent examples where males have been charged with forms of non-sexual offending which are far more common among men than women, but who identified at the time as women. Several of those listed in Annex A also have an additional history of non-sexual offending.

## 7. Clarity on sex offender management records

It is unclear how Police Scotland records offender sex/gender for the purposes of management in the community under MAPPA.

Recent MAPPA data reported by Local Authorities shows three registered sex offenders who are described as ‘non-binary’.<sup>1</sup>

We are aware of several cases where convicted male sex offenders who identify as women (or another gender) are likely to be subject to MAPPA, either currently or in future. These include cases in Annex A. In addition, there are at least five men

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<sup>1</sup> These are cited in MurrayBlackburnMackenzie ‘[Registered Sex Offenders without a Sex](#)’ (19 September 2024).

convicted of rape and/or serious sex offences who are reported to have changed identity while in prison.

We are also aware of the recent media report that an internal Police Scotland document last year considered the possibility of recording Adam Graham/Isla Bryson as a woman for the purpose of offender management after release.

Given this confusion, we should like to know:

- The sex of the three non-binary cases shown in recent MAPPA data
- If Police Scotland recorded any male registered sex offenders as female, under its previous policy
- How it will record such cases under its new policy

## 8. Legal understanding

Lastly, the statement you gave to the SPA said:

“Neither the Scottish or UK Parliaments have been able to set out a codified approach in legislation to the legal status, rights or duties pertaining to the concept of gender recognition in a way that reconciles with the Equality Act 2010”.

We think the law is much clearer than these comments suggest (see also commentary on Police Scotland policy by Dr Michael Foran).<sup>2</sup>

Of direct relevance, in a judgment in February 2022, the Inner House of the Court of Session made a clear ruling that the protected characteristic of gender reassignment was separate from the protected characteristic of sex, and that for the purposes of the Equality Act, a person’s sex was not changed or affected by their status under gender reassignment. Lady Dorrian observed:

The protected characteristics listed in the 2010 Act include “sex” and “gender reassignment”...For this purpose a man is a male of any age; and a woman is a female of any age. Section 11(b) indicates that when one speaks of individuals sharing the protected characteristic of sex, one is taken to be referring to one or other sex, either male or female. Thus an exception which allows the Scottish Parliament to take steps relating to the inclusion of women, as having a protected characteristic of sex, is limited to allowing provision to be made in respect of a “female of any age”. **Provisions in favour of women, in this context, by definition exclude those who are biologically male.**<sup>3</sup>

Despite the clarity of this ruling, it is not reflected in Police Scotland's approach to sex and gender identity, which treats subjective declarations of gender identity as

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<sup>2</sup> Dr Michael Foran ‘[The legal framework for gender identity](#)’ (28 September 2024)

<sup>3</sup> [For Women Scotland Limited v The Lord Advocate and the Scottish Ministers](#), 18 February 2022.

substituting for sex, in almost all contexts. In terms of implications for staff, this will have the most detrimental impact on female staff and officers.

We think that Police Scotland needs to remedy this as a priority. As noted above, we would be happy to recommend independent legal experts who may be able to advise further.

## **9. Conclusion**

We welcome the commitment to a review. We believe that a thorough examination of policies on sex and gender, which is concerned with the integrity of data, impacts on victims, the rights of all those who come into contact with the police, and the rights of female staff to privacy, dignity and safety, will require Police Scotland to look at every policy context where sex has been replaced by gender self-identification, and hope that this is what is now planned. We hope to discuss these issues in more depth with ACC Paton.

Yours sincerely,

Dr Kath Murray  
Dr Lucy Hunter Blackburn  
Lisa Mackenzie