

Equalities and Human Right Commission Scotland submission of 17 March 2022 PE1876/V - Accurately record the sex of people charged or convicted of rape and attempted rape

Thank you for letter addressed to Lynn Welsh Head of Legal Scotland for the Equality and Human Rights Commission seeking the Commission view on this petition. I am responding on behalf of the Commission.

Collection of data regarding protected characteristics

The Commission supports and encourages accurate data collection in relation to all protected characteristics, including sex.

It is for all bodies collecting data to ensure they do so lawfully. Any public body collecting data, including Police Scotland, should have a clear and transparent policy relating to the data they collect and the use they put it to. Such a policy should be equality impact assessed to ensure that it is non-discriminatory, that it advances equality of opportunity, and fosters good relations in line with the needs of the Public Sector Equality Duty. The collection of data must be necessary and proportionate, and ensure that privacy rights are not breached.

Proportionality means that where a body carries out a number of functions, the data they collect and the way it is collected will vary, depending on the purpose the data collected is intended to serve. So, for example, Police Scotland may collect information on the protected characteristics of those to whom they are providing a service, or who are the victims of crime, differently from those charged with serious offences.

'Accurately recording' the sex of people charged or convicted of rape or attempted rape

How best to record data on the sex of people charged or convicted of rape or attempted rape will depend on how this data is to be used. It is important that this is clearly defined and stated.

This notwithstanding, the Chief Statistician's recently produced guidance on "Sex, gender identity, trans status - data collection and publication: guidance" seems to us to provide some helpful information on an appropriate balance to be struck in relation to the recording of data in relation to those charged with or convicted of rape or attempted rape.

We hope you will find our response helpful in your consideration of this matter.