

## For Women Scotland response to the call for input to the report of the Special Rapporteur on violence against women and girls to the HRC Forms of sex-based violence against women and girls

### About us

For Women Scotland is a not-for-profit group campaigning to protect and strengthen women and children's rights in Scotland. We believe that "sex" is a biological term referring to the two immutable categories of male and female. This aligns with the UN definition of sex as "the physical and biological characteristics that distinguish males and females"<sup>1</sup> and is reflected in Article 1 of CEDAW which protects women against discrimination on the basis of sex.<sup>2</sup> In recent years, the Scottish Government has, on occasion, overstepped its competency with regard to UK law<sup>3</sup> and, some experts believe, has contravened UN conventions.<sup>4</sup>

In 2024, we took the Scottish Government to the Supreme Court to establish that sex should have an ordinary meaning in law.<sup>5</sup> We have previously won at Judicial Review in the Inner House of the Court of Session in Scotland. We agree with the Special Rapporteur that this ordinary definition is the most reflective of international Human Rights treaties and law.

### The Legal Landscape

According to the European Union's Directive 2004/113/EC, transposed in the United Kingdom in December 2007,<sup>6</sup> differences in treatment between women and men are permissible when they are justified by a legitimate aim. The directive states that "A legitimate aim may, for example, be the protection of victims of sex-related violence (in cases such as the establishment of single-sex shelters), reasons of privacy and decency (in cases such as the provision of accommodation by a person in a part of that person's home), the promotion of gender equality or of the interests of men or women (for example single-sex voluntary bodies), the freedom of association (in cases of membership of single-sex private clubs), and the organisation of sporting activities (for example single-sex sports events)." In accordance with the Directive, the UK's Equality Act 2010 permits the difference in treatment, and the exclusion of male sex, in the context of services and establishments providing assistance to female victims of violence.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) is founded on the recognition that: "the realisation

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<sup>1</sup> [https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=S&sortkey=&sort\\_order=](https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=S&sortkey=&sort_order=)

<sup>2</sup> <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>

<sup>3</sup> <https://www.scotcourts.gov.uk/media/0a1plqgo/court-of-session-judgement-reclaiming-motion-by-for-women-scotland-limited-against-the-lord-advocate-and-others-18-february-2022.pdf>

<sup>4</sup> <https://claireob1.substack.com/p/does-international-human-rights-law>

<sup>5</sup> <https://forwomen.scot/29/11/2024/uk-supreme-court-the-hearing/>

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>

of de jure and de facto equality between women and men is a key element in the prevention of violence against women.”<sup>7</sup>

The Council is clear that ‘men’ and ‘women’ are used in the ordinary biological sense and that difference between the sexes is key to understanding inequality.<sup>8</sup> We believe this status should be reflected in the UK Equality Act in which sex is a protected characteristic. Although we await the outcome of our Supreme Court case (FWS2) to find out whether a Gender Recognition Certificate (GRC) can change a person’s legal standing, our first Judicial Review (FWS1) established that “Provisions in favour of women, in this context, by definition exclude those who are biologically male.”

We consider the ruling in FWS1 to correctly represent the law as it currently stands. This judgment was never appealed and duly became final law in Scotland, as well as a ‘persuasive’ ruling in the rest of the UK. In ruling on our second Judicial Review, the Inner House stated “Individuals without a gender recognition certificate (GRC) retain the sex in which they were born and have no right to access services provided for members of the opposite sex.” Although the ruling as regards to individuals with a GRC is under appeal, this part of the ruling has not been appealed and is also final law in Scotland.

In addition, the Equality Act explicitly allows for the blanket exclusion of all males - including those with a Gender Recognition Certificate - from female services and spaces.<sup>9</sup>

Despite these clear judgements and statutes, the Scottish Government, the public sector, women’s services, and others continue to apply a fallacious reading of equality law which we believe materially affects outcomes for women. Possibly the most egregious example has been within the Rape Crisis Sector where government funded services have prioritised trans identified men at the expense of women. We believe this is a useful case study in government and organisational failure.

### **Rape and Sexual Violence Services in Scotland - Background**

While we acknowledge that sexual violence can affect men as well as women, according to the Scottish Government, 95% of the victims of rape or attempted rape in 2023/24 were female.<sup>10</sup> Women’s groups in the UK view sexual assault and domestic violence as gendered crime in line with CEDAW 1992: “The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>11</sup>

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<sup>7</sup> <https://rm.coe.int/168008482e>

<sup>8</sup> [https://search.coe.int/directorate\\_of\\_communications#{%22CoEIdentifier%22:\[%2209000016808f0fb1%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/directorate_of_communications#{%22CoEIdentifier%22:[%2209000016808f0fb1%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})

<sup>9</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-10137/>

<sup>10</sup> <https://www.gov.scot/publications/recorded-crime-scotland-2023-24/pages/6/>

<sup>11</sup> <https://www.legal-tools.org/doc/f8d998/pdf/&ved=2ahUKEwi4r8KY2dX>

The Istanbul Convention says that parties shall ensure that measures for protection and support of victims of violence “be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim.”<sup>12</sup> It also stipulates the provision of specialist women’s support services. Despite claiming to adhere to CEDAW and the Istanbul convention, there have been material failures in the provision of support services in Scotland, dating back over a decade.

The Scottish Government funds a range of services to combat VAW, however, the Government has no policy or monitoring mechanism to ensure that single-sex services are available for female victims of violence, including the victims of domestic violence, sexual violence, rape and trafficking for sexual exploitation. In 2019, we revealed that the funding criteria included a condition that all services produce a trans inclusion policy: “To be eligible for funding, applicants are required to demonstrate the following in their application...Ensure that your service is inclusive to lesbian, bisexual, trans and intersex (LBTI) women. An LBTI Inclusion Plan should be submitted along with your application.”<sup>13</sup>

After we raised this issue, the minister claimed “grant recipients...can therefore of course use the exceptions for single-sex services.” However, no explanation was given as to how this would interact with the required inclusion plan. When revised guidance was published, it continued to insist on the necessity for an inclusion plan while also emphasising this did not affect the ability of an organisation to use the single sex exceptions.

Inspiring Scotland, the organisation charged with managing and awarding Equally Safe funds claimed “Our reason for requesting LBTI inclusion plans grew from a Scottish Government policy objective to improve approaches to trans inclusion amongst organisations working in this field.”<sup>14</sup> This reflects anecdotal information from managers at Rape Crisis services that the government were prioritising the inclusion of trans identified males in women-only services. From around 2013, RCS was working closely with trans organisations and introduced a series of significant changes: it started work on attaining a charter award for trans inclusion from LGBT Youth Scotland, recommended rape crisis centres invite James Morton of Scottish Trans Alliance to deliver training to staff,<sup>15</sup> and produced a series of policies and pamphlets to promote trans inclusion. It was also confirmed in 2013 by Emma Rich, then CEO of Engender, a government funded feminist policy organisation, who tweeted that “All Government-funded VAW services in Scotland have a trans-inclusion plan”.<sup>16</sup>

The Equality Act also permits organisations to reserve certain jobs for women under Schedule 9 (Genuine Occupational Requirement).<sup>17</sup> In 2015, Mridul Wadhwa, a trans identified male who

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<sup>12</sup> <https://rm.coe.int/168008482e>

<sup>13</sup> <https://forwomen.scot/29/12/2019/funding-conditions/>

<sup>14</sup> <https://inspiringscotland.org.uk/wp-content/uploads/2021/01/Delivering-Equally-Safe-Fund-FAQs.pdf>

<sup>15</sup> <https://x.com/RCCGlasgow/status/519928939792564225>

<sup>16</sup> <https://archive.ph/QZDk2#selection-463.22-463.96>

<sup>17</sup> <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9>

worked for Rape Crisis Scotland (RCS) and had been 'out' since 2010,<sup>18</sup> gave evidence to a Parliamentary committee in Westminster:

"I believe the gender reassignment General Occupation Provision in recruitment is discriminatory to transsexual people especially trans women. I genuinely believe that there is no space for it in the gender based violence sector and that it has no place in violence against women work. I was unaware of its existence until a few weeks ago. I have worked in the violence against women sector since 2005 and have never known for it to be used. I am disappointed to think that someone has the right to refuse work to me and others like me in my sector just because they think that I might not be a woman. When I started working in this sector, I was not out as a trans person, this was not out of fear of discrimination but more because I did not think it was necessary. However, as an out trans women I have not experienced discrimination but that is because I am already in it. There is a strong possibility that other trans women like me would never be able to work in this sector. I must say though that none of the organisations I work for would ever consider using this part of the legislation and have very positive trans inclusive policies and encourage trans women to work and volunteer with them."<sup>19</sup>

In fact, Rape Crisis Centres and Scottish Women's Aid routinely used Schedule 9 restrictions in recruitment, including when advertising for two positions subsequently taken by Wadhwa - as manager of Forth Valley Rape Crisis and CEO of Edinburgh Rape Crisis.<sup>20</sup> By misapplying the requirement, rape crisis centres misled survivors who were told that the centres were exclusively staffed by women. They also risked falling foul of the law by indirectly discriminating against other members of that sex.

Guidance for women's shelters written by LGBT Youth Scotland was, for a considerable period, posted on Rape Crisis Scotland's website until it was removed following complaints from survivors. The guidance erroneously claimed that it was not legal to restrict a service to one sex: "People who provide separate and single-sex services, such as refuges, can only provide a different service or refuse a service to transsexual women service user under exceptional circumstances and these circumstances depend on the facts of the case – this means that 'blanket' bans or policies barring people from accessing services are not acceptable."<sup>21</sup> This is a straight misrepresentation of the Equality Act, where provision is made for single-sex services with the following example given in the Explanatory Notes: "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>22</sup>

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<sup>18</sup> <https://archive.ph/4nxwD>

<sup>19</sup> <https://committees.parliament.uk/writtenevidence/57453/pdf/>

<sup>20</sup> <https://archive.ph/xW9SH>

<sup>21</sup> [https://www.strath.ac.uk/media/1newwebsite/departmentsubject/socialwork/documents/eshe/3\\_Single\\_Sex\\_Service\\_-\\_Trans\\_Guidance.pdf](https://www.strath.ac.uk/media/1newwebsite/departmentsubject/socialwork/documents/eshe/3_Single_Sex_Service_-_Trans_Guidance.pdf)

<sup>22</sup> <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/207>

The guidance also included the troubling suggestion that if women objected to the presence of obviously male people in a shelter for vulnerable women, this was no reason to move the trans identified male and they “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.”

In 2020 the Scottish Parliament considered a Bill which was intended to improve conditions for rape victims in the immediate aftermath of an assault. Sandy Brindley, the CEO of RCS, wrote that “The single biggest issue that women raise with Rape Crisis in Scotland about the process of getting a forensic examination after being raped is not having access to a female doctor”.<sup>23</sup> However, despite this, Brindley then expended considerable political influence to ensure that an amendment to ensure victims could request a female examiner was blocked by the Parliament. RCS briefings emailed to MSPs asking them not to support a rape victim’s right to choose a female medical examiner directed them to Brindley in the event of additional questions. When the amendment passed in spite of this, it was branded “bigoted” by Wadhwa.<sup>24</sup>

### **Rape and Sexual Violence Services in Scotland - Recent developments**

In January 2024, Edinburgh Rape Crisis (ERCC), the centre managed by Mridul Wadhwa, was taken to employment tribunal by Roz Adams for constructive dismissal. The Judge ruled that Ms Adams was subjected to a “heresy hunt” which he described as “Kafkaesque”.<sup>25</sup> She was later awarded nearly £70,000.<sup>26</sup> Ms Adams’ ordeal began after she requested permission to inform a worried service user that the non-binary member of staff assigned as her support worker was biologically female. However, as expressed in a statement in 2019, RCS prioritised the identity of staff over the needs of survivors: “We would like to make it clear that we will never disclose the trans history of any of our employees or volunteers” and added that “Trans women are an important and valued part of our movement.”<sup>27</sup>

In the subsequent fall-out, RCS commissioned a review of ERCC conducted by Vicky Ling. The report found a litany of failures which included: “a strategy which did not put survivors first; a failure to protect women only spaces;... [and] a CEO who did not understand the limits on her [sic] role’s authority.”<sup>28</sup>

Among Ling’s recommendations was the stipulation that “RCS must facilitate a shared definition of woman/female to be adopted across the network. The RCS definition of woman/female must be publicised.”

Glasgow and Clyde Rape Crisis (GCRC), the oldest and largest centre in Scotland decided to break with RCS saying its priority was to provide a single-sex service by an “all-female

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<sup>23</sup> <https://archive.ph/XyJHs>

<sup>24</sup> <https://archive.ph/ygs8k>

<sup>25</sup> <https://www.gov.uk/employment-tribunal-decisions/r-d-adams-v-edinburgh-rape-crisis-centre-4102236-slash-2023>

<sup>26</sup> <https://www.bbc.co.uk/news/articles/c6248z383x7o>

<sup>27</sup> <https://archive.ph/cjkoF>

<sup>28</sup> <https://www.rapecrisisscotland.org.uk/resources/ERCC-Review-Report-FINAL1-.pdf>

workforce" - and this was "at odds" with RCS's priorities.<sup>29</sup> The co-chair, Katie Cosgrove said "We believe very strongly in the rights of women to have single-sex services within a rape crisis setting and we believe, to ensure that they are protected and that risk is minimised, that it should be an all-female workforce."

In January 2025, a leaked document from RCS indicated they were still struggling to provide definitions. In a convoluted document, they said "female" would be defined as "signifying an ordinary biological perspective on women" while "When we use 'woman', we mean anyone who self-identifies as a woman. We use this language as it corresponds to a gendered perspective."<sup>30</sup> As most spaces in rape crisis centres are described as "women only", this definition would continue to allow for the inclusion of male individuals while misleading female survivors accessing the service.

A day after the story broke, RCS changed direction again and said it was no longer planning to publish a definition using the excuse that as the Supreme Court had yet to rule on FWS2 it would not be "helpful or appropriate".<sup>31</sup> However, as we outline above, under the law as it stands, provisions for women exclude biological males which, in a protected service like rape crisis, explicitly covers the exclusion of those with a GRC.

As of now, the crisis over the definition of 'women' has, ironically, torn apart the women's movement and violence protection, prevention, and counselling services. It appears that RCS may no longer be making direct referrals for survivors to the three centres which cover a large area of Scotland's population: ERCC, GCRC, and Beira's Place, the independent centre set up by JK Rowling in Edinburgh.

Women approaching the services have to contend with the added stress that they will have to demand (at the risk of being dubbed transphobic) a female only session. In a recent report on the approaches taken by different centres, we wrote: "The declaration by Rape Crisis Scotland in 2014 that 'women-only includes those who self-identify as women' applies in all rape crisis centres across Scotland has wrecked havoc. Many centres clearly do not hold this ideological belief and over time disparities and obfuscation in standard provision have developed."<sup>32</sup>

## Data Collection

Policy group Murray Blackburn Mackenzie (MBM) have undertaken extensive work on the issue of data collection, including within the Criminal justice system.<sup>33</sup> They have petitioned Parliament to intervene to stop Police Scotland recording the sex of offenders according to their 'gender identity' in cases of rape or attempted rape.<sup>34</sup>

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<sup>29</sup> <https://www.bbc.co.uk/news/articles/cz7w322230go>

<sup>30</sup> <https://www.sundaypost.com/fp/rape-crisis-trans-guidance/>

<sup>31</sup> <https://www.telegraph.co.uk/news/2025/01/28/rape-crisis-charity-drops-promise-define-woman-trans-row/> (<https://archive.ph/FAuQp>)

<sup>32</sup> <https://forwomen.scot/04/10/2024/rape-crisis-centres-by-women-and-for-women/>

<sup>33</sup> <https://murrayblackburnmackenzie.org/criminal-justice-landing-page/criminal-justice-data/>

<sup>34</sup> <https://murrayblackburnmackenzie.org/criminal-justice-landing-page/scottish-parliament-public-petition-on-recording-sex-accurately-in-cases-of-rape-or-attempted-rape/>

In Scotland, rape is defined as follows: “a person will commit the offence of rape by intentionally or recklessly penetrating, with their penis, the victim’s vagina, anus or mouth, in circumstances where the victim does not consent, and the accused has no reasonable belief that the victim is consenting to the penetration.”<sup>35</sup> It is not, therefore, a crime which can be committed by women (except in very rare cases of joint enterprise).

Police Scotland responded to committee in March 2024 saying:

“The sex/gender identification of individuals who come into contact with the police will be based on how they present or how they self-declare, which is consistent with the values of the organisation.

“This practice adheres to legislative compliance, operational need and the values of respect, integrity, fairness and human rights whilst promoting a strong sense of belonging.”<sup>36</sup>

Although Chief Constable, Jo Farrell, attempted to backtrack in September 2024, saying “Let me finish by being absolutely clear – a man who commits rape or serious sexual assaults will be recorded by Police Scotland as a male”, MBM have now established that the police are not committed to delivering the promised wide-ranging review.<sup>37</sup>

Recording on the basis of gender identity alone is likely to have significant implications on the accuracy and reliability of crime and victim statistics, particularly given the differences in offending patterns between the sexes – in Scotland 98% of sexual offences are committed by men. The inclusion of even a very small number of men who identify as women can very rapidly skew the female criminal statistics.

For example, over a ten year period (2006-2015) the number of women convicted of possession of an indecent photograph of a child was 1.3 per year.<sup>38</sup> In 2016, at least three men who identified as women were convicted on this charge (Alice Smith,<sup>39</sup> Nat Bird,<sup>40</sup> Nicola Florida<sup>41</sup>), thereby more than doubling the annual statistics for women.

The Scottish Government is failing to lead by example and provide clarity on this issue. Official guidelines by the Chief Statistician listed 24 different genders which could be used for official

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<sup>35</sup> <https://www.legislation.gov.uk/asp/2009/9/notes/division/3>

<sup>36</sup> <https://murrayblackburnmackenzie.org/2024/09/08/promoting-a-strong-sense-of-belonging-police-scotland-policy-on-recording-rape-does-not-take-womens-interests-seriously/>

<sup>37</sup> <https://murrayblackburnmackenzie.org/2025/01/16/police-scotland-review-of-sex-and-gender-whats-the-story/>

<sup>38</sup> <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>

<sup>39</sup> <https://archive.fo/ZJrKd>

<sup>40</sup> <https://archive.fo/TV9XS>

<sup>41</sup> <https://archive.fo/Cn4n3>

statistics.<sup>42</sup> This was despite claims by the Minister, Kaukab Stewart, that “The Scottish Government’s position is that of the law. In law, people are either male or female.”<sup>43</sup>

The deliberate confusion engendered by this sort of output will only make it harder to collect the necessary data to monitor the issues faced by women on account of their sex. As MBM said:

“Whatever Scottish Ministers may actually believe, the framework appears to provide further evidence of the privileged access to the Scottish Government enjoyed by those who promote the sort of language and concepts in the list above, and their ability to persuade the Scottish Government to use its resources to promote these across the public sector. For public bodies that are susceptible to gender identity ideology, such as Police Scotland, an oven-ready list of gender identities rubber-stamped by Scottish Government is likely to be particularly appealing, irrespective of its value or purpose.”<sup>44</sup>



*For Women Scotland*  
30 January 2025

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<sup>42</sup> <https://www.telegraph.co.uk/politics/2024/10/20/snp-guidance-public-bodies-24-genders/>

<sup>43</sup> <https://www.gov.scot/publications/foi-202400438906/>

<sup>44</sup> <https://murrayblackburnmackenzie.org/2024/11/05/the-extra-genders/>