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Convener  
Equalities, Human Rights and Civil Justice Committee  
Scottish Parliament

By email  
26 October 2022

Dear Convenor,

### **STAGE 1 REPORT ON THE GENDER RECOGNITION REFORM (SCOTLAND) BILL**

We are a group of female survivors and mothers of female survivors of male sexual violence who were and/or currently are compelled to self-exclude from services offered under the Rape Crisis Scotland (RCS) umbrella because of its refusal to guarantee female survivors a female-only therapeutic environment.

We are writing to you to respond to the Stage 1 Report on the Gender Recognition Reform (Scotland) Bill (GRR Bill) and because we are concerned that a misunderstanding which was included in the SHRC oral evidence to you has been repeated in a recent article titled “Anti-trans activists forced Edinburgh Rape Crisis Centre into lockdown”.<sup>1</sup> We are particularly concerned that this misunderstanding may be repeated in the Stage 1 debate and wish to set the record straight with our letter.

#### A note on terms used throughout this letter

We use the terms “men” and “women” in line with the definitions of the Equality Act 2010 (EqA), referring to biological sex, that is males and females respectively. To avoid all misunderstandings about which sex we are referring to, we use the term “men with the protected characteristic of gender reassignment” to refer to male members of the trans community. As no transition is required to be protected under this characteristic and as RCS told us they accept a man is female based on no more than a verbal declaration, this term includes those making a mere verbal statement of identity, those who have fully transitioned medically and anyone in between.

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<sup>1</sup> A. Ramsay, ‘Anti-trans activists forced Edinburgh Rape Crisis Centre into lockdown’, openDemocracy, [website], 17/10/2022, <https://www.opendemocracy.net/en/5050/trans-scotland-mridul-wadhwa-for-women-scotland/> [Accessed 20/10/2022].



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## 1. On the difference between trans-inclusive policies

During Session 6 of oral evidence hearings, Barbara Bolton, speaking as Head of Legal and Policy for the Scottish Human Rights Commission, stated:

*I will come back quickly on that by reminding the committee of the evidence from Rape Crisis Scotland, which was that it has been running a trans-inclusive service for 15 years and it does not believe that people are self-excluding.<sup>2</sup>*

The position taken on self-exclusion by Sandy Brindley, speaking as Chief Executive of Rape Crisis Scotland, is given in paragraph 453 of the Stage 1 Report:

*When asked about self-exclusion, Sandy Brindley of RCS said “Our services have been trans inclusive for 15 years, and this issue has come up very recently, probably triggered by the debate around the bill. The number of survivors and women who use our services increases every week—there has definitely been no reduction in demand.”<sup>3</sup>*

We were astonished to read either statement and want to draw the Committee’s attention to the fact that Ms Brindley is treating three quite different approaches as though they were one single approach, leading to the mistaken assertion included in Ms Bolton’s oral evidence that there is no evidence that self-exclusion is happening in Scotland.

There are several different ways organisations working in the Violence Against Women and Girls (VAWAG) sector can operate a trans-inclusive policy:

1. Providing a service to men with the protected characteristic of gender reassignment alongside a separate female-only service, staffed entirely by women. (Restricted access, restricted staffing)
2. Including men with the protected characteristic of gender reassignment within the service originally provided for women only, staffed entirely by women. (Open access, restricted staffing)
3. Including men with the protected characteristic of gender reassignment within the service originally provided for women only and staffed by women as well as men with the protected characteristic of gender reassignment. (Open access, open staffing)

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<sup>2</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 21 June 2022*, (Session 6), column 44, <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13837>, [Accessed 20/10/2022].

<sup>3</sup> Equalities, Human Rights and Civil Justice Committee, *Stage 1 Report on the Gender Recognition Reform (Bill) Scotland*, (Session 6), 6/10/2022, p.70 para.453, <https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRCJ/2022/10/6/d81c72da-4070-4355-aacb-cc58d9c1bc08/EHRCJS062022R08.pdf>, [Accessed 25/10/2022].



The Committee failed to ascertain which kind of trans-inclusive policies Ms Brindley was referring to and failed to ask whether it had adopted one that allowed it to continue to meet the needs of female survivors for a female-only therapeutic environment.

The original trans-inclusive policy adopted by Scottish Women's Aid (SWA) for instance was of the first kind, as confirmed to us by its author.<sup>4</sup> We would see no problem with such a policy, as it is our firm belief that VAWAG sector organisations who wish to provide services to men with the protected characteristic of gender reassignment can do so without sacrificing the female-only therapeutic environment needed by the women and children who suffered male violence.

Rape Crisis Scotland abandoned both the first and second kind of trans-inclusive policy at some point before 2014, **which was the year when one of our members was compelled to self-exclude from Rape Crisis Glasgow after it refused to guarantee a female counsellor for her child.** Documents produced by and for Rape Crisis Scotland published until then repeatedly emphasise the need of female survivors for a female-only service or female staff.

In 2015, it included on its website *Stronger Together: Guidance for women's services on the inclusion of transgender women.*<sup>5</sup> For the first time this publicly framed the distress of female survivors at the presence of men with the protected characteristic of gender reassignment within the female-only therapeutic environment as disrespectful and in need of re-education like homophobes and racists:

*In the circumstance that other service users say that they are uncomfortable sharing a service with a trans woman, this is rightly seen as no reason for the trans woman to be moved. The service has to make any decision about provision based on good practice rather than prejudice. In this situation, we would work to educate other service users – much in the same way that we would if we received comments regarding other service user's ethnicity, religious affiliation or sexual orientation.*<sup>6</sup>

The guidance also erroneously advises women's services that the Equality Act 2010 requires women-only services to be inclusive of men with the protected characteristic of gender reassignment.<sup>7</sup> The EqA does the opposite – it allows them to be exclusive.

Following a public outcry in 2019 at such an unacceptable position taken about the distress of female survivors by the very service funded to support them, RCS removed this document from its website.

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<sup>4</sup> This was a private meeting in 2019 with a woman who wishes to remain anonymous for fear of reprisals.

<sup>5</sup> 'Stronger Together: Guidance for women's services on the inclusion of transgender women', LGBT Youth Scotland, September 2015, [https://www.lgbtdomesticabuse.org.uk/media/1167/stronger\\_together\\_-\\_september\\_2015.pdf](https://www.lgbtdomesticabuse.org.uk/media/1167/stronger_together_-_september_2015.pdf), [Accessed 20/10/2022].

<sup>6</sup> Ibid, p.14

<sup>7</sup> P. 3



That it has not, however, changed its view about our distress and our need for a female-only therapeutic environment has been made clear by repeated public statements made by the current manager of Edinburgh Rape Crisis Centre (ERCC). In one interview<sup>8</sup> in 2021, Mridul Wadhwa confirmed that Rape Crisis Scotland was aware that “large groups of survivors” were now self-excluding from its service because of its trans-inclusive policy. Another interview<sup>9</sup>, again acknowledging that a group of survivors are self-excluding, included the astonishing advice that survivors like us should “reframe their trauma” and should expect to be challenged about our “prejudice” against men with the protected characteristic of gender reassignment if we wanted to access the service.<sup>10</sup>

The latter interview is not only astonishing because of the attitude shown towards survivors expressing a need for a female-only therapeutic environment but also the ignorance revealed about how counselling works, that RCS’s National Service Standards mandate treating survivors very differently from what is stated here<sup>11</sup> and how survivors heal from trauma. That this is coming from the manager of one of Scotland’s biggest rape crisis centres is concerning.

*But I think the other thing is that **sexual violence happens to bigoted people** as well. And so, you know, it is not discerning crime. But these spaces are also for you. But **if you bring unacceptable beliefs that are discriminatory in nature**, we will begin to work with you on your journey of recovery from trauma. But please also **expect to be challenged on your prejudices**, because how can you heal from trauma and build a new relationship with your trauma, because you can’t forget, and you can’t go back to life before traumatic incident or traumatic incidents. And some of us never, ever had a life before traumatic incidents. But if you have to **reframe your trauma**, I think it is important as part of that reframing, having a more positive relationship with it, where it becomes a story that empowers you and allows you to go and do other more beautiful things with your life, you also have **to rethink your relationship with prejudice**.<sup>12</sup>*

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<sup>8</sup> J. Hatchet, ‘Mridul Wadhwa speaking at SayIt Sheffield. Transcript’, Jean Hatchet [website], <https://www.jeanhatchet.com/post/mridul-wadhwa-speaking-at-sayit-sheffield-transcript>, [Accessed 20/10/2022].

<sup>9</sup> *The Guilty Feminist*, Episode 267, 10/08/2021, <https://guiltyfeminist.com/episode/?episode=323>, [Accessed 20/10/2022].

<sup>10</sup> Please note that the “prejudice” referred to here includes the involuntary trauma reactions of female survivors to the presence of men who have the protected characteristic of gender reassignment.

<sup>11</sup> See for instance standard 1.1 b: “The organisation has clear values that are **survivor focused** and support a **trauma and gender informed** empowerment approach **where service users are treated with dignity and respect** within a culture of belief.” ‘Rape Crisis National Service Standards’, 2012, p. 7, [RCNSS-External-Version-Final.pdf \(forthvalleyrapecrisis.org.uk\)](https://www.rcnss.org.uk/external-version-final.pdf), [Accessed 20/10/2022].

<sup>12</sup> Transcript of *The Guilty Feminist*, Episode 267, provided on ‘The Real Crisis at Rape Crisis’, For Women Scotland [website], 10/08/2021, <https://forwomen.scot/wp-content/uploads/2021/08/Mridul-Wadhwa-Guilty-Feminist-transcript.pdf>, [Accessed 20/10/2022].



In counselling, the practice of "reframing trauma" is used to allow survivors to put their own reactions to being violated in a context that allows them to manage their feelings of guilt or shame. This technique can often be successfully used to stop a survivor blaming herself for what happened to her and instead allows her to understand that the responsibility lies with the perpetrator. In the context of a survivor who needs a female-only space to recover and who is worried because her involuntary trauma responses to men also happen when a man has the protected characteristic of gender reassignment, "reframing her trauma" would involve helping her to understand that this is a normal reaction based on her experience of male violence, and not rooted in bigotry or prejudice. That it isn't a rejection of any man's right to identify as he pleases, but a recognition of his sex, because a member of that sex class has previously violated her. And this is the reason why – in the context of female survivors of male violence – it does matter what sex other people present in the therapeutic environment are.

To be clear, female survivors are self-excluding from the Scottish rape crisis network because it operates the third kind of trans-inclusive policy – of open access and open staffing. Because this includes, without restriction, men with the protected characteristic of gender reassignment in what they need to be a female-only therapeutic environment. And they do so not because they have an issue with the protected characteristic of gender reassignment, but because this means that the service includes males in what should be a female-only service.<sup>13</sup>

There is a vast difference between a trans-inclusive policy that seeks to provide a specialist service to men with the protected characteristic of gender reassignment while maintaining the integrity of the female-only therapeutic environment we need to recover and the policy currently in use by Rape Crisis Scotland. The latter is compelling increasing numbers of vulnerable women to self-exclude from the service to protect themselves from harm.

The Committee would be well advised to take note of this difference.

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<sup>13</sup> The fact that almost all female survivors have a fear of males and cannot recover in their presence is well known across VAWAG sector organisations, not only through a substantial body of academic and clinical research, but also over 40 years' worth of frontline workers' experience. We provide details on the reasons for this under point [8. On the nature of self-exclusion](#) and [9. On the nature of trauma from sexual violence](#).



## 2. On the claim that the issue of self-exclusion has only come up very recently

Self-exclusion of female survivors is such a well-known issue that it was specifically referred to in the Equality Act 2010 Explanatory Notes, paragraph 740, to justify excluding men with the protected characteristic of gender reassignment from the female-only therapeutic environment:

*A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.<sup>14</sup>*

This pays due regard to the fact that female survivors overwhelmingly need a female-only therapeutic environment to recover from male violence. An extensive body of research into the needs of female survivors which highlights this fact is easily available as are testimonies from frontline workers in the VAWAG sector, some of whom attended a meeting in the Scottish Parliament to brief MSPs on this in 2018.

Self-exclusion was also raised as a direct and harmful consequence of trans-inclusive policies by several submissions to the *Transgender Equality Inquiry* held by the Women and Equalities Committee of the UK Parliament in 2015. Of particular interest is a submission by a Scottish survivor of domestic abuse detailing her experience of self-exclusion from Scottish VAWAG sector organisations because of their trans-inclusive policies.<sup>15</sup>

Self-exclusion was again raised as a direct and harmful consequence of legalising self-declaration of sex at a public meeting held in Edinburgh on 14 February 2018, both by speakers and members of the audience sharing their personal experiences of self-exclusion and the harm done to them by trans-inclusive policies.<sup>16</sup>

This was also when another member of our group was compelled to self-exclude from RCS services, despite being in crisis and continually worsening over the next 18 months.

In September 2018, a survey<sup>17</sup> carried out by *Women and Girls in Scotland* found that 71% of the 2000 respondents would not feel comfortable accessing women's services if they would encounter men with the protected characteristic of gender reassignment in the

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<sup>14</sup> Equality Act 2010 Explanatory Notes, 2010, <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/20/7>, [Accessed 20/10/2022].

<sup>15</sup> J. Mearns, 'Written evidence', 03/11/2015, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/written/19387.html>, [Accessed 20/10/2022].

<sup>16</sup> 'A record of Women's Place UK Meetings', Women's Place UK [website], 27/10/2021, <https://womansplaceuk.org/2021/10/27/record-womans-place-uk-meetings/>, [Accessed 25/10/2022].

<sup>17</sup> 'Female Only Provision: A Women and Girls in Scotland Report', Women and Girls in Scotland [website], 3/06/2019, [https://secureservercdn.net/160.153.138.217/unb.7ef.myftpupload.com/wp-content/uploads/2019/09/WGS\\_female\\_only\\_provision\\_report.pdf](https://secureservercdn.net/160.153.138.217/unb.7ef.myftpupload.com/wp-content/uploads/2019/09/WGS_female_only_provision_report.pdf), [Accessed 20/10/2022].





therapeutic environment. Many respondents explained why they are already self-excluding from services and spaces operating on a fully trans-inclusive basis to protect themselves.

As we make no claims about what percentage of survivors would self-exclude from women's services, it is irrelevant to our argument that this was a self-selected survey and that it is not representative of all survivors. All that matters is that out of 2000 women asked about self-exclusion from services and spaces, only 20% said they would feel comfortable accessing a service which was fully inclusive and only 17% stated they would happily use women's facilities which were fully inclusive. This shows that self-exclusion is not a hypothetical risk and that it is not a rare response to female-only services and spaces including men with the protected characteristic of gender reassignment.

Thereafter, this group continued to engage with RCS to highlight the issue of self-exclusion over the last few years, independent of any parliamentary proceedings and independent of media coverage.

In 2021, stating that they had been contacted by survivors who were self-excluding, they sought to provide a definitive answer to survivors who need a female-only therapeutic environment to recover. They first approached RCS who advised them that it was local centres they needed to ask. And so, their question, put to each of the 17 local rape crisis centres across Scotland, was "if their services could be accessed on a **female-only** basis by those women who need that".<sup>18</sup> They emphasised that they were not asking for support to be withheld from any men and boys, including those with the protected characteristic of gender reassignment.

This engagement culminated in a post<sup>19</sup> on the RCS website denouncing as "fearmongering" and "coordinated and harmful claims" as well as "dis- and misinformation" this attempt by a survivor-led women's rights group to gain clarity on the issue. RCS further went on to state:

*Women only spaces are a core principle of the Rape Crisis movement [...] These spaces include women with a diverse range of lived experience and views, including trans women and girls.*

That is not an answer to the question asked.

There is more evidence available of female survivors being compelled to self-exclude from women's services and of many such survivors raising concerns about harmful trans-inclusive policies in the context of women's aid services too.

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<sup>18</sup> Women and Girls in Scotland (@wgscotland), 'On 23 July we wrote to...', Twitter, 8/08/2021 [https://twitter.com/WG\\_Scotland/status/1424334290586849281](https://twitter.com/WG_Scotland/status/1424334290586849281), [Accessed 20/10/2022].

<sup>19</sup> Working for Survivors, Rape Crisis Scotland [website], 9 August 2021, <https://www.rapecrisisscotland.org.uk/news/news/working-for-survivors/>, [Accessed 20/10/2022].





The Committee would be well advised also to read the *Response to Stonewall*<sup>20</sup>, written by FOVAS, another group of survivors raising this issue. This refutes claims made by Stonewall in a 2019 report that when it interviewed VAWAG sector workers it found no evidence that trans-inclusive policies were causing harm to female survivors. As FOVAS explains in its response, Stonewall could make this claim only by omitting evidence to the contrary provided by other frontline workers.

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<sup>20</sup> 'Response to Stonewall', FOVAS [website], 02/07/2019, <https://fovas.wordpress.com/response-to-stonewall-2/>, [Accessed 20/10/2022].



### 3. On the role of Rape Crisis Scotland

Scottish Borders Rape Crisis Centre describes the background and history of RCS as follows:

*Rape Crisis Scotland (RCS) is the national office for rape and sexual abuse centres throughout Scotland and forms part of a global Rape Crisis movement. It was set up in 2003.*

*Until late 2006, local Centers in Scotland which were affiliated to Rape Crisis Scotland, formed the Scottish Rape Crisis Network (SRCN). In 2006 it was agreed to incorporate the SRCN title into the generic Rape Crisis Scotland name. This name now constitutes both the Scottish National Office and also the Network of member Centers.*

*Each member Centre of Rape Crisis Scotland operates independently of the others. Some Centers still operate as collectives, while others, including SBRCC, have management structures. Currently, each Centre receives some Scottish Government funding through RCS, but is also responsible for generating other required funding.<sup>21</sup>*

Given that RCS distributes funding to local centres and is speaking publicly on behalf of the entire network, it is evident that the national office has considerable influence on local centres when it comes to their public stance on policies. Ms Brindley purports to speak for the entire network when she denies that there have ever been any problems with RCS's trans-inclusive policies. Neither the media nor the Scottish Government nor this Committee make any distinctions between the national office and local centres and their policies either. RCS is relied on at national level as authoritative source of information on these services nationwide.

When survivors try to raise their concerns about Rape Crisis Scotland's trans-inclusive policy and its public support for enshrining the self-declaration of sex in law, we are often told that RCS is not responsible for the service delivery of counselling sessions, support groups and advocacy work, but only the national helpline. The 17 local centres within its network, we are told, operate independently and make their own decisions about access.

When survivors try to raise their concerns with local centres, however, they are often told that policy is set by the national office (RCS). Frontline workers from these centres, who without exception state they want to remain anonymous for fear of reprisals at work, have also spoken up at women's rights meetings, a meeting in the Parliament<sup>22</sup> and on social

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<sup>21</sup> 'About us', Scottish Borders Rape Crisis Centre [website], <http://www.scottishbordersrapecrisis.org.uk/about-us/>, [Accessed 20/10/2022].

<sup>22</sup> This meeting was hosted by Joan Mc Alpine MSP who invited Canadian women's rights campaigner Megan Murphy to a meeting with MSPs on 22 May 2019. Ms Murphy detailed the devastating consequences Canada's Bill C-16, which enshrined self-declaration of sex in law, had on its most vulnerable and marginalised women – women in prison, survivors of sexual violence, including indigenous survivors and working-class women – and on the VAWAG services that support them. Present at this meeting were frontline workers from Scotland's women's services also sharing their concerns about RCS's policy. The meeting was mentioned in 'Trans group protests over 'bigot's' talk', *The Times*, 23/05/2019, [www.thetimes.co.uk/article/trans-group-protests-over-bigot-s-talk-3qgqcdwfh0](http://www.thetimes.co.uk/article/trans-group-protests-over-bigot-s-talk-3qgqcdwfh0), [Accessed 25/10/2022].



media to say that local centres were not consulted when RCS decided to endorse and promote reform of the Gender Recognition Act (GRA) to move to the self-declaration of sex and that open opposition to the national office's stance may lead to negative consequences for the worker or the local centre itself.

We are now in a position where local centres may indeed provide survivors who need this a female-only therapeutic environment when they come to ask for help, but, because those centres fear reprisals from trans rights activists who oppose the right of survivors to a female-only service, they will not say so publicly, including when approached for the first time by women seeking reassurances before taking the contact further. What this means in practice is that a vulnerable survivor who cannot recover in a mixed-sex environment has to overcome an additional barrier to access – her fear that she will be judged prejudiced, bigoted or transphobic or that she will be denied help if her local centre will not offer what she needs at the point of service delivery.<sup>2324</sup> The fears of survivors are one of the known barriers to access, and should therefore never just be dismissed as unfounded or about a merely theoretical risk.

Survivors like us, who do not feel capable of enduring that reaction, are thus compelled to self-exclude as are survivors who know they cannot recover in a mixed-sex therapeutic environment.

Even if a centre could provide the help she needs, a survivor may never find out. A centre providing such support may be unwilling to say that clearly to a new unknown caller, for fear of attracting unwelcome attention. Staff report that they fear calls asking this question not from survivors but from activists who will target them if they give the “wrong” reply.<sup>25</sup>

We are of the opinion that RCS wields considerable influence, both in the national debate around the GRR Bill, and with local centres. We also believe that RCS has neglected an important part of its duties as the national office, which is to advocate for survivors to be heard when they talk about their experiences and their needs for recovery, to “work to address prejudicial attitudes towards female survivors of sexual violence on an agency, societal and institutional level”.<sup>26</sup>

When it comes to this debate however, and the needs of female survivors of male violence for a female-only therapeutic environment that excludes all men, even those with the

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<sup>23</sup> This worry leading to self-exclusion is not a theoretical risk. We have spoken to survivors who this has happened to and who, like us, are very worried about the public statements made by Mridul Wadhwa, CEO of ERCC, criticising survivors who object to the presence of men with the protected characteristic of gender reassignment in the female-only therapeutic environment as transphobic, prejudiced and bigoted. We have personally spoken to several other survivors who felt compelled to self-exclude afterwards. See further discussion of these remarks under [1. On the difference between trans-inclusive policies.](#)

<sup>24</sup> For an example where ERCC refused to reassure a traumatised survivor on its waiting list who was worried if she would still receive a female counsellor after the remarks of its CEO and who enquired about this privately, see the following Twitter thread: Leya (@\_leyanelle\_), ‘The @ONS told us this week...’. Twitter, 30/11/2021, [https://twitter.com/\\_Leyanelle\\_/status/1465635994733096964](https://twitter.com/_Leyanelle_/status/1465635994733096964), [Accessed 25/10/2022].

<sup>25</sup> We heard this directly from the manager of a women's aid service in 2019, who shared their experience of this happening at local level.

<sup>26</sup> ‘About us’, Scottish Borders Rape Crisis Centre.



protected characteristic of gender reassignment, this duty seems to be forgotten. The national office cannot even bring itself to acknowledge our concerns, let alone to defend our right to openly and safely express our own needs and experiences by asking the public and trans rights activists not to denigrate, threaten or attack survivors for speaking out.



#### 4. On our meeting with Rape Crisis Scotland in 2019

On 25 October 2019, some of us met with Sandy Brindley, Chief Executive of Rape Crisis Scotland and Caroline Burrell, the then Manager of Edinburgh Rape Crisis Centre.<sup>27</sup>

Our stated purpose was to seek reassurance that female survivors of male sexual violence would not encounter men, including men with the protected characteristic of gender reassignment, in the female-only therapeutic environment and to share our concerns about including any men, including those with the protected characteristic of gender reassignment, in this environment. We also intended to suggest several common-sense compromises to ensure that female survivors who depend on this for their recovery can be guaranteed a single-sex service in the future (should this not currently be the case).

By this point, leading voices within the Scottish rape crisis network had condoned or amplified the voices of organisations who threaten attendees of women’s rights meetings, who sought to silence the voices of survivors and who called them “transphobes” and “bigots”.<sup>28</sup> A blog on International Women’s Day in 2017 from *Forth Valley Rape Crisis Centre* described it as “dangerous and discriminatory for feminists to debate the inclusion of trans\* women within the feminist movement.”<sup>29</sup> (By which, as the text makes clear, they refer to the inclusion of men with the protected characteristic of gender reassignment in the female-only therapeutic environment as survivors and staff.)

RCS was also publicly advocating for the inclusion of men with the protected characteristic of gender reassignment in female-only service provisions, as can be seen from its submissions to UK and Scotland consultations on Gender Recognition Act Reform. It also still had on its website the previously mentioned policy document which frames the discomfort of female survivors at encountering such men in what they expect to be a female-only service as disrespectful and in need of re-education like racists or homophobes.<sup>30</sup>

That’s why this meeting was a distressing prospect for all of us and why we had welcomed RCS’s offer to arrange for a counsellor to be on-site in case any of us needed support. As this offer was withdrawn shortly before the meeting, some of the women who had committed to be there were forced to prioritise their well-being over attending the meeting.

None of us had met before, and because the meeting facilitator had kept our identities in strict confidence before the meeting, we did not know each other’s names either.

For those who did go, what followed was a traumatising experience.

We attended this meeting in good faith and in the belief – as our meeting facilitator was advised in an email just days before the meeting – that we would be reassured that there is

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<sup>27</sup> The meeting was arranged on our behalf by a third party who had become aware of the concerns of self-excluding survivors and hoped a face-to-face discussion between a few of us and RCS could help address those. That person attended but took no substantive part in the discussion or in the follow up action described here.

<sup>28</sup> Susan (@scottishwomen), It is inappropriate for a Rape Crisis Centre to..., 7/05/2019, [https://twitter.com/scottish\\_women/status/1125820494480064513](https://twitter.com/scottish_women/status/1125820494480064513), [Accessed 20/10/2022].

<sup>29</sup> International Women’s Day 2017, Forth Valley Rape Crisis Centre [website], 8/03/2017, <https://www.forthvalleyrapecrisis.org.uk/news/blog/international-womens-day-2017/>, [Accessed 20/10/2022].

<sup>30</sup> ‘Stronger Together: Guidance for women’s services on the inclusion of transgender women’.



a path for female survivors to access a female-only therapeutic environment, as it is allowed in law. We assumed that this path was not publicised, but nonetheless available, at least on request. Instead, we were left acutely distressed that this is not the case.

It became clear after the meeting had begun, that RCS had also invited to attend an activist senior academic, who was permitted to take a leading role in the meeting on the application of the Equality Act to rape crisis services.

We were told that female survivors did not have any rights in law at all to expect a female-only service; that men with the protected characteristic of gender reassignment could never be excluded from a female-only service, regardless of whether they had a GRC or not and that the sex-based exceptions in the Equality Act 2010 could not be applied because of a lack of case law confirming that those were legal. They also stated that RCS needed to balance the needs of female survivors with the employment rights of men with the protected characteristic of gender reassignment, and that excluding the latter from providing counselling to female survivors was not an appropriate means to a legitimate aim.

We were informed that a verbal statement of identity was sufficient for inclusion of any man with the protected characteristic of gender reassignment within the female-only therapeutic environment. A change of name or pronoun, let alone appearance or any kind of medical transition, was not necessary.

We were further informed that a woman who insisted on a female counsellor could find herself confronted by a man with the protected characteristic of gender reassignment, including those without a GRC.

We shared individual traumatic experiences in seeking unsuccessfully to obtain unambiguously single-sex support and were disappointed that these did not elicit any undertakings to look further and find ways to avoid these being repeated.

We explained that traumatised female survivors frequently suffer from hypervigilance, which means they read males as male regardless of presentation (even when others do not). We pointed out that this was purely a survival skill developed by many female survivors out of necessity. And that the presence of males, regardless of identity, prevents us from reaching a psychological state in which recovery is possible. We shared examples of other women who had told us they feared that objecting to the presence of any male person would see them excluded from the service and examples of women who were compelled to self-exclude from services, because the presence of males was re-traumatising to them.

In response, the pain suffered by men with the protected characteristic of gender reassignment on being rejected by female survivors was raised by RCS. Trauma-based care should however not ask female survivors to suppress their own needs for the benefit of males.

A fuller account of this meeting and a copy of the email we sent to Ms Brindley is included in [Appendix E](#), which further explains why this meeting had such an impact on us.

After our meeting, as we had been left severely distressed by what we had been told, we decided that we had to keep trying to raise our concerns in the hope that we would eventually ensure that female survivors who needed a female-only therapeutic environment



to recover would have their need met, and would be offered this when accessing the service, so that no woman in crisis would have to be scared of expressing her need for this.

As three of us had been taking notes throughout the entire meeting<sup>31</sup>, we decided to start by putting our notes together and writing a narrative account<sup>32</sup> of the meeting and sent it to Ms Brindley asking her to correct any misunderstandings we may have had about RCS's policies and positions.

Ms Brindley disputed the veracity of our account, criticising it as subjective, inaccurate and written for a certain purpose. When we requested clarification as to which of RCS's policies and positions we had misunderstood, we received no answer. As should be clear to any observer, our account of what we were told in this private meeting is entirely consistent with the position taken by senior members of RCS publicly.

In continuing the engagement, we wanted to find common ground and areas of compromise to achieve our aim of ensuring that our needs are met by the service, but we found the responses from RCS could not be built on to achieve that aim; we withdrew from the engagement two months later. The accusation that we have a hidden agenda has been as hurtful as it has been untrue. We have been upfront about our intentions from the beginning, and these intentions remain the same three years later – to ensure that female survivors can access a female-only therapeutic environment and can do so without fear of being labelled bigoted or prejudiced.

For the avoidance of doubt, here is what we expect from RCS:<sup>33</sup>

- **All female victims of sexual violence shall be entitled to and offered as standard a female-only service from RCS and its centres. This shall be communicated publicly by RCS and all the centres within its network, on its websites and media channels.**
- **No child victim shall ever again be refused a female counsellor by RCS.**
- **There shall be no publication or promotion of materials denigrating female survivors who express their need for female-only provisions, not on RCS websites, its media channels and other publications nor by its staff.**
- **There shall be no amplification of the voices of those who condone, promote or engage in hatred and violence against women who argue for female-only services on RCS websites, media channels and other publications or by its staff.**

Considering the most recent RCS statistics from 2020/21, which show that over 90% of survivors accessing the service are female<sup>34</sup>, and the fact that the vast majority of workers and volunteers continue to be female, it is self-evident that the refusal to guarantee a female-only service to female survivors is not driven by service limitations but by the ideological beliefs of its management.

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<sup>31</sup> Openly, with pen in one hand and notebooks of various sizes open on our laps.

<sup>32</sup> We chose to write a narrative account, because it was important to us to capture not only the content of the meeting, but also how it unfolded, how we interacted with RCS.

<sup>33</sup> RCS here stands for the umbrella organisation and the local centres within its network.

<sup>34</sup> 'Annual Report 2020-21', Rape Crisis Scotland, [RCS-Annual-report-2020-2021-web-pages.pdf](https://www.rapecrisisscotland.org.uk/wp-content/uploads/2022/01/RCS-Annual-report-2020-2021-web-pages.pdf) ([rapecrisisscotland.org.uk](https://www.rapecrisisscotland.org.uk)), [Accessed 20/10/2022].





This directly conflicts with one of the basic tenets of the Scottish Government’s excellent trauma-based training framework<sup>35</sup> which is best summed up like this: “Staff/volunteers are aware of their own personal beliefs and prejudices and put these aside in order to respond to service users respectfully and non-judgementally”.<sup>36</sup> This is a direct quote from the 2012 version of the National Service Standards of Scotland’s rape crisis services. The updated standards<sup>37</sup> adopted in 2018 omit this important principle, even though this forms a cornerstone of the professional ethics of all caring professions.

The public statements made by Ms Brindley and other senior figures of RCS, as well as their policy of including men with the protected characteristic of gender reassignment as both survivors and staff within the female-only therapeutic environment, their refusal to hear what survivors are telling them about their needs, their repeated denials of any problems with their policy even after we met face-to-face to share our lived experience of its negative impact on survivors and the adamant refusal to be honest with survivors and those speaking on their behalf are in our view also irreconcilable with RCS’s National Service Standards.

We believe that RCS is in violation of its core standard when it refuses to acknowledge our need for a female-only therapeutic environment. We question whether RCS can meet a total of 28 out of its 51 individual National Service Standards, given this refusal.<sup>38</sup>

We do not have the capacity to survey all local centres about their policies but will say that if they work in line with what we were told at the meeting and what other members of RCS have stated publicly, it is our opinion that they cannot avoid coming into conflict with those National Service Standards.

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<sup>35</sup> ‘National Trauma Training Program’, Transforming Psychological Trauma [website], <https://transformingpsychologicaltrauma.scot/>, [Accessed 25/10/2022].

<sup>36</sup> ‘Rape Crisis National Service Standards’, 2012, p. 14, standard 5.5, [RCNSS-External-Version-Final.pdf](https://www.forthvalleyrapecrisis.org.uk/rcnss-external-version-final.pdf) ([forthvalleyrapecrisis.org.uk](https://www.forthvalleyrapecrisis.org.uk)), [Accessed 20/10/2022].

<sup>37</sup> ‘Summary Information for Partners, Funders and Commissioners’, 2018, [RCNSSsummaryexternaldoc19-1.pdf](https://www.rapecrisisscotland.org.uk/rcnsssummaryexternaldoc19-1.pdf) ([rapecrisisscotland.org.uk](https://www.rapecrisisscotland.org.uk)), [Accessed 20/10/2022].

<sup>38</sup> Ibid, 1.1b and d, 1.3 a-d, 1.4 a and b, 2.1 a and c, 2.2 a-c, 2.3 a-d, 2.4 a-c, 3.1 a-d, 4.2 a, b, d and 4.4 b.



## 5. On the claim that concerns are being raised now only because of the debate

It is true that our group has remained silent about our meeting with RCS for three years and that we are only now going public about our experience. But Ms Brindley is misrepresenting the situation by claiming that concerns are only being raised now. This has been happening for more than eight years, after the third kind of trans-inclusive policies were adopted in VAWAG sector organisations across Scotland, because this negatively impacted female survivors almost immediately.

We have been extremely reluctant to take this step and tried hard for the last three years to raise our concerns in other ways about the needs of female survivors not being met, about the issue of self-exclusion and about the framing of our distress at the presence of men with the protected characteristic of gender reassignment in women's services and spaces as bigotry, hatred, prejudice or transphobia. Members of our group worked with other groups campaigning to uphold women's sex-based rights to add our voices there. We also attempted to raise our concerns by contributing submissions to government consultations on GRR, on funding for the VAWAG sector and others as well as writing to MSPs and MPs.

We did so at great personal cost at a time when we should have focused on our recovery from trauma. And it has been retraumatising to have to explain what the impact of sexual violence has been on our lives, to beg to be heard and to have to plead for understanding in a debate where even the most tempered of expressions of opposition to enshrining the self-declaration of sex in law is met with threats from extreme activists and indifference from our government.

We have remained silent also because Ms Brindley categorically forbade us from sharing our account of the meeting on no less than three occasions, making a number of claims about us, our intentions and the accuracy of our account that are easily countered.<sup>39</sup> Our silence has allowed Ms Brindley and other RCS members to deny that self-exclusion is an issue and assert repeatedly on social media, in the press, its own website and in Parliament that their trans-inclusive policy has caused no problems for female survivors.

We have respected Ms Brindley's request not to share our account of the meeting publicly until now, but in conscience we no longer feel able to do so following her latest statement published in the openDemocracy article referenced above.

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<sup>39</sup> We are willing to show the full email exchanges to the Clerk of the Committee, but have held back from including it here, on the assumption that Ms Brindley's permission would be needed to publish her part.



## 6. On the claim that survivors are misinformed and being fed deliberate misinformation

In “Anti-trans activists forced Edinburgh Rape Crisis Centre into lockdown”, Ms Brindley is quoted as follows:

*These attacks on Rape Crisis Scotland risk causing real damage, says Brindley.*

*“Survivors are being fed deliberate misinformation to make them fearful about accessing our services and that really, really worries me,” she said. “Because what we know is that survivors describe our services as lifesaving. And to think that people are being put off accessing them because of a misrepresentation of what those services are – that really worries me and that really upsets me.”<sup>40</sup>*

As it was Ms Brindley herself who confirmed our worst fears about RCS refusing to guarantee a female-only therapeutic environment to female survivors, even when they specifically request it, believing that they cannot legally exclude any men with the protected characteristic from counselling female survivors, it is astonishing to read this statement.

Assuming Ms Brindley herself, together with Prof Cowan and Ms Burrell, described accurately the understanding of the legal framework being applied in rape crisis services in Scotland, we can categorically state that she is mistaken in her assertion.

The claim that grassroots women’s rights groups in Scotland are spreading misinformation about RCS and that this is “dissuading people from accessing support”<sup>41</sup> is mistaken. It is survivors themselves who first raised concerns about the inclusion of men with the protected characteristic of gender reassignment in the female-only therapeutic environment. They did so alongside frontline staff frustrated by the umbrella organisations’ unwillingness to listen to their concerns about the impact including men with the protected characteristic of gender reassignment had on female survivors. Some of these women went on to found, co-found or join the more than a dozen new Scottish grassroots women’s rights organisations that have sprung up in defence of women’s rights to single-sex provisions, others spoke out at public meetings on reform of the Gender Recognition Act, such as the 14 February 2018 meeting mentioned above.

A number of these survivors and frontline workers attended a private meeting in the Scottish Parliament where they shared their concerns directly with MSPs.<sup>42</sup> Frontline workers told the MSPs present that 99% of the women and children they support have a fear of males and need a female-only space to recover in.

Even more survivors, many on Scottish rape crisis services waiting lists, contacted and continue to contact, the new grassroots organisations for help with asking their local rape crisis centre if they can access the female-only service they need. They are too scared to do this in person, because they worry – and with good reason as we see from the public statements<sup>43</sup> made by senior leadership – that this will see them considered as bigoted,

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<sup>40</sup> Ramsay, openDemocracy.

<sup>41</sup> ‘Working for survivors’, Rape Crisis Scotland.

<sup>42</sup> The meeting was held in May 2019, as detailed in footnote 20.

<sup>43</sup> For examples of this see the discussion under [1. On the difference between trans-inclusive policies.](#)



transphobic or prejudiced at best and refused help at worst. Survivors contact RCS when they are in crisis. Being thought of in this way by the very service set up to support us exceeds our capacity to cope.

Survivors do not exist in a vacuum. We participate in public life and for many of us social media is a lifeline. We cannot help but be aware of RCS's public rhetoric against those advocating for a female-only therapeutic environment that excludes all men, including those with the protected characteristic of gender reassignment. Especially not after their opposition to the six-word amendment to the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill. And it is the refusal of RCS to confirm whether they offer female survivors a female-only therapeutic environment that compels us to self-exclude from the service. **Women's groups writing about their attempts to get an answer to that question are expressing the fears of survivors, not fearmongering about services.**

Regarding our group's opposition to GRR seeking to enshrine self-declaration of sex in law, I have personally looked with great care at the interaction between the EqA and the GRA. I have personally listened to the experiences of women negatively affected by self-id laws in other jurisdictions. I have personally collected examples of abuses of the latter internationally as revealed in court judgements and mainstream media (which I have shared in various personal submissions to government consultations on the issue).

After spending years educating myself on this issue and experiencing personally the devastating effect that trans-inclusive policies can have on female survivors, I have concluded that enshrining the self-declaration of sex in law will be detrimental to the rights and safeguarding of women and children. That is why I stand in opposition to the GRR Bill and why I am part of a group raising concerns about this. Not because I have listened to misinformation, deliberate or otherwise. This is true also for the other members of HEAL Survivors Group.

Frankly, the suggestion that survivors have been manipulated into self-exclusion and opposition to GRR by "anti-trans actors"<sup>44</sup> is condescending and reprehensible nonsense.

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<sup>44</sup> Ramsay, openDemocracy.



## 7. On the claim that internationally there has been no widespread evidence of self-exclusion

In paragraph 459, the Stage 1 Report quotes Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, as follows:

*The Cabinet Secretary reiterated SHRC's position that, internationally there has been no evidence of widespread self-exclusion.<sup>45</sup>*

The Cabinet Secretary is mistaken both in her assertion about what the SHRC stated in oral evidence and about the nature of self-exclusion.

In the meeting on 21 June 2022,<sup>46</sup> neither member of SHRC made any statements about self-exclusion internationally. They can therefore not have asserted that "internationally there is no evidence of widespread self-exclusion."

The discussion focused entirely on self-exclusion across the UK, because that is what a witness<sup>47</sup> in the meeting held on 31 May 2022 had been referring to. There was also a lengthy discussion of self-exclusion, again across the UK, in the meeting held on 14 June 2022.<sup>48</sup> Barbara Bolton and Cathy Asante, both speaking for SHRC, were then invited to respond to this in the meeting held a week later. They did state that "the commission has not seen any objective evidence of those matters arising in society."<sup>49</sup> This is only in the context of self-exclusion in the UK.

The Committee would be well advised to ensure that statements ascribed by one witness to another are accurate lest it run the risk of perpetuating mistakes by including them in its report as has happened here.

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<sup>45</sup> *Stage 1 Report*, p.70.

<sup>46</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 21 June 2022*.

<sup>47</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 31 May 2022*, (Session 6), <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13796>, [Accessed 20/10/2022], Susan Smith in columns 5, 20 and 44.

<sup>48</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 14 June 2022*, (Session 6), <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13823>, [Accessed 20/10/2022], on self-exclusion from rape crisis services see Naomi Cunningham in column 33.

<sup>49</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 21 June 2022*, column 34.



## 8. On the nature of self-exclusion

Following the discussion around self-exclusion in the Committee, one would be forgiven to conclude that this is a rare phenomenon amongst female survivors of sexual violence. It was characterised as a theoretical risk, and there were, at least according to some witnesses, no signs of it happening in Scotland. We have already addressed the latter claim above, but to help the Committee and MSPs to better understand the issue, we want to clarify what self-exclusion is and why we resort to it.

Avoidance is a common behaviour after experiencing sexual violence. The desire to stay away from anyone and anything that could bring on the stressful, frightening and exhausting symptoms traumatised survivors suffer in the aftermath of an attack is a normal reaction. Thus, self-exclusion is a self-defence mechanism a survivor uses to protect herself from the harm that comes from being reminded of the event (and not just from the risk of another attack). The academic discourse on the impact that male sexual violence has on women and children describes self-exclusion as an avoidance technique alongside other common behaviours shown by survivors, such as aggression, self-aggression, substance abuse, risk-taking and others.<sup>50</sup>

Survivors frequently withdraw from society, from their family and friends, from activities they once loved and public as well as private spaces. This happens for a variety of reasons, such as feelings of guilt, shame and blame, fear and anxiety, an inability to cope with encountering any men or boys in public and private spaces, and a desire to be left alone.<sup>51</sup>

This behaviour is therefore well known from academic research into survivors, from clinical practice treating survivors and several decades' worth of experience of frontline workers in women's services supporting survivors. As previously mentioned, self-exclusion behaviour is described in the Explanatory Notes to the Equality Act 2010 as a reason why excluding all men with the protected characteristic of gender reassignment from a counselling session for female survivors is proportionate and legitimate.

### **Because this is a known and common behaviour of survivors.**

Self-exclusion is notoriously hard to measure. We do not stand up to be counted. You never even see us, and if we do muster up the courage to access a space or service, we are the ones who quietly drift away without saying anything if we do not feel safe, welcome, listened to or heard. The self-exclusion of survivors is not an act of civil disobedience, rebellion or protest. It is a way to avoid confrontation we do not feel able to have. A tool we use when a situation (expected or occurring) exceeds our capacity to cope. Self-exclusion may initially happen for one reason, but then be continued for another. Given the high

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<sup>50</sup> 'Impacts of sexual violence and abuse', Rape Crisis England and Wales [website], <https://rapecrisis.org.uk/get-informed/about-sexual-violence/impacts-of-sexual-violence-and-abuse/>, [Accessed 25/10/2022].

<sup>51</sup> See a discussion of self-exclusion among female survivors of rape in the aftermath of the 2010 earthquake in Haiti: O. Damus, 'The Rapes in Haiti: Psychological and Sociological Aspects of Sexual Crimes', *Études caribéennes* [En ligne], 42, April 2019, <http://journals.openedition.org/etudescaribeennes/22958>, [Accessed 20/10/2022].



prevalence of PTSD among survivors,<sup>52</sup> the Committee would be advised to take note that self-exclusion happens far more often than they assume.

*Patients with posttraumatic stress disorder (PTSD) experience marked cognitive, affective, or behavioral symptoms in response to reminders of a traumatic event. These may include flashbacks, severe anxiety, dissociative episodes, fleeing, or combative behaviors. These symptoms are more marked and lead to more psychosocial disruption than in other individuals who have experienced trauma without subsequent PTSD. **Individuals with PTSD compensate for such intense arousal by attempting to avoid experiences that may elicit symptoms.** This can result in emotional numbing, diminished interest in everyday activities, and in extreme cases, detachment from others. [our emphasis]<sup>53</sup>*

The women who seek help from Rape Crisis services are typically in crisis and have recognised that they are unable to cope with the aftermath of an assault without support. It is often nothing more than the mere presence of men (and sometimes boys) that will trigger the symptoms mentioned, which negatively impacts on their ability to recover and to manage their daily lives. And this lies at the root of self-exclusion from women's services that include men with the protected characteristic of gender reassignment: the compulsion to self-exclude arises because of the known presence or feared presence of males as either survivors or staff in what the survivor needs to be a female-only therapeutic environment.

If services want to find out about this problem, they can only put out a call asking survivors who are self-excluding to come forward, as our meeting facilitator did, to listen to their experiences of and reasons for self-exclusion from rape crisis or women's aid services. To our knowledge, no women's service in Scotland has done so to date, although the Scottish Women's Convention organised an additional session in May 2022 to specifically talk about the importance of single-sex spaces. Several women present stated they were currently self-excluding from women's services because they were unable to cope with the presence of males in what they need to be a female-only therapeutic environment. Much more engagement like that is needed if VAWAG sector organisations, our Parliament and the Scottish Government are truly committed to meeting the needs of female survivors.

On self-exclusion, one participant, who worked with survivors for 40 years, coming "into contact with thousands and thousands of women" in that time, explained the problem like this:

*Because if we are looking at women who have been traumatised by male violence, we have to recognise that trauma does not recognise legislation. Trauma is there it is in our bodies and it does not recognise the fact that you are legislating that male-bodied persons can come into your service. I think the problem we face is that*

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<sup>52</sup> See the next point for a detailed explanation.

<sup>53</sup> J. Sareen, 'Posttraumatic stress disorder in adults: Epidemiology, pathophysiology, clinical manifestations, course, assessment, and diagnosis' UpToDate, 15/09/2022, <https://www.uptodate.com/contents/posttraumatic-stress-disorder-in-adults-epidemiology-pathophysiology-clinical-manifestations-course-assessment-and-diagnosis/print>, [Accessed 20/10/2022].





women will accommodate this, and they will accommodate men coming into spaces, but they will not come back to them. They will vote with their feet they will walk away and leave, and they will be silenced because we are all conditioned to accommodate and you will bend our wants and needs to males. We know that even though we might understand why someone wants to live as a woman. Rational thinking happens in the frontal lobe, but trauma doesn't it works in your limbic system and that's a survival strategy and that's where the recognition that you have a male-bodied person in a supposed safe space will be problematic. So women will leave the services they will walk away, they will go back to abusive partners, they will take their depression medication, they will self-medicate through drink or both and they will just shut up. You won't get statistics on this as they will just avoid services, they won't take up services they will just leave. This is because women are conditioned to be quiet that's really really important and why women need single sex spaces."<sup>54</sup>

One survivor explains that she was unable to even endure listening to the voices of her much beloved brothers for the first year after leaving a coercive relationship:

*I also want to talk about male voices because having come out of a coercive relationship, I could not talk to any of my male family members in any discussion for the first year because of the male voicing, because I was being back being told that I wasn't right I was wrong that what happened didn't happen so I had to rely on female only support from family members for the first year and found it really difficult to communicate with my brothers who I am really close with. The idea that I could hear a male voice in the place were I need to recover is just beyond my comfort. I just could not take it in the first year of my recovery [...] For survivors of male violence we desperately need single sex services this is a non-negotiable this is why I will not set foot in a rape crisis centre or a woman's refugee anymore as they have not made it clear that there will be no Trans women in these single sex spaces.<sup>55</sup>*

The additional barriers of access faced by ethnic minority women and girls in accessing VAWAG sector organisations like rape crisis or women's aid were set out by Dr Jagbir Jhutti-Johal in an interview in July 2021:

*there is an important lens which I think is sometimes missing in the discourse and needs to be added.*

*Thinking about this lens I was actually thinking about the issue of single sex spaces, whether changing rooms, prisons, hospital wards. You know, as a young girl my respectability and my family's respectability and honour were dependent on how I behaved but also whom I associated or was seen with. This meant I avoided being in male spaces, and like other Indian girls I learnt how to create safe spaces to mix with others, mainly girls so that we could build friendships.*

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<sup>54</sup>The Scottish Women's Convention report on a Roundtable event: Single Sex Spaces', Scottish Women's Convention [website], July 2022, <https://www.scottishwomensconvention.org/files/single-sex-spaces-report-1660641977.pdf>, [Accessed 20/10/2022], p. 3.

<sup>55</sup> Ibid, p.5.



*Notions of honour and shame are so embedded in our culture and that lens has been missing in this debate. [...]*

*However, to leave a family home when there is abuse is a great risk and women will only ever do it if they feel they have a safe space to go to, where even though they will be questioned on their actions by their family or members of the community, their morality and motives will not be brought into question. Now if we think about this alongside the debate about single sex spaces, I have concerns. If we are now saying that single sex spaces are not going to be available for women only, and especially women of colour, you are creating an environment where barriers are being placed that will prevent women from accessing these spaces due to fear of possible community gossip because they may be in a space where there are men.<sup>56</sup>*

In the context of trans-inclusive policies that allow men with the protected characteristic of gender reassignment access to women's services, Dr Jhutti-Johal agrees with the interviewers point that

*it is really important to recognise for some women it will mean that they cannot go to a space because they will be bringing shame on their family and their honour will be called into question and this could put them at real risk. That is dangerous in the context of so-called honour-based violence.<sup>57</sup>*

Although such concerns about women from faith communities self-excluding were brought to the Committee, the Stage 1 Report dismisses them by stating that "The SHRC said they had not seen any objective evidence for that but that it would not be affected by whether someone has a GRC or not."<sup>58</sup>

Ms Bolton categorically states in her response on self-exclusion to the Committee that SHRC has "not seen any objective evidence of those matters arising in society". We have seen no evidence that SHRC have any understanding of the nature of self-exclusion, or that they have tried to engage with any of the women who protect themselves by resorting to it. The Committee would in our view therefore be well advised to consider whether SHRC can be relied on as an expert witness on the issue.

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<sup>56</sup> S. Dillon, 'An interview with Dr Jagbir Jhutti-Johal, OBE', Shonagh Dillon [website], <https://shonaghdillon.co.uk/an-interview-with-dr-jagbir-jhutti-johal-obe/>, [Accessed 20/10/2022].

<sup>57</sup> Ibid.

<sup>58</sup> *Stage 1 Report*, p. 70, paragraph 454

## 9. On the nature of trauma from sexual violence

Sexual violence is an attack on the victim's dignity, privacy and safety. It violates not only her body but also her sense of self. Although sexual violence does not always lead to physical injuries, it does always leave behind a mental injury. That wound goes deep into the core of her being. Eventually, it leaves behind a mental scar. Survivors can never go back to how they were before the attack, but they can, and many do, recover over time. Repeated attacks or prolonged exposure to sexual violence leave behind more mental injuries and more scarring, making recovery a much more difficult endeavour, however.

To understand trauma after sexual violence, it is first helpful to understand how our brains work and how they process a traumatic event:

*The Triune Brain model was introduced back in the 1960s by neuroscientist Paul D. MacLean. To this day, it still holds up as a basic way to understand cognitive functioning.*

*The brain can be divided into three main parts, from simple to complex:*

**Reptilian brain.** *This houses your survival instincts and manages autonomic body processes, like heart rate, breathing, hunger, and thirst.*

**Mammalian brain.** *This contains the limbic system, which processes emotions like joy and fear. It also regulates attachment and reproduction.*

**Neomammalian brain.** *This is responsible for sensory processing, learning, memory, decision-making, and complex problem-solving.*

*When you experience something traumatic, the brain shuts down all nonessential systems and moves into the "lower" brain systems. This activates the sympathetic nervous system and signals the release of stress hormones, preparing you for survival mode: fight, flight, or freeze. A fourth trauma response has also been introduced: the fawn response.*

*Once the threat has passed, your parasympathetic nervous system comes back online. This allows your brain to resume normal functioning with all three parts, so you can "rest and digest" what has just happened.<sup>59</sup>*

In the brains of traumatised survivors of sexual violence, however, that step often does not happen. Their brains do not resume normal functioning. That's because trauma – the mental injury and scarring – changes the brain:

The prefrontal lobe is adversely affected, this results in problems expressing thoughts and feelings. The amygdala is in overdrive because it increases in physical size, leading to emotional dysregulation. The hippocampus shrinks which can cause short term memory

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<sup>59</sup> H.I. Lebow, 'The Science Behind PTSD Symptoms: How Trauma Changes the Brain', PsychCentral [website], 1/07/2021, <https://psychcentral.com/ptsd/the-science-behind-ptsd-symptoms-how-trauma-changes-the-brain>, [Accessed 20/10/2022].



loss. The medial prefrontal cortex doesn't function properly after trauma, leading to inappropriate fear responses.<sup>60</sup>

The Women's Resource Centre explains in a comprehensive briefing on trauma:

*Danger and the fear response are located in the mammalian brain in a collection of primitive structures referred to as the limbic system. The thalamus is the central neural centre for all five senses (vision, hearing, smell, taste and touch). The amygdala is a small almond like structure and is associated with big emotions related to fear, horror, attachment and emotional/ sensory memory. **The amygdala is activated by visual or auditory threat with an incredibly fast response rate, firing at 7 millionth of a second.** Once the amygdala is activated it will fire the hypothalamus to release the stress hormones, cortisol and adrenaline, which prepare the body for flight and fight responses. The Hippocampus is linked to memory function and retains information in a spatial and chronological order, similar to the functions of a filing cabinet and filing system where everything is logically filed and everything is in its own space. Trauma material cannot usually be integrated into this system and tends to be repeated via a loop type memory system referred to as an active memory, responsible for flashbacks during the day and nightmares of a night. In usual neural functioning the frontal cortex will activate an appropriate response. However, in trauma situations terror and fear responses overwhelm brain functioning with survival mode superseding all other brain activities and inhibiting activation of the frontal cortex resulting in an impairment of executive functioning and the loss of the ability to plan, organise or take appropriate action. [my emphasis]<sup>61</sup>*

Although every survivor has her own experience of trauma, the following symptoms are commonly found:

- **Emotional** (Mood swings, hopelessness, fear, anger, hypersensitivity, pre-occupation with danger)
- **Cognitive** (Diminished concentration, self-blame, fragmented memory and recall problems, flashbacks, nightmares, phobias)
- **Physical** (Sleep / eating problems, gastro-intestinal problems (IBS), impaired immune system, chronic fatigue syndrome, asthma, migraines)
- **Behavioural** (Self-harming, suicidal ideation/ activation, risky sexual behaviour, impulsive and aggressive behaviour, irritable, impatient)
- **Interpersonal** (Withdrawn, difficulties with trust, problems relating to others, lack of inter-personal boundaries, isolation and sense of alienation, intolerance)

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<sup>60</sup> J. D. Bremner, 'Traumatic stress: effects on the brain', December 2006, *Dialogues in Clinical Neuroscience*, 8(4): 445-461, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181836>, [Accessed 20/10/2022].

<sup>61</sup> 'Developing A Trauma Informed Approach. The importance and application of A Trauma Informed Approach for Working with Survivors of Gender Based Violence', Women's Resource Centre [website], <https://www.wrc.org.uk/Handlers/Download.ashx?IDMF=65c374d4-efed-4089-9428-c0e58eaeaf86>, [Accessed 20/10/2022], p.8.



- **Spiritual** (Existential crisis, loss of faith, development of false self, unbelonging and loss of sense of wholeness)<sup>62</sup>

The vast majority of survivors develop a fear of males as a consequence of the sexual violence they suffered at the hands of males. As shown above, our brains alert us of danger within seven millionth of a second. Our bodies are flooded with stress hormones in less than a second. And the brains of traumatised survivors like us alert us of danger at the mere presence of males. This is called hypervigilance and is a natural reaction to having experienced a traumatic event. No amount of disapproval will make a difference when our reptilian brain takes over – whether we tell ourselves that there is no danger or someone else tells us, it makes no difference.

For most female survivors, those who have developed a fear of males, this means constantly feeling under threat and in danger if males are present in certain situations, but especially when they seek to recover in a female-only therapeutic environment.

There's no logic or reasoning possible at that moment; no amount of re-education reaches the reptilian brain. That's not its function. Its function is survival.

A female survivor with a fear of males can avoid her amygdala firing up at that lightning speed and stress hormones flooding her body only by avoiding the presence of males. Only then can she remain within her window of tolerance<sup>63</sup> and maintain a mental and emotional state in which counselling can be effective. And that is why we are asking for a female-only therapeutic environment – because the presence of males means we do not feel safe and cannot engage with counselling in a way that benefits us. Counselling for survivors of sexual violence can only succeed if we feel safe, both physically and psychologically. **We need to be within our window of tolerance.**

Many survivors have problems setting and asserting boundaries around their own bodies and expressing their needs. They were violated without their consent. Consent is therefore of paramount importance in working with female survivors of male violence, especially when they are learning to trust again. Counsellors seek to let the survivor know that she is in control, and nothing happens without her consent from the very beginning of counselling. To make her feel safe and in control so that she can reach a state from which recovery is possible.

Sexual violence destroys trust – the trust a survivor has in herself and in others. It is common to feel this way even when the attacker was unknown to the survivor.

We are not asking for a female-only space because we are wilful, selfish, bigoted, hateful, prejudiced. We ask because we need a female-only space in order to feel safe. This is the most basic requirement for reaching a state from which recovery is possible. We are not asking for a space free from all men because we hate all men. We are not asking for all men

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<sup>62</sup> Ibid, p.12.

<sup>63</sup> J. Young, 'The impact of psychological trauma on our window of tolerance' [video], 2019, <https://vimeo.com/377509039>, [Accessed 25/10/2022].



to be excluded, regardless of their identity, because we hate men with the protected characteristic of gender reassignment.

We are not motivated by hate at all.

We are motivated by our need for safety, both physical and psychological. At the most basic level, living with trauma means identifying situations, people, things that will trigger involuntary trauma responses. For female survivors of male violence, one of the most common triggers is the presence of males, especially when we least expect it, when we are in an enclosed space with them and in situations where we feel vulnerable. Involuntary trauma reactions to the presence of males can be triggered even by supportive males in our lives, including loving and caring family members, partners or friends.

One of the hardest lessons I learned in counselling was that no amount of counselling, would be able to remove the trauma from my life. In my first session I told the counsellor that I needed her to make it stop. Four months later I had progressed to asking her to help me find a way to make it go away. And in my last session I thanked her for showing me how to live with my trauma. She couldn't take it away, but she could help me find ways to manage my involuntary trauma responses when they happened. I couldn't have opened up to someone male, no matter how lovely, unthreatening or caring. It just wasn't possible.

There's no amount of re-education that'll stop my lizard brain firing up when it recognises a male person in certain situations and tells me I'm in danger. Not even brainwashing can overpower that instinctive reaction. The only thing RCS can hope to achieve is to impress upon me the need to keep my mouth shut and try not to show my panic or fear lest I be labelled a bigot or transphobe. That's not merely ignorant or offensive, that's abusive. It's using the power of their position to shame me for an involuntary trauma response that arises from my experience of male sexual violence.

And this attitude stands in sharp contrast to the principles that the Scottish National Trauma Training Programme emphasises. Sandra Ferguson explains in a video for this Scottish Government programme that trust is the key issue in determining whether a survivor can successfully engage with a service. That's why it is one of the universal principles of a trauma-informed approach to supporting survivors (alongside empowerment, choice, collaboration and safety). And service providers, she urges, must appreciate that trust has to be earned.<sup>64</sup>

Without trust, we cannot engage successfully in counselling. How can we trust that RCS will be non-judgemental when we ask for a female-only service, given the public statements made by senior members of its leadership? How can we trust that RCS will use a trauma-informed approach when they refuse to acknowledge that survivors with a fear of males need a female-only therapeutic environment?

Without trust, how can we not feel compelled to self-exclude?

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<sup>64</sup> S. Ferguson, 'Leading the National Trauma Training Programme (With Subtitles)', [video], 2019, <https://vimeo.com/377019393>, [Accessed 25/10/2022].





## 10. On the claim that a mental health diagnosis is stigmatising

One of the main arguments relied upon to justify adopting self-declaration of sex into Scots Law is that having to provide a mental health diagnosis is stigmatising. We are dismayed that both the Scottish Government and the Committee have uncritically accepted this claim. This is of particular concern to us as female survivors of male violence, because the incidence rate among survivors of mental health conditions as a direct consequence of male violence is very high.

In its most recent statistics, RCS lists the following among the effects of abuse:

- 18% of survivors have attempted suicide
- 24% have self-harmed
- 35% have suicidal thoughts
- 40% have experienced panic attacks
- 54% suffer from flashbacks
- 57% have depression
- 81% suffer from anxiety<sup>65</sup>

Research into Post-traumatic Stress Disorder (PTSD) has shown that sexual violence is the most common cause of PTSD.<sup>66</sup> A recent meta-analysis<sup>67</sup> of the available data showed “that 81% of sexual assault survivors had significant symptoms of post-traumatic stress (PTSD) one week after the assault.”<sup>68</sup> Over time, the mental health of many survivors improves, but 41% are still suffering PTSD a year after the assault.<sup>69</sup> Around a third of survivors with PTSD are “still symptomatic 10 years after the traumatic event.”<sup>70</sup>

Survivors accessing a rape crisis service are typically in crisis, because they need help managing their mental health issues arising from sexual violence. Thus, we would argue that survivors with mental health issues are overrepresented in the service, as those who manage to recover on their own may be less likely to seek help from RCS.

Given the prevalence of mental health issues among survivors, and the tireless work of mental health campaigners to change the public perception of mental health issues as stigmatising, we are very disappointed that the Scottish Government and the Committee seem to accept this claim. We reject the idea that a mental health diagnosis is stigmatising in the strongest way possible. We firmly believe that our government and our parliamentarians have an obligation not to perpetuate such harmful notions and ask that the Committee is more careful on this issue in the future.

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<sup>65</sup> ‘Annual Report 2020/21’, Rape Crisis Scotland, p.36.

<sup>66</sup> Sareen, ‘Posttraumatic stress disorder in adults’.

<sup>67</sup> E.R. Dworkin, A.E. Jaffe et al., ‘PTSD in the Year Following Sexual Assault: A Meta-Analysis of Prospective Studies.’ *Trauma, Violence, & Abuse*, 0(0), 2021.

<sup>68</sup> ‘75% of sexual assault survivors have PTSD one month later’, UW Medicine Newsroom [website], 20/07/2021, <https://newsroom.uw.edu/news/75-sexual-assault-survivors-have-ptsd-one-month-later>, [Accessed 20/10/2022].

<sup>69</sup> Ibid.

<sup>70</sup> Sareen, ‘Posttraumatic stress disorder in adults’.



## 11. On the claim that a GRC will make no difference to self-exclusion

Several witnesses to the Committee claimed that a GRC would make no difference to self-exclusion. Here is Ms Bolton presenting her view of the issue:

*If women are self-excluding, that is not going to be affected by whether someone has a gender recognition certificate, because trans people exist in society and move about in society, as is their right and as they must be supported to do. If there are specific concerns, again, you would need to break it down. What are we saying about toilets or public life? I have considered the question of women avoiding participating in public life and find it hard to see what it is about making gender recognition certificates available that would result in that.<sup>71</sup>*

This view misunderstands the issue entirely. Women self-exclude not because people with the protected characteristic of gender reassignment exist and move about in society, but because men with the protected characteristic of gender reassignment are or may be given access to the services that a survivor needs to recover from male violence. But most survivors need to recover in a female-only therapeutic environment.

There is considerable disagreement amongst legal professionals about the consequences of holding a GRC. The Scottish Government itself holds the tricky, simultaneous belief that a GRC does and does not change its holder's entitlement to access legal set asides of the opposite sex. There is much confusion amongst VAWAG sector organisations as to what they are allowed to do when it comes to those who hold a GRC. We explore this and other, more general claims in Appendices A to D.

The real-life impact therefore of increasing the number of GRCs in Scotland by as many each year as had been issued in the previous 18 years, will be two-fold in our view. First, in some areas in Scotland the increase may have a disproportionate impact, making it more likely that a survivor will encounter a male GRC-holder. If more men with the protected characteristic of gender reassignment hold a GRC, more of them will seek to access women's single-sex spaces and services. Many VAWAG sector organisations believe they cannot be excluded from their services at all, thus making their services mixed-sex.

The second impact will be much more profound. The GRR Bill widens the pool of applicants from less than 1% of the adult population with a medical diagnosis of gender dysphoria to 100% of all above the age of 16. What this means in practice is that anyone could have a GRC, regardless of medical need. Even a person who is unequivocally perceived as a man may be legally female. This makes challenging their presence in women-only spaces and services a risky endeavour. A risk that vulnerable survivors are unlikely to take. The only thing a survivor can be certain of in that situation is that she can self-exclude for her own protection from harm.

It is therefore likely that handing out GRCs based on a self-declaration of sex will have an impact on the numbers of survivors compelled to self-exclude from VAWAG services and public spaces.

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<sup>71</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 21 June 2022*, column 34.



## 12. On the notion that concerns can be dismissed now in favour of a post-legislative review later

Cathy Asante, speaking for SHRC during the Committee meeting on 21 June 2022, suggests the following:

*One of the things that we recommended in our evidence is that there be a post-legislative review of the bill, if it is passed. One of the functions of that would be to identify whether any of those concerns—or evidence to support them—has materialised. The fact that we have not found such evidence so far does not mean that it does not or cannot exist, so we think that there would be an important role for a post-legislative review in considering whether any of those concerns are playing out, or whether it is more, as Victor Madrigal-Borloz said, that they have not actually transpired.<sup>72</sup>*

In the last five years alone, there were over 10,000 recorded rapes and attempted rapes and over 20,000 recorded sexual assaults across Scotland.<sup>73</sup> RCS's own statistics<sup>74</sup> show that only around half of the survivors who access their service report their attack to the police, which means that there is an even higher number of survivors whose suffering goes unrecorded. According to RCS, around 6000 survivors access their service each year<sup>75</sup>, and yet with only half of them reporting their attack, their own statistics tell us that there are many more incidents of sexual violence across Scotland in the same timeframe. Although the number of cases cannot tell us how many survivors there are in total and estimates of underreporting vary, it is reasonable to suggest that the total number of survivors exceeds that of survivors accessing rape crisis services by a considerable margin.

How then is it possible for anyone to state with any amount of certainty that self-exclusion cannot be happening in Scotland when the number of survivors not accessing rape crisis services is so high?

No one has yet attempted to quantify the issue, but all attempts must start with the fact that sexual violence in Scotland is common. Most victims are women and girls suffering sexual violence at the hands of men. Mental health issues amongst survivors are equally common. That's why 6000 seek help from rape crisis services in Scotland every year. Potentially hundreds if not thousands of survivors do not. Many survivors face several barriers in accessing the service that they cannot overcome, such as work or childcare commitments, language or cultural issues, family circumstances, controlling or abusive

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<sup>72</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 21 June 2022*, column 35.

<sup>73</sup> Recorded Crimes and Offences: a data cube spreadsheet, Statistics.Gov.Scot [website], August 2022, <https://statistics.gov.scot/slice?dataset=http%3A%2F%2Fstatistics.gov.scot%2Fdata%2Frecorded-crime&http%3A%2F%2Fpurl.org%2Flinked-data%2Fcube%23measureType=http%3A%2F%2Fstatistics.gov.scot%2Fdef%2Fmeasure-properties%2Fcount&http%3A%2F%2Fstatistics.gov.scot%2Fdef%2Fdimension%2FcrimeOrOffence=http%3A%2F%2Fstatistics.gov.scot%2Fdef%2Fconcept%2Fcrime-or-offence%2Fcrimes-group-2-rape-attempted-rape>, [Accessed 20/10/2022].

<sup>74</sup> see footnote 23, p.37.

<sup>75</sup> P. 30.



partners, logistical problems, and feelings of guilt, shame and blame as well as doubts that counselling would help them. Self-exclusion, due to RCS's denial of our need for a female-only therapeutic environment and their refusal to confirm, publicly or otherwise, that this is what we can access, has added another barrier to that list.

We may not be able to count the number of traumatised women and girls, but to say it in Ms Bolton's words, we know they "exist in society and move about in society"<sup>76</sup>. And what these survivors rely on to comfortably and safely navigate public spaces are single-sex facilities. If those are no longer available, and with avoidance being one of the main coping strategies for survivors, it means self-exclusion not only from rape crisis services but also from much of public life for many more of us.

If you had chosen to meet any of us, we could have told the Committee about all of this, but you denied yourself access to the testimonies of women who can explain why single sex spaces and services are vitally important and why legal change must be tested hard against its potential impact on the ability of traumatised women to have access to services.

The notion then that we can dismiss concerns about self-exclusion and maybe revisit the issue in a "post-legislative review" after passing the law, as suggested by Ms Asante is unconscionable given the prevalence of sexual violence in Scotland. Evidence *was* provided in countless written submissions. Survivors *were* willing to give face-to-face evidence to the Committee, but it ignored the former and rejected the latter.

Why would this be any different in a post-legislative review? How can we trust that the same people who won't listen to us now or accept our written evidence will treat us differently then? Considering that in a review of the legislation in Ireland, women's concerns about and their lived experiences of its harmful consequences were ruled out of scope, and the submissions the review received about this were given only cursory reference, we don't think we can.<sup>77</sup>

We would be grateful to both the Committee and the SHRC if they could let us know what evidence they need to see before they believe us. Could you quantify what number of women and girls should suffer in aid of passing this law before you rethink it? Or is the number always N+1? Is there any limit at all?

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<sup>76</sup> Equalities, Human Rights and Civil Justice Committee, *Tuesday 21 June 2022*, column 34.

<sup>77</sup> In this regard we were particularly dismayed to read on page 72, paragraph 472 of the *Stage 1 Report* that the Committee considered the concerns raised to "go beyond the scope of the provisions in the bill". How can we believe that a post-legislative review would not come to the same conclusion?



## Appendix A On the claim that GRR is necessary to bring Scotland in line with international best practice and existing human rights law

The Declaration on Women’s Sex-based Rights (WDI)<sup>78</sup> is an advocacy document “seeking to reaffirm the human rights of women as set out in UN documents.”<sup>79</sup> Among its drafters are legal and healthcare professionals, women’s and children’s rights campaigners as well as campaigners for the rights of lesbian, gay and bisexual people.

It has never been debated or adopted in any national parliament nor has it been ratified by any country. No country has sent legal representatives to its drafting and no country has sent legal representatives to sign it.

In short, it has no legal standing anywhere in the world and is not legally binding on anyone.

The WDI has this in common with the Yogyakarta Principles which the Scottish Government relies upon to justify both the need and urgency of reforming the Gender Recognition Act 2004.

Unlike the Yogyakarta Principles, the WDI does not condone giving the death penalty to gay and lesbian children who engage in consensual relations when they are still below the age of consent, nor does it condone the death penalty in general. (Principle 4)<sup>80</sup>

Unlike the Yogyakarta Principles, the WDI also does not advocate for removing the protected characteristic from all laws, policies and regulations worldwide upon which basis the protection of a disadvantaged group relies. (Principle 31, the removal of sex as a protected characteristic)<sup>81</sup>

Unlike the Yogyakarta Principles, the WDI also does not remove protections from homosexuals by redefining homosexuality, changing it from being an attraction to a person of the same sex to an attraction to a person who shares the same preferences for sex stereotypes and sex-role stereotypes. (Introduction to the 2006 Yogyakarta Principles, footnote 1, upheld in the 2017 Yogyakarta Principles + 10)<sup>82</sup>

The WDI does however in its position rely upon an international treaty which does place an obligation on the Scottish Government – the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – and it relies on a number of other international treaties on the rights of women and children that the UK is a signatory to.

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<sup>78</sup> ‘Declaration on Women’s Sex-based Rights’, Women’s Declaration International [website], 2019, <https://www.womensdeclaration.com/en/>, [Accessed 20/10/2022].

<sup>79</sup> ‘FAQs’, Women’s Declaration International [website], <https://www.womensdeclaration.com/en/about/faqs/>, [Accessed 25/10/2022].

<sup>80</sup> ‘Principle 4’, yogyakartaprinciples.org [website], 2006, <http://yogyakartaprinciples.org/principle-4/> [Accessed 25/10/2022].

<sup>81</sup> ‘Principle 31 (YP+10)’, yogyakartaprinciples.org [website], 2017, <http://yogyakartaprinciples.org/principle-31-yp10/>, [Accessed 25/10/2022].

<sup>82</sup> ‘Introduction to the Yogyakarta Principles’, yogyakartaprinciples.org [website], 2006, <http://yogyakartaprinciples.org/introduction/>, [Accessed 25/10/2022], footnote 1.



Article 1 WDI reaffirms “that the rights of women are based upon the category of sex.”<sup>83</sup> This article quotes in full Article 1 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, which we also quote here in full:

*For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made **on the basis of sex** which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. [our emphasis]<sup>84</sup>*

As the Women’s Resource Centre explained in the context of austerity policies:

*In plain English, this means that the Convention defines discrimination against women as any distinction, exclusion or restriction on the basis of sex that has **the effect or purpose** of harming or reversing women’s human rights and freedoms in any aspect of their lives.*

*The definition of discrimination means that all the rights as set forth in the Convention need to be considered from a holistic point of view, i.e. **it puts the onus on the State to consider both the direct and indirect consequences of their policies and practices.** [their emphasis]<sup>85</sup>*

We have seen no evidence that either the Scottish Government or this Committee has carefully considered the direct and indirect consequences of enshrining self-declaration of sex in law on the rights of women. On the contrary, the Committee has twice refused to hear witnesses who could speak directly on this issue:

- 1) Prof Robert Wintemute, one of the original drafters of the Yogyakarta Principles the Scottish Government relies upon, who has since confirmed that the impact of its demands on the rights of women and girls was never considered, and now warns against implementing its demands and
- 2) A group of female survivors of male violence who sought to inform the Committee on their lived experience of both male violence, the nature of the trauma arising from it and the consequences for them of policies based on self-declaration of sex.

CEDAW places a legal obligation on the Scottish Government to consider both the direct and indirect consequences of the GRR Bill **before passing it**. The Yogyakarta Principles don’t

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<sup>83</sup> ‘Declaration on Women’s Sex-based Rights’, Women’s Declaration International [website], 2019, <https://www.womensdeclaration.com/en/declaration-womens-sex-based-rights-full-text/#article-1>, [Accessed 20/10/2022].

<sup>84</sup> ‘United Nations Convention on the Elimination of All Forms of Discrimination against Women’, United Nations General Assembly, 18/12/1979, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>, [Accessed 25/10/2022], Article 1.

<sup>85</sup> ‘Definition of Discrimination - Article 1, CEDAW’, Women’s Resource Centre [website], <https://www.wrc.org.uk/blog/definition-of-discrimination-article-1-cedaw>, [Accessed 25/10/2022].



place any legal obligation upon it. And yet it has chosen to argue it has an obligation to the latter, ignoring entirely its obligations under the former.

Resolution 2048 is also relied upon to argue for reform.<sup>86</sup> Again, just like the WDI and the Yogyakarta Principles, this is a legally non-binding policy declaration brought to the table by campaigners. (This is not, as people may believe, a resolution of the European Parliament, but of the Council of Europe, an altogether different organisation.)

In 2015, when this declaration was voted on, there were 318 members eligible to vote in the Council of Europe Parliamentary Assembly. Interest was low, and only 103 assembly members cast a vote, of which 68 voted in agreement.<sup>87</sup> That represents one in five members of the assembly. The vote did not follow a debate or any scrutiny of the resolution's demands. Their impact on the rights of other groups, especially those of women and children was not considered at all. It was voted on at a time when the understanding of the unintended, direct and indirect consequences of self-declaration of sex in law for the rights and safeguarding of women and children were largely unknown.

To argue, as the Scottish Government does, that a resolution which carries no universal agreement of Council of Europe members, was neither tested for its compliance with the rights of other groups nor debated by members and which places no obligation whatsoever upon the Scottish Government, makes this reform a necessity is a curious position to take.

The Stage 1 Report explains that

*Resolution 2048 of PACE made in 2015 expressed concerns that requiring someone seeking legal recognition of their acquired gender to have been medically treated or diagnosed is a breach of their right to respect for their private life under Article 8 of the ECHR.<sup>88</sup>*

This argument has since been tested and rejected in a case brought in front of the European Court of Human Rights.<sup>89</sup> It is surprising therefore that the Scottish Government continues to rely on this resolution to justify the GRR Bill.

The argument that self-declaration of sex in law represents best international practice is equally spurious. The vast majority of countries in the world do not give equal rights to people with the protected characteristic of gender reassignment at all. Of those that do, the majority require a medical transition. Few countries have implemented self-id laws,<sup>90</sup> and all those that have, did so without allowing their consequences for and impact on other protected groups to be scrutinised and debated.

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<sup>86</sup> In the Policy Memorandum on the GRR Bill, the Scottish Government states it "would assure Scotland's compliance with Resolution 2048". *Gender Recognition Reform (Scotland) Bill — Policy Memorandum*, Scottish Parliament [website], 2/03/2022, <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/policy-memorandum-accessible.pdf>, [Accessed 20/10/2022], p.14.

<sup>87</sup> Resolution 2048, Parliamentary Assembly of the Council of Europe [website], 22/04/2015, <https://pace.coe.int/en/files/21736#trace-4>, [Accessed 20/10/2022].

<sup>88</sup> *Stage 1 Report*, p.16.

<sup>89</sup> Case of A.P., Garçon and Nicot v. France [2017], ECHR 338, 6/04/2017, <https://hudoc.echr.coe.int/eng?i=001-172913>, [Accessed 20/10/2022].

<sup>90</sup> The Scottish Government mentions a total of 12 countries across various documents.





Merriam Webster defines best practice as

*a procedure that has been shown by research and experience to produce optimal results and that is established or proposed as a standard suitable for widespread adoption*<sup>91</sup>

There is no evidence that self-declaration of sex is considered to represent best practice internationally or that it produces optimal results. In truth, there is no consensus at all. Not even across Europe. The argument that it is and does comes only from trans rights campaigners, but there is no reason why the Scottish Government, which has obligations to the whole of society, must or even should agree to their demands while ignoring our objections.

This is also the position taken in 2017 by the European Court of Human Rights in *the Case of A.P., Garçon and Nicot v. France*.<sup>92</sup> The Scottish Government cites this case to support its position that a medical transition should not be necessary to gain a GRC,<sup>93</sup> but omits from its Policy Memorandum the fact that the court directly answered the question whether it was reasonable for states to require a medical diagnosis of gender dysphoria before granting a GRC to an applicant.

After carefully considering all available international and European human rights law and the arguments made by trans rights organisations allowed to intervene, the court held by unanimous agreement that **the requirement for a medical diagnosis does not violate the human rights of people with the protected characteristic of gender reassignment.**

*Consequently, and especially in view of the wide margin of appreciation which they enjoyed, the Court considers that the French authorities, in refusing the second applicant's request to have the indication of gender on his birth certificate amended, on the grounds that he had not shown that he actually suffered from a gender identity disorder, struck a fair balance between the competing interests at stake.*<sup>94</sup>

The European Court of Human Rights agreed with the view that states had an obligation not just to people with the protected characteristic of gender reassignment, but also to the rest of society in deciding whether to adopt self-declaration of sex in law, and it emphasised throughout that there were competing interests at stake. As we have been at pains to argue, these competing interests include the rights of other groups in society, such as the rights of women and girls who are protected on the basis of sex.

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<sup>91</sup> 'best practice', *Merriam Webster Dictionary*, Merriam Webster [website], <https://www.merriam-webster.com/dictionary/best%20practice>, [Accessed 20/10/2022].

<sup>92</sup> Case of A.P., Garçon and Nicot v. France.

<sup>93</sup> Policy Memorandum, p.14.

<sup>94</sup> Case of A.P., Garçon and Nicot v. France, paragraph 143.





## Appendix B On the claim that GRR makes no difference to access rights

The Scottish Government has not engaged at all with the argument made by opponents of this reform that changing the eligibility criteria as well as the application process for changing one's legal sex will have a detrimental impact on the rights of women and girls under the Equality Act 2010.

Declaring there to be no problem and claiming that there will not be an effect is not engagement. Given the number of legal opinions published by trans rights campaigners such as Professor Sharpe, who categorically state that no male GRC-holder can be excluded from single-sex provisions,<sup>95</sup> it is surprising that the Scottish Government continues to insist that increasing the number of GRC-holders by several magnitudes will not have any effect whatsoever on the single-sex provisions made possible under the EqA.

When the Gender Recognition Act 2004 was enacted, the Sex Discrimination Act 1975 was amended through Schedule 6 in order to disapply the Genuine Occupational Qualification exception from GRC-holders. Thus, no male GRC-holder could be excluded either from any legal set asides created for the safety, dignity or privacy of women and girls or from those created to redress any inequalities suffered by them on the basis of their sex.

Thereafter no mechanism existed by which a male GRC-holder could legally be excluded from providing intimate care to female persons or to stop such a person from accessing a single-sex hospital ward.

This complete disregard for the rights and needs of women and girls was only rectified with the enactment of the EqA, which separated sex and gender reassignment into two different protected characteristics and introduced a total of six different sex-based exceptions whereby persons with the protected characteristic of gender reassignment could be excluded from legal set asides created for persons who shared the protected characteristic of sex.

However, the Equality and Human Rights Commission (EHRC) produced statutory codes which conflict with the provisions of the EqA. Some of the codes advised businesses and organisations that no GRC-holders could be excluded from opposite-sex spaces, while also advising them that no person with the protected characteristic of gender reassignment should be excluded. After being advised of their error, the EHRC issued a correction in 2018, stating when deciding whether the sex-based exceptions could be applied to a person with the protected characteristic of gender reassignment depended first on whether they were in possession of a GRC or not.<sup>96</sup>

They clarified that a man with the protected characteristic of gender reassignment who remains legally male has no more right to access a female-only legal set aside than any other man. However, in direct contradiction to the EqA, which contains no such condition,

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<sup>95</sup> A. Sharpe, 'Will Gender Self-Declaration Undermine Women's Rights and Lead to an Increase in Harms?', *The Modern Law Review*, 83, 539-557, 2020.

<sup>96</sup> 'EHRC statement on sex and gender reassignment: legal protections and language'. womensgrid [website], 3/08/2018, <https://www.womensgrid.org.uk/?p=7015>, [Accessed 20/10/2022]



the EHRC stipulated that a male GRC-holder can be excluded from female-only legal set asides only in exceptional circumstances, an opinion echoed by Professor Sharpe.

Although publicly they confidently defended this view, internal correspondence revealed through a Freedom of Information request lodged by Fair Play for Women showed that “as recently as July 2018 the EHRC had not reached its own internal agreement about whether transwomen with a GRC are entitled to access or may be excluded from women’s single sex services and had no clear process for developing it.”<sup>97</sup>

Most recently, the EHRC published new guidance on single-sex spaces, but its codes advising that there is a meaningful difference between those with and without a GRC remain in force.

Several legal opinions have also been published which disagree with the EHRC codes' interpretation of the EqA and with legal opinions like Professor Sharpe's, a trans rights advocate. See also for instance, Julian Norman<sup>98</sup>, Rebecca Bull<sup>99</sup> and Julius Komorowski.<sup>100</sup>

Whether the EHRC's interpretation of the sex-based exceptions in the EqA is correct or not, the House of Commons Women and Equality Committee noted in its Tenth Report of Session 2017-19 titled *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission*, that there was so much legal uncertainty around applying the sex-based exceptions that it issued the following recommendations:

*While the apparent failure of significant numbers of public sector commissioners to properly apply the public sector equality duty to their decision making is a problem of understanding and not of the law itself, it is a clear example of what is going wrong because of the current system of equality law enforcement. This cannot be left to affected organisations to fix. As Women's Aid made clear, they do not have the resources to do so. (Paragraph 167)*

*We recommend that the Government Equalities Office issue a clear statement of the law on single-sex services to all Departments, including the requirement under the public sector equality duty for commissioners of services to actively consider commissioning specialist and single-sex services to meet particular needs. (Paragraph 168)*

*We do not believe that non-statutory guidance will be sufficient to bring the clarity needed in what is clearly a contentious area. We recommend that, in the absence of case law the EHRC develop, and the Secretary of State lay before Parliament, a dedicated Code of Practice, with case studies drawn from organisations providing*

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<sup>97</sup> 'Single sex services & the Equality Act: A new statutory Code of Practice must help everyone get clear what "single sex" means', Fair Play For Women [website], 8/08/2019, <https://fairplayforwomen.com/single-sex/>, [Accessed 25/10/2022].

<sup>98</sup> J. Norman, 'Has everyone really got it wrong', Filia [website], 26/08/2018, <https://www.filia.org.uk/latest-news/2018/8/23/has-everyone-really-got-it-wrong>, [Accessed 20/10/2022].

<sup>99</sup> R. Bull, 'Briefing Note: Impact of Gender Recognition Reform on Sex Based Rights', Murray Blackburn Mackenzie [website], 11/02/2020, <https://mbmpolicy.files.wordpress.com/2020/02/impact-of-gender-recognition-on-sex-based-rights.-r-bull-11-feb-2020.pdf>, [Accessed 20/10/2022].

<sup>100</sup> J. Komorowski, 'Sex and the Equality Act.' Journal of the Law Society of Scotland, 13/01/2020.



*services to survivors of domestic and sexual abuse. This Code must set out clearly, with worked examples and guidance, (a) how the Act allows separate services for men and women, or provision of services to only men or only women in certain circumstances, and (b) how and under what circumstances it allows those providing such services to choose how and if to provide them to a person who has the protected characteristic of gender reassignment. (Paragraph 190)<sup>101</sup>*

Please note in particular the shift in emphasis on applying the sex-based exceptions, which we would like to see echoed in the funding requirements set out by the Scottish Government: that businesses and organisations must justify when they wish to include a person who has the protected characteristic of gender reassignment in a single-sex setting provided for the opposite sex, and not – as is currently the case – when they wish to exclude such a person.

Given the widely diverging legal opinions as well as the EHRC code (which while conflicting with the EqA provisions is nonetheless statutory) and this Women and Equalities Committee Report highlighting how complicated and difficult in practice the interplay between the original GRA and the EqA is, it is incomprehensible to us that the Scottish Government brushes off all concerns with the comment that the EqA will not be amended.

As noted above, the Equality Act 2010 allowed the creation of spaces for the benefit of all those who shared a specific protected characteristic. Those spaces were locked to all those who did not share that characteristic. In the case of the protected characteristic of sex, those who have legally changed sex must – in the opinion of the EHRC and various legal experts – be granted a key.

Under the current provisions, there is at least a safeguard – that of requiring a medical diagnosis of gender dysphoria – and a gatekeeper – the Gender Recognition Panel. The fact that every applicant must first seek a medical diagnosis from a medical professional can and does provide a much-needed safeguard. This can be seen in an assessment of persons seeking full gender reassignment surgery in Oxford, which noted that amongst motivations to seeking this, “Paedophilia was a rare but concerning finding.”<sup>102</sup> The individuals in question were consequently refused referral by the healthcare professionals involved.

Thus far then, the individuals granted such a key to female-only spaces in Scotland are limited to about 400 in number who all had to satisfy both the safeguarding and gatekeeping requirements of the GRA. Should these individuals seek to access female-only provisions, this is a not insignificant, but manageable number, especially if providers are reminded that they can be lawfully excluded where that is necessary.

However, the Scottish Government is now proposing to hand out GRCs via a statutory declaration of sex, with all safeguarding and gatekeeping measures removed, variously

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<sup>101</sup> Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission*, 30/07/2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/147002.htm>, [Accessed 20/10/2022].

<sup>102</sup> K. Saunders and C. Bass, ‘Gender reassignment: 5 years of referrals in Oxfordshire’, *The Psychiatrist* 35: 325-327, 2011.



estimated at between 200 and 400 per year (without modelling). Claiming that this is no cause for concern, because GRA Reform does not seek to remove the locks to single-sex spaces and services provided under the EqA, while handing out keys to anyone who fills in a form, is deeply irresponsible.

It is also offensive to the legal experts who have painstakingly set out the unintended consequences of these proposals and disrespectful to the women's rights campaigners who have highlighted the harm this will do to women and girls.



## Appendix C On the claim that GRR is only about making getting a birth certificate easier

Contrary to the oft repeated claim that the purpose of the Gender Recognition Act 2004 is to allow a transgender person to change their birth certificate and the purpose of GRA Reform is to make this an easier process, this is of course not the stated purpose of the GRA.

Its stated purpose is legal recognition in the "acquired gender" for all purposes, including the right to marry, but most of all to obtain the rights, freedoms and responsibilities of members of the other sex. **Birth certificates are one small aspect of that recognition: mere proof of that change of legal status, not its purpose.** The purpose and effect of a GRC has always been the acquisition of the rights granted to the other sex. And therefore, **the purpose of enshrining the self-declaration of sex in law is not to make getting a birth certificate in your "acquired gender" easier, but to make the acquisition of the rights granted to the other sex easier.**

In the meeting on 31 May 2022, Lucy Hunter Blackburn, speaking for Murray Blackburn Mackenzie, shared with the Committee a recent Northern Ireland court judgement, in which the judge emphasises that a GRC does much more than just allow for easier access to a birth certificate:

*Last year, in the High Court of Northern Ireland, Mr Justice Scofield described a gender recognition certificate as conferring on someone "a significant and formal change in their status with potentially far-reaching consequences for them and for others, including the State."<sup>103104</sup>*

Ms Hunter Blackburn goes on to explain that the privacy provisions of the GRA 2004, Section 22, have profound implications for anyone dealing with GRC-holders:

*Those far-reaching consequences flow mainly from two sections of the Gender Recognition Act 2004, which have not been mentioned by name in the committee's sessions so far. Section 9 sets out the effect of a GRC. It provides that a person's acquired gender "becomes for all purposes" in law—except in the two defined circumstances— their sex.*

*Section 22 puts in place a stringent privacy protection. It creates criminal offences for disclosing any information about a person's past identity or current status as a GRC holder, if that knowledge is gained in an official capacity—again, with limited exceptions.*

*A key question for the committee is how the two sections interact with the Equality Act 2010. We and others sent in a joint briefing to you about that, following comments that were made in your first public meeting on the bill. We highlighted that the legal position here is unsettled and that several influential organisations*

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<sup>103</sup> High Court of Northern Ireland Judicial Review (2021) NIOB 48 (paragraph 135), <https://www.judiciaryni.uk/sites/judiciary/files/decisions/JR111%20Application%20for%20Judicial%20Review.pdf>, [Accessed 20/10/2022].

<sup>104</sup> Judge Scofield also calls a GRC "a major change in the status of the Individual in the eyes of the law", *ibid.* paragraph 31



*believe that the GRC changes somebody's sex under the 2010 act, which has implications for how organisations can practically provide single-sex services in line with the law.*<sup>105</sup>

Without thoroughly, objectively and fairly considering how this will affect those with the protected characteristic of sex, there can be no justification for pursuing such a course of action. We have yet to see the Scottish Government do this. It said in 2019 that the publicly stated intent behind the then consultation was to “to convince those who have concerns about the issue that there is not a tension and inevitable conflict between women’s rights and trans rights”.<sup>106</sup> Without any evidence of a willingness to fully engage with women’s rights campaigners and others opposed to the reform, this was not a consultation in good faith but a token gesture. We have seen no evidence that the Scottish Government has changed its approach in this new consultation either.

What it has done however, is to seek to argue that a GRC will make no difference to the rights of persons with the protected characteristic of gender reassignment when it comes to the legal set asides reserved for women based on their sex *and* take the opposing view in defending itself against a judicial review brought by For Women Scotland. There it argues that a GRC does make a difference. These are, of course, mutually exclusive positions that interpret the law from opposing viewpoints, and it would therefore be helpful for all MSPs if the Scottish Government could decide which of these two positions it believes before the GRR Bill is voted on.

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<sup>105</sup> Equalities, Human Rights and Civil Justice Committee, Tuesday 31 May 2022, column 2.

<sup>106</sup> Nicola Sturgeon in the Scottish Parliament on 16 January 2020, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12459&mode=pd>, [Accessed 20/10/2022].



## Appendix D On the claim that no evidence has been provided of abuses

The Stage 1 Report contains this highlighted statement on the concerns raised:

*The majority of the Committee believes that the concerns raised, while recognising that such views are sincerely held, go beyond the scope of the provisions in the Bill, and is satisfied that the Bill itself will not change any of the protections or definitions set out in the Equality Act 2010, including the ability to exclude trans people from single-sex services where proportionate and appropriate. The majority is satisfied that the Bill will not change or remove women's rights, make changes to how toilets and changing rooms operate, redefine what a man or a woman is, nor change or expand trans people's rights. The majority is satisfied that the Bill will not change the effect of a GRC, which is that the individual is legally recognised in their acquired gender. Further, the majority recognise that, when asked about evidence of abuse and concerns, no witness was able to provide concrete examples.*

This is of course a curious position to take, given that evidence of abuses is available from many of the countries where laws and policies based on the self-declaration of sex have been implemented. This has been highlighted in countless written submissions to each of the three Scottish consultations on reform of the GRA, including from our members. We believe that the Committee denied itself the chance to fully explore this issue by holding its oral evidence meetings before the written evidence was analysed. Thus, it is hard to accept the claim that no evidence has been provided under these circumstances.

To aid the Committee in understanding how identifying as the other sex can be abused, here are just four examples:

- Election fraud – Mexico (circumventing a law that seeks to increase the representation of women in elected positions), reported in the Guardian:

*Mexico's electoral tribunal has disqualified 15 male candidates who pretended to be transgender to get around gender parity rules in the southern state of Oaxaca. [...] Not a single spot designated for men was filled by a transgender person. However, 19 places designated for women ... were filled by men who say they're transgender<sup>107</sup>*

- For financial gain – Canada (using self-id to get cheaper insurance)<sup>108</sup>

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<sup>107</sup> D. Agren, 'Mexico: 15 fake transgender candidates disqualified from election', *The Guardian*, 22/06/2018, [www.theguardian.com/world/2018/jun/22/mexico-elections-fake-transgender-candidates-disqualified](https://www.theguardian.com/world/2018/jun/22/mexico-elections-fake-transgender-candidates-disqualified), [Accessed 20/10/2022].

<sup>108</sup> R. Southwick, 'Alberta man changes gender on government IDs for cheaper car insurance', *CBC*, 20/07/2018, <https://www.cbc.ca/news/canada/calgary/change-gender-identification-insurance-alberta-1.4754416>, [Accessed 20/10/2022].





- Academic fraud – UK (claiming to have changed sex to get someone else’s law degree)<sup>109</sup>
- To gain better access to victims – Canada (Sexual predator leverages self-id law to enter women’s refuge and commits sexual assault against female survivor)<sup>110</sup>

The latter incident is what we as survivors are most concerned about. We could provide many more examples of predators seeking access to women and girls from countries with self-id laws.<sup>111</sup> But we think that this puts the focus on the wrong issue.

Our main argument – and that of many other opponents to enshrining self-declaration of sex in law – is not that ‘bad faith actors’ abusing such a law is harmful to women and children (although it undoubtedly is), **our main argument is that the law itself is harmful to us.**

It is not abuses of self-declaration of sex, whether that’s in laws, policies or regulations that we are most concerned about, but the erosion of single-sex spaces and services and of women’s sex-based rights, of safeguarding and the denial of our right to privacy and dignity when we are in a state of undress and thus vulnerable.

Granting men access to what should be female-only spaces and services is the root cause of the harms we experience as a consequence, not access gained fraudulently. And we argue that no men at all should have access to female-only spaces and services, including men with the protected characteristic of gender reassignment. In the case of predatory men, whether a predator is a man with the protected characteristic of gender reassignment or a predator pretending to be a man with this protected characteristic is irrelevant to his victims, it is the predatory behaviour that matters.

The Committee confidently states that the GRR Bill will not lead to any changes, but it must undoubtedly be aware that there is a difference between the law as written and the law as applied. That’s because the Equality Act 2010 itself has been a prime example of the difficulties that can arise when a law is poorly understood, misrepresented, misinterpreted or misapplied. This has been the subject of much of the discourse around reform of the GRA, and for good reason.

Thus, we are (un)fortunately in the position of being able to see what the effect of GRR would be in practice. Across Scotland, public sector institutions, third sector organisations and businesses in all industry sectors have implemented policies, rules and regulations based on self-declaration of sex in the expectation that this will be written into Scots Law in any case.

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<sup>109</sup>S. Sharma, ‘Man tried to dupe Durham University into giving him law graduate's degree - by claiming he had a sex change’ *Chronicle Live*, 18/10/2019, <https://www.chroniclelive.co.uk/news/north-east-news/nathan-hogg-durham-university-court-17102835>, [Accessed 20/10/2022].

<sup>110</sup>B. Hunter, ‘HUNTER EXCLUSIVE: Sex offender who IDs as woman busted for shelter attack’, *Toronto Sun*, 18/10/2022, <https://torontosun.com/news/provincial/hunter-exclusive-sex-offender-who-ids-as-woman-busted-for-shelter-attack/wcm/426228a4-1036-457d-899a-98003fb74bd7/amp/>, [Accessed 20/10/2022].

<sup>111</sup> There are a number of websites that have collected court reports and newspaper articles of such abuses.



This is partially due to the EHRC's initial misinterpretation of the Equality Act 2010's sex-based exceptions, partially to trans rights organisations like Stonewall or LGBT Youth Scotland erroneously briefing public sector institutions,<sup>112</sup> third sector organisations and businesses on the law as they wish it to be and not how it is and partially – in the case of VAWAG services – due to funding rules<sup>113</sup> introduced by the Scottish Government in 2012, which require female-only services that apply to the Equally Safe fund to show how they include men with the protected characteristic of gender reassignment in their service if they wish to receive government funding.<sup>114</sup>

In practice, the effect of this has been that increasing numbers of public sector institutions, third sector organisations and businesses have abandoned single-sex provisions wherever they could in favour of mixed-sex provisions. In part, this is due to uncertainty on how to correctly apply the sex-based exceptions.

This has resulted in increased numbers of sexual crimes (voyeurism, illegal recording, sexual harassment and sexual assault) committed by men against women and girls. Evidence of this happening can be seen in every court across the UK.

Andrew Gilligan writing for The Times wrote the first analysis of police records confirming this in September 2018, stating “Almost 90% of reported sexual assaults, harassment and voyeurism in swimming pool and sports-centre changing rooms happen in unisex facilities, which make up less than half the total.”<sup>115</sup>

Most recently, fashion retailer Primark, which introduced mixed-sex changing rooms in 2019, was forced to reinstate single-sex changing rooms after female customers reported incidents of sexual violence or harassment in its mixed-sex changing rooms.<sup>116</sup>

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<sup>112</sup> For an example, see A. Reindorf, ‘Review of the circumstances resulting in and arising from the cancellation of the Centre for Criminology seminar on Trans Rights, Imprisonment and the Criminal Justice System, scheduled to take place on 5 December 2019, and the arrangements for speaker invitations to the Holocaust Memorial Week event on the State of Antisemitism Today, scheduled for 30 January 2020. Report’, 16/09/2021, <https://www.essex.ac.uk/-/media/documents/review/events-review-report-university-of-essex-september-2021.pdf>, [Accessed 25/10/2022].

<sup>113</sup> ‘Delivering Equally Safe October 2021 – September 2023 Information and Application Guidance Notes’, Inspiring Scotland [website] <https://www.inspiringscotland.org.uk/wp-content/uploads/2021/04/DES-Guidance-notes-April-2021.pdf>, [Accessed 25/10/2022].

<sup>114</sup> The Scottish Government has been unclear on this question. It continues to require applicants to provide a trans-inclusive policy during the application process (“The proposed work must be demonstrably inclusive of lesbian, bisexual, trans and intersex (LBTI) women.”, *ibid* p.14) Yet footnote 6 now states “The LBTI plan does not impact on the ability of organisations to utilise the single sex exceptions in the Equality Act where that is a proportionate approach to achieving a legitimate aim.” (*ibid*) No information is available why VAWAG services must first show how they include men with the protected characteristic of gender reassignment in a female-only service if the Scottish Government agrees that they can legally be excluded. That’s why many organisations continue to believe it is mandatory and will not risk losing funding by defying it.

<sup>115</sup> A Gilligan, ‘Unisex changing rooms put women in danger’, *The Times*, 2/09/2018, <https://www.thetimes.co.uk/edition/news/unisex-changing-rooms-put-women-in-danger-8lwbp8kgk> [Accessed 25/10/2022].

<sup>116</sup> ‘Important changes to our fitting rooms in the UK’, Corporate Primark [website], 30/09/2022, <https://corporate.primark.com/en/newsroom/corporate-news/important-changes-to-our-fitting-rooms-in-the-uk/n/98cec44a-542f-40b9-8a88-618831aeddc0>, [Accessed 25/10/2022].



This move to mixed-sex facilities has not only resulted in increasing numbers of women and girls being victimised by men, but it has also resulted in increasing numbers of women and girls resorting to self-exclusion in public life and at school. Among those women and girls are not only ethnic minority women and survivors like us, but also those who rely on female-only provisions for their dignity, privacy and safety when they are in a state of undress and vulnerable.

These same policies are now pointed to by proponents of GRA reform as proof that the GRR Bill would not change anything at all and used as justification for proceeding with reform. However, as several women's rights campaigners and legal professionals have shown, these policies were adopted without due diligence being paid to their impact on women and children. And many of them are based on an erroneous interpretation of the sex-based exceptions in regard to persons with the protected characteristic of gender reassignment.

The EHRC, the regulator tasked with overseeing how the EqA is implemented, has itself struggled with correctly doing so, as can be seen in the way it has revised its view on how GRC-holders can be treated. The report by the Women and Equalities Committee quoted above, as well as a considerable number of legal opinions set out how difficult it is to understand the interplay between the original GRA and the EqA.

We also know how hard it is for underfunded VAWAG sector organisations to defend themselves against accusations of transphobia when they seek to exclude all men with the protected characteristic of gender reassignment from female-only services, which means they often operate on the basis of the self-declaration of sex only because they are forced to do so by funding constraints and activist pressure.

Given all the above, the Committee's confidence seems misplaced to us.



## Appendix E Summary of our meeting and the account we sent to Ms Brindley

Once all of us were present and to mark the beginning of the official meeting, Ms Brindley and Ms Burrell made a point of introducing themselves formally with their names and titles. During the meeting, in an astonishingly disrespectful development, we found ourselves confronted with a trans rights activist, who proceeded to inform us that we had no legal right whatsoever to a female-only service, and that it was unlawful for RCS to exclude any man with the protected characteristic of gender reassignment from providing counselling to female survivors.

As we are not legal experts, this was intimidating, especially since we had not been introduced to this woman and thought she was there as a survivor like us. On realising that we had no idea who this was, our meeting facilitator informed us a third of the way through that this activist was Sharon Cowan, Professor of Queer and Feminist Legal Studies at Edinburgh University.

It remains incomprehensible to us why RCS thought fit to bring a trans rights activist to a private and ostensibly co-operative meeting with survivors who are self-excluding from its services because its trans inclusive policies are actively harmful to them.

In the course of the meeting Prof Cowan repeated several times that female survivors did not have any rights in law at all to expect a female-only service; that men with the protected characteristic of gender reassignment could never be excluded from a female-only service, regardless of whether they had a GRC or not and that the sex-based exceptions in the Equality Act 2010 could not be applied because of a lack of case law confirming that those were legal. Prof Cowan also stated that RCS needed to balance the needs of female survivors with the employment rights of men with the protected characteristic of gender reassignment, and that excluding the latter from providing counselling to female survivors was not an appropriate means to a legitimate aim.

We were further informed that the minimum standard required by RCS for the inclusion of any man with the protected characteristic of gender reassignment within the female-only therapeutic environment was a verbal statement of identity. And that the service required no changes whatsoever from such a man, not even a change of name or pronoun, let alone appearance or any kind of medical transition. Despite this, we were repeatedly told that RCS considered their services to be women-only. They adamantly refused to inform female survivors about this policy, even after we made several suggestions as to how this could be done without requiring any public announcement of a change in its trans-inclusive policy.

Furthermore, when we asked for a guarantee that survivors requesting a female counsellor would receive one, we were informed by Ms. Burrell that a woman who insisted on a female counsellor could find herself confronted by a man with the protected characteristic of gender reassignment, including those without a GRC.

When the mother of a daughter gang-raped in 2014, who was also present at the meeting, explained how traumatising it was when her local rape crisis centre refused to guarantee her child a female counsellor, Ms Brindley did not acknowledge that this should never have happened. Our member was in tears at sharing her experience. We still cannot understand



why Ms Brindley did not at the very least afterwards reach out to her to assure her that such a dereliction of duty on the part of a rape crisis centre would not be repeated.

After all, as our member had explained, this refusal then left the child and her family unsupported in the harrowing court case that followed. Her daughter, whose entire experience as a child victim of rape going through the Scottish legal process was a shocking story of one abysmal failure after another, has however since received both an apology and a request to advise those dealing with child victims going through a rape trial on how to address those mistakes. We believe that an apology and a request for advice on how to avoid repeating this mistake are the bare minimum of what RCS should be required to do in its role speaking for the wider network.

Later, another member of our group explained that traumatised female survivors, including herself, frequently suffer from hypervigilance, which means they read males as male regardless of presentation (even when others do not). We pointed out that this is neither a rejection of any male's trans identity nor prejudice, bigotry or transphobia, but a survival skill developed by many female survivors out of necessity. And that the presence of males, regardless of identity, prevents us from reaching a psychological state in which recovery is possible.

We further explained that female survivors, who are typically in crisis when they contact rape crisis services, should not be put into a position of being forced to object to the presence of males in a service they expect to be female-only. We shared examples of other women who had told us they feared that doing so would see them excluded from the service and examples of several other women who were compelled to self-exclude from services like those covered by the RCS and SWA umbrellas, because the presence of males was re-traumatising to them.

Ms Burrell responded to this by elaborating on the pain suffered by men with the protected characteristic of gender reassignment on being rejected by female survivors. This response ignored the principles of the trauma-based care rape crisis services should provide by asking female survivors to suppress their own needs for the benefit of males.

We stressed several times during this meeting that we would never seek to deny any survivor access to help, and that we firmly believed that rape crisis services could support both groups without negatively impacting either by providing separate services.



Email sent after the meeting to Ms Burrell and Ms Brindley on 1 December 2019<sup>117</sup>

Dear Caroline and Sandy,

Thank you for having us at Edinburgh Rape Crisis<sup>118</sup> recently with [Redacted].

Although we left the meeting feeling distressed and worried by your clarification of your policies and the fact that you feel you cannot and therefore will not provide a female-only service for females, we hope that we may continue to engage with you with the aim of finding a compromise that meets the needs of female survivors of male violence, as well as your own as providers and those of your trans-identifying service users, volunteers and staff.

For this reason, we thought it would be useful to provide you with our account of the meeting to begin with. Please could you comment in the first instance on this account and whether you feel it is accurate.

Please note, we do not give you permission to share or forward this letter, either in full or in excerpt, with any other party, or to share our names or details with any other party without prior agreement from all of the undersigned.

#### Attendees and purpose of the meeting

On Friday 25 October, a group of women who had previously used rape crisis/violence support services were invited to visit Edinburgh Rape Crisis to learn more about their policies and about whether female service users would encounter biological males in the therapeutic environment there — in short whether they offered female-only services. We valued the opportunity to have this discussion and to raise our concerns.

On arrival, Sandy Brindley introduced herself as the Chief Executive of Rape Crisis Scotland, and Caroline Burrell introduced herself as the Centre Director for Edinburgh Rape Crisis. The other women around the table introduced themselves only by first name, including a woman called Sharon. As we had not previously met, we assumed she was there in the same capacity as us — survivors of male sexual violence. Sharon mentioned that she worked at the University of Edinburgh, and one of the other women shared that she did, too.

#### Exploring Rape Crisis practices and stating our concerns

An hour of discussion followed during which each of the four women shared a little about their experiences of using a rape crisis centre and why women-only spaces were important to them.

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<sup>117</sup> Please note this email sets out our understanding of the position of RCS and their trans-inclusive policy. We omitted from this account the experience shared by the mother of a gang-raped child because we were worried that this may later on be used in ways we could not foresee.

<sup>118</sup> We realise that we got the name wrong at the time. It should be Edinburgh Rape Crisis Centre or ERCC. We have left this unchanged however as this is the original text.



Sandy told everyone that their services were open to both sexes, including trans people, which all in the room agreed was right and fair. Sandy said that she believed that males who identify as trans were women, and that all RCS and ERC jobs, both voluntary and paid, were open to anyone who identified as a woman. At this point Sandy elaborated on the issue of perception — that most of us would not know whether a person presenting as a woman was female or not and that we had all therefore used women-only spaces in the presence of males identifying as trans without noticing. We understood this to mean that the service treated and therefore included as women only those males identifying as trans who had meaningfully transitioned and who would therefore be perceived as women by many people.

One of us highlighted the obvious problem with this approach — that perception differs between individuals and stressed that traumatised female survivors, including herself, frequently suffer from hypervigilance, which means they read males as male regardless of presentation (even when others do not). We pointed out that this is neither a rejection of any male's trans identity nor transphobia, but a survival skill developed by many female survivors out of necessity.

As the conversation unfolded however, Sandy clarified that any male who claims a trans identity would be treated as a woman by the service, including those who present as male, have made no changes to names or pronouns and who would be unequivocally perceived as men by all.

Sandy confirmed for instance that a male-born person could work on their phone counselling line, as long as that person identified as a woman. This meant that a traumatised woman could call the helpline and be counselled by a male. One of the women said that a close family member had been raped, and that having a rape crisis line answered by a man would cause her severe trauma.

At this point we suggested that such a re-traumatising practice could easily be avoided by offering any female caller the option of talking to a female counsellor. However, Sandy told us that if a woman asked for a female counsellor, she could theoretically be assigned to a male-born person identifying as female, and that they would not be told in advance of the status of this person.

One of the women asked Caroline what would happen if a woman were upset about being assigned a male born person as a counsellor, and she said that if a client and counsellor did not connect, they could explore this with Caroline. One woman said that this was not a matter of connecting, it was a matter of traumatised women not being counselled by a male — the normal practice in the trauma-informed approach used in the violence against women sector. Caroline did not have an answer for this, other than it had not been an issue previously.

Caroline and Sandy's general approach seemed to be that as there was unprecedented demand for their service, and that as no woman had complained, it meant their policies





were fine. They did confirm that they had not sought the views of their service users on this issue.

One of the women said that she self-excludes from the ERC service as she feels they are hostile to women with gender critical views. For example, ERC have publicly shown support for Sisters Uncut, an aggressive anti-women activist group who regularly demonstrate outside women's rights meetings. This has included standing outside venues, wearing balaclavas, shouting at women entering and banging pots and pans to disrupt the meeting. On one occasion they drowned out the voice of a survivor of male sexual violence who was standing up at a meeting explaining why single-sex spaces were important to her. Caroline was only able to offer that she didn't know about the balaclavas.

We also suggested that many women were unhappy with the lack of female-only services but felt afraid to complain as they feared being excluded from the service. Caroline and Sandy both said that no woman would be treated as a bigot if she did not want to be counselled by a male who identifies as trans. However, it was pointed out that even if the counsellor was then changed, the damage was already done if the woman was re-traumatised by being confronted with a male at a time she was at her most vulnerable. We suggested that ERC and RCS could avoid this situation, if they would consider offering female survivors a choice of seeing a female counsellor before her sessions begin.

Another woman who self-excludes from ERC's service said that she knows a number of women who are self-excluding from other service providers refusing to provide a female-only service, for example in the domestic violence sector. Sandy and Caroline were then asked how they measure how many women self-exclude from their service because they feel afraid and unwelcome. They did not know. We suggested that this could be remedied by offering service users a chance to answer specific questions on this issue anonymously and without fear of repercussions.

Caroline then explained that their service users were happy attending group counselling sessions designed to be mixed-sex as well as those purporting to be women-only but which are in fact open to males claiming a trans identity. After pointing out that this contradicted the well-documented needs of female survivors, we asked how ERC would react if a female survivor was uncomfortable attending a group counselling session also attended by a male who identified as trans and requested to attend a female-only session instead. She responded by saying the woman could raise this as an issue, but we were left with the impression that as ERC will not offer explicitly female-only sessions, there may be no support for such a service user. This impression was further strengthened when both Sandy and Caroline countered this example by saying many trans people do not use the service because they are afraid of rejection — we were left to infer that this was the fault of women who are uncomfortable being in groups with male people.

Nonetheless, we asked whether Caroline and Sandy would consider offering a limited number of sessions explicitly for female survivors only, alongside any other sessions they already have. We stressed the need to offer this from the outset rather than relying on a



traumatised survivor having to overcome her fears to request one. One of the women asked Sandy if she believed that, as we could not agree on definitions for women and men, whether people born with vaginas had the right to services and spaces that people born with penises could not use. Sandy appeared to struggle with this. She finally managed that their service — a rape crisis service — was not about people's genitals and that these were not checked at the door. She said this approach was “essentialist” and that “all genders” can abuse, specifically mentioning lesbian violence when we discussed safeguarding service users from males seeking to abuse their approach of allowing anyone to access or provide the service on the basis of self-identification. She said RCS offered extensive training and safeguarding and would not employ any inappropriate person, which seemed extremely weak as a safeguarding measure.

#### Legal argument presented by Prof. Cowan for ERC and RCS

About a third of the way through the meeting Sharon said that it is not legal for ERC and RCS to exclude trans people — specifically males — from working for the service unless there was legitimate and proportionate reason.

We were made aware at this point that Sharon was Sharon Cowan, Professor of Queer and Feminist Legal Studies at the University of Edinburgh. Neither Sandy, nor Caroline or Sharon herself had explained who she was or in what capacity she was at the meeting, as would have been courteous and fair. We had neither prior warning of this and thus were denied the chance to prepare our own legal argument nor did we have the advantage of having our own legal expert present to react to Sharon's interpretation of the law.

Sharon's views and her activism are well known, and she is in our opinion partisan on the subject of single-sex rights v trans rights as this interview demonstrates:

<http://www.studentnewspaper.org/in-conversation-with-sharon-cowan-the-politics-of-queerness/>

We emphasised that rape counselling services were the actual example given in the Equality Act 2010 as an instance where restricting a service to biological women was legitimate and proportionate. Sharon said that case law would be required before ERC and RCS could do this. This is of course not accurate on any given law, not just in regard to the Equality Act, but as we are not legal experts ourselves we could only ascertain the invalidity of Sharon's claim after the meeting.

We did however point out to Sharon and RCS that the Genuine Occupational Requirement allowed them to restrict appointments of counsellors to biological females and that was the reason why Scottish Trans Alliance and Stonewall had wanted the Genuine Occupation Requirement dropped from the Equality Act. We also highlighted the fact that a large number of organisations working in the violence against women sector as well as numerous lawyers and legal experts interpreted the Equality Act in different ways from Sharon, including Professor Rosa Freedman, chair of Human Rights Law at the University of Reading.



### Our main take-aways from the meeting

- RCS and ERC believed it was acceptable to bring a known trans rights advocate to a meeting of traumatised women without prior warning, to neglect to introduce her and her credentials, and instead allowed the other women to believe that they were in the company of another abused woman. This was particularly worrisome for the woman who works at the University of Edinburgh in the knowledge that a colleague with this standpoint now has first-hand knowledge of her gender critical views. Sharon did assure the woman that she would not divulge the details of the meeting to colleagues. It remains however a dishonest and manipulative act by a service where women should feel safe and that they should be able to trust.
- RCS and ERC could, legally, provide services for only women, including counselling services where female survivors may request a female counsellor, female-only groups such as the one offered by Glasgow Rape Crisis, and a female staffed phone line. RCS and ERC have chosen not to, following instead a self-identification model where claiming a trans-identity alone is enough for any male to be included in the section of the service dedicated to female survivors (which is traditionally provided by and expected to be for females only). No proof of any kind is requested from the self-identifying male.
- RCS and ERC will not inform women that the services they are accessing may be staffed or attended by males, as their definition of women-only includes males. Inquiring whether the service is “for women only” will not elicit a satisfactory answer either, as despite knowing that women asking for this are expecting a female-only service, they will be told the service is for women only without volunteering that for RCS and ERC this group includes males unequivocally perceived to be men by everybody else.
- The Chief Executive of Rape Crisis Scotland, mindful of the fact that 100% of rapes in Scotland are committed by males, as rape requires a penis, does not think that the genitals of the people using, working and volunteering at her service with female survivors matter. This was despite the fact that all the women present, as is the case with the majority of women who have suffered male violence, said that they were very afraid of unknown males, regardless of their gender identity.

Please feel free to correct any misunderstandings or misconceptions on our part to allow us to find an agreed basis upon which to proceed.

We look forward to your reply.

Yours sincerely,  
[Redacted], [Redacted], [Redacted] and Maren



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