

Petitioner submission of 30 June 2023

PE1876/EE: Accurately record the sex of people charged or convicted of rape or attempted rape

Who is responsible?

The Committee has repeatedly sought to establish which body is responsible for recording in this area. Most public bodies, including the Scottish Government, state Police Scotland (PS) is responsible (see [Annex A here](#)).

At the same time, PS appear to take some direction from government. When asked about the policy by the Scottish Parliament's Criminal Justice Committee, DCC Malcolm Graham stated PS had been awaiting guidance from the Chief Statistician, but had not found the published guidance helpful:

“While this considered many factors in how such information should be gathered in a consistent and respectful manner, it does not provide answers to a number of challenges in how organisations should record to meet recording standards”. [Letter from Police Scotland to the Convener, Criminal Justice Committee, 28 January 2022](#)

DCC Graham's letter also indicated that PS policy would depend on the direction of gender recognition reform:

“Further direction and guidance from Scottish Government's Chief Statistician is awaited, due to Scottish Government's decision to postpone its proposals to reform the Gender Recognition Act 2004, pending further consultation”.

In response to a recent Parliamentary Question ([ref. S6W-16640](#)) Scottish Government made clear it has no intention to require PS to accurately record the sex of those charged with rape or attempted rape. From this, we can conclude Ministers believe the current recording policy is ethical, with no risks to data reliability. As [argued](#) previously, we do not think this position is tenable in either respect.

Latest Police Scotland submission

In April 2023 the Petitions Committee asked PS for further information in two areas:

- The process for updating the recording policy, whether this included wider consultation, and if so, with whom.
- Any reflections or updates on its earlier statement that ‘there are no known cases where a biological male has been charged with the physical crime of rape and has self-identified as a woman’.

Policy-making process

The [Police Scotland response](#) ignores the first request and focuses on its current review. This omission is surprising, given [DCC Graham has previously told the Criminal Justice Committee](#) about the process in some detail:

“In 2019, to prepare for proposed reform of the Gender Recognition Act, Safer Communities Equality and Diversity team considered a draft Police Scotland policy on Gender Identification and assessed that a Police Scotland position statement was required.

A position statement (below) was developed by Police Scotland. This was approved by the Senior Leadership Board in November 2019 for use in response to enquiries while Police Scotland awaited direction and guidance from Scottish Government on the identification and recording of sex and/or gender, which would emerge from a review by the Scottish Government’s Chief Statistician.”

Reflections or updates

In response to the request for ‘any reflections or update’ on its previous statement that ‘there are no known cases where a biological male has been charged with the physical crime of rape and has self-identified as a woman’, PS set out tangential process points. For example, it explained:

If the attending officer is satisfied the individual presents as a female and subsequently records them as such on our crime systems which, if the offender is a first time offender and having a new record created on Crime History System (CHS), will be created as female.

[Police Scotland submission, 30 May 2023](#)

There is no indication of what ‘presents’ means in this context, although typically the term simply refers to gender stereotypes. This means for those coming into contact with the police for the first time, data recording in relation to sex is left dependent on the extent to which any individual officer believes a person conforms to ‘feminine’ ideals. We think that this is sexist and statistically incoherent.

The response also states if a person already known to the police as male acquires a full gender recognition certificate, their criminal history record will be changed to female. Again, this is statistically incoherent and likely to undermine data reliability. Should Scotland introduce legal gender recognition based on self-declaration, these risks will increase further.

Isla Bryson and Andrew Miller cases

The PS response did not reflect on the recent Bryson and Miller cases, both of which show an organisation that treats the wishes of violent male offenders as paramount.

While double-rapist Isla Bryson was arrested and recorded as male, he was *allowed* to be processed in court as a woman. Andrew Miller ([charged](#) with abduction, sexual assault and other offences), who was known locally to use a woman's name and to have dressed 'as a woman', was recorded all the way from arrest onwards as male *at his own request*.

The PS submission did not address the statistical or ethical implications of either case, nor acknowledge it was Miller's *own decision*, not their own stereotype-based policies, that led to his being recorded as a male charged and convicted of sexual assault.

As we have [previously argued](#), while the PS statement remains technically correct (since Bryson declared a trans identity after being charged) the case reveals the inherent instability in police recording practices and statistical outputs. Had Bryson claimed a trans identity ahead of being charged his offences, these would have been recorded as committed by a woman. It should be obvious that this is a misguided approach to data collection.

Institutional sexism and misogyny

Chief Constable Iain Livingstone recently stated that PS was [institutionally sexist and misogynist](#). We think it is difficult to think of a more sexist or misogynistic policy than one that prioritises the feelings of men charged with rape or attempted rape over predominantly female victims. If PS wishes to address the observations made by the Chief Constable, this is a good place to start.

Meanwhile, we are grateful to the Committee for pursuing this point with such determination over the past 18 months.

