Equalities, Human Rights and Civil Justice Committee Implementation of the EHRC revised code of practice for services, public functions and associations

Submission from MurrayBlackburnMackenzie

We are providing this note to supplement our previous invited evidence to the committee.

Evidence session 19 November

1. At the Committee evidence session on 19 November, the Scottish Trans Manager at the Equality Network, Vic Valentine, said:

   > 'I think it is just worth highlighting that the policy that we now have to house all prisoners on estates for their sex at birth is how we used to make decisions about trans prisoners in the past across the UK and a large reason that was changed was due to the deaths of four trans women by suicide across 2015 and 2016. We've been here before. This is how we treated trans people when we placed them in prisons before and the results were pretty stark, as stark as they can be.'

2. We have taken a long-standing close interest in the development of the SPS's *Gender Identity and Gender Reassignment* policy, due to its implications for women in prison.[1] We wish to draw the Committee's attention to the points below.

Scottish Prison Policy

3. The SPS *Gender Identity and Gender Reassignment* policy was formally put in place in March 2014. The policy was developed in conjunction with the Equality Network, of which the Scottish Trans Alliance (now Scottish Trans) is part.

4. In 2018, James Morton, the then Scottish Trans Alliance manager, wrote that:

   > 'We strategised that by working intensively with the Scottish Prison Service to support them to include trans women as women on a self-identification basis within very challenging circumstances, we would be able to ensure that all other public services should be able to do likewise.'[2]

5. We have reviewed Morton's chapter, and it includes no reference to self-inflicted deaths in custody, here or elsewhere in the UK, as a reason for developing the policy. This may reflect that, to the best of our knowledge, there were no such relevant cases reported in Scotland up to 2018.

6. There has since been one relevant case in Scotland which has been the subject of a Fatal Accident Inquiry (FAI), which merits careful attention.

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[1] For example, see: Murray, K., & Hunter Blackburn, L. (2019). Losing sight of women's rights: The unregulated introduction of gender self-identification as a case study of policy capture in Scotland. Scottish Affairs, 28(3), 262–289. https://doi.org/10.3366/scot.2019.0284

[2] Morton, J. (2018). A Scottish history of trans equality activism. In C. Burns (Ed.), Trans Britain: Our journey from the shadows (pp. 231–246). Unbound.

Scottish case considered at FAI

7. Sarah-Jane Riley, who as Aiden Riley had been convicted of a violent crime in 2008, and was subject to an Order of Lifelong Restriction, committed suicide in HMP Perth in 2019, after hearing that a further bid for release had been rejected. Due to the tragic outcome of this case there is considerable detail available in a Fatal Accident Inquiry (FAI) report (2025). This case is complex: the impact on Riley of the prospect of indefinite detention is a strong theme in the FAI report.

8. Riley began to identify as a woman in 2015 and was moved for a short time to Cornton Vale, under the 2014 SPS policy that provided for allocation based on self-declared gender identity. The FAI notes that 'Sarah encountered many difficulties with other prisoners' and was moved into segregation. The report adds the 'move to the female estate had gone very badly'.

9. After a release on licence in July 2018, Riley was returned to Perth that November for breaching conditions. In a case conference 'Sarah expressed some concern about moving to a female prison due to the problems she experienced when she was placed in Cornton Vale. She stated she felt safe in Perth as it was familiar, and staff knew her well'. However, one witness 'was clear that all staff at Perth Prison the governor down wanted Sarah to be moved to another prison. She was a unique prisoner in Perth', due to a complex combination of factors.

10. Riley 'expressed strong opposition' to a proposed move to the female wing at Polmont 'for reasons based on her prior adverse experience in the female estate'. The report notes 'I concluded from the evidence is that she did articulate her fears and concerns within the prison after recall, but that little weight was accorded to them. Especially as regards their relevance to the attempts to transfer her, they were ignored. The response of the responsible staff at Perth to her objection… was to decide to try again next month. No consideration seems to have been given to whether there might be good reason for her objection to transfer to Polmont'.

11. The report noted that the 'equality and diversity role within SPS…took a quite prescriptive approach at the first TSG [transgender] case conference and stated that Sarah had to go to the female estate because the policy said that she should. [He] held a very rigid view of the SPS's responsibilities under the Equality Act 2010 Act. He does not appear to have considered whether the policy should be departed from in this very unusual case where there was a previous history of Sarah living in the hall at Perth as a woman'.

12. The report notes that the Equality and Diversity Manager at SPS HQ undertook 'to contact Scottish Transgender Alliance. STA had received late notification and could not provide a representative to attend the TSG case conference.'

13. The report also records a prison-based social worker 'thought that the best thing would be for Sarah to stay in Perth. She was close to family, had links in the

community and was known to the local social workers. No one higher in the prison hierarchy seems to have been aware of her view. The only course pursued was to seek a transfer'. Equally however, the FAI accepted that Riley was a more complex case than a local prison such as HMP Perth was used to accommodating, and that this was a relevant consideration.

Scottish case yet to be subject to an FAI

14. We are aware of one further potentially relevant case in Scotland.

15. Andrew Burns/Tiffany Scott was described as 'one of the most menacing people' in the Scottish prison estate and was subject to an Order for Lifelong Restriction. He assaulted a nurse while escaping from a hospital in Cheshire in 2010. In 2013 he was sentenced to 14 months for stalking a 13-year-old girl from Polmont Prison, Falkirk, by sending letters. The BBC reported that in 2017 Falkirk Sheriff Court was locked down for safety reasons whilst Burns/Scott was sentenced for a series of violent incidents in Glenochil Prison. These included 'striking a prison nurse on her back with a hurled chair, punching a prison officer in the face, and spitting at another officer and trying to bite him'. He also smeared excrement over his cell, tore a drip needle out of his arm, and ripped up 'tear-proof' clothing. Burns/Scott had begun to identify as a woman whilst in custody, it appears around 2016.

16. The SPS initially rejected a move to a women's prison. However in late January 2023, it was reported that the SPS had 'relented in recent weeks' and approved a transfer to the female estate. Against the backdrop of the Adam Graham/Isla Bryson controversy and intense political pressure, a day later the Justice Secretary announced that all transfers to the female estate would be 'paused' for prisoners with a history of violence. Burns/Scott died in custody in February 2024, reportedly from a drug overdose and abdominal injuries. A SPS spokesperson has said that a Fatal Accident Inquiry will be held in due course.

Cases elsewhere in the UK

17. The four cases of self-inflicted deaths we have found in this group of prisoners in 2015 and 2016 all occurred in England. Only two of them (Vicky Thompson and Joanne Latham) are commonly cited as relevant to policy changes made there in 2017. Those changes were later partially reversed and are now under further review.

18. In one case, Nicola Cope at HMP Foston Hall, the prisoner concerned was housed in line with identity rather than sex, in a women's prison.[3]

19. In a second case, the inquest jury found the death of Vicky Thompson in a male prison (HMP Leeds) not to have been intended as suicide, although the prison authorities were strongly criticised for their handling of a vulnerable prisoner. It

[3] Prisons and Probation Ombudsman Independent investigation into the death of Ms Nicola Cope a prisoner at HMP Foston Hall on 29 November 2016

was reported that ‘the jury concluded it was right she was held in a male jail and that she did not intend to take her own life. But the foreman said "more attention should have been paid" to her.’ The investigation report noted that at one point ‘Ms Thompson said that she did not want to move to a women’s prison’ but also argued that a move to a woman’s prison should have been considered.[4]

20. There are two remaining cases in male prisons which inquests found to be suicides.

21. Joanne Latham had been held since 2001, after conviction for attempted murder. The Prisons and Probation Ombudsman summarised the case as follows:[5]

> ‘Ms Latham was born male but, four months before her death, had asked to live as a woman. The appropriate allocation of transgender prisoners is not straightforward and national policy is currently under review. However, I am generally satisfied that Woodhill responded appropriately to Ms Latham’s request to be treated as a transgender prisoner and we have respected her choice in this report. Ms Latham had a very violent history and had spent a number of years in a high security psychiatric hospital. She often self-harmed. Since May 2014, she had been held in the close supervision centre at Woodhill, part of a national system for managing the most disruptive and dangerous prisoners.’
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> Ms Latham was being monitored under Prison Service suicide and self-harm prevention procedures at the time of her death. I am concerned that these procedures did not operate fully effectively and the frequency of observations did not reflect her high risk at the time. While I recognise that Ms Latham was regarded as a high risk of violence towards staff, as well as to herself, I consider that it took prison staff too long to go into her cell after she had barricaded it, seriously self-harmed, and then did not respond at a welfare check. National and local guidance to deal with cell barricades were not followed. Sadly, when staff eventually intervened, it was too late to save Ms Latham’.

22. Jenny Swift, who committed suicide in a male prison (HMP Doncaster) in late 2016, was on remand awaiting trial for attempted murder. The victim of the attack had subsequently died, while Swift was being held on remand. A strong theme in the investigation report is Swift’s loss of access to cross-sex hormones, in the absence of these having been previously obtained on an official prescription: the report made recommendations about improving the assessment of health care needs for this group of prisoners on admission.

23. The investigation report noted that “Swift had stated that she wanted to be located in the female estate, and had said that if she was not moved there, she would take her own life.” It further noted that three case reviews had been held,

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[4] Prisons and Probation Ombudsman Independent investigation into the death of Ms Vicky Thompson a prisoner at HMP Leeds on 13 November 2015

[5] Prisons and Probation Ombudsman Independent investigation into the death of Ms Joanne Latham a prisoner at HMP Woodhill on 27 November 2015 (page 3)

and the team had concluded two weeks before the suicide occurred that there was enough information and evidence to support a recommendation to transfer Swift to the female prison estate: this had been relayed to Swift, although Christmas was going to delay a formal decision and move. The report notes that:

> 'At the time of Ms Swift's remand HMPPS had just introduced a new Prison Service Instruction (PSI) 17/2016, The Care and Management of Transgender Offenders. The investigation has found that all actions taken to support Ms Swift and assess her suitability for the female estate were timely and in line with the revised PSI.'[6]

Conclusion

24. All self-inflicted deaths in custody are a tragedy and highly specific to individual circumstances. They should be invoked in policy- and law-making with extreme care. This is the first time we have been aware of such cases being used to justify the policy put in place in Scotland in 2014. We invite the Committee to treat that comment made to it by the Scottish Trans Manager at the Equality Network with considerable caution, given the observations above.

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23 November 2026

MurrayBlackburnMackenzie is an Edinburgh-based policy analysis collective, made up of Dr Kath Murray, Dr Lucy Hunter Blackburn, and Lisa Mackenzie. We do not receive any funding from the Scottish Government.

[6] Prisons and Probation Ombudsman (2016) Independent investigation into the death of Ms Jenny Swift a prisoner at HMP Doncaster on 30 December 2016