

IN THE COURT OF SESSION

Court Ref: COS-PII83-25

AFFIDAVIT

of

RHONA HOTCHKISS

in the Petition of

FOR WOMEN SCOTLAND, a company incorporated under the Companies Acts, and having its registered office at 5 South Charlotte Street, Edinburgh, Scotland, EH2 4AN

PETITIONER

for

Judicial Review of (i) Supporting Transgender Pupils In Schools
Guidance for Scottish Schools and (ii) SPS Policy for the Management of
Transgender People in Custody Operational Guidance

By way of video conference on the _____ day of December Two Thousand and Twenty-Five in the presence of Sindi Mules, Solicitor and Notary Public, Balfour+Manson LLP, 56-66 Frederick Street, Edinburgh, EH2 1LS compeared RHONA HOTCHKISS, who [being solemnly sworn] [being affirmed] depones as follows:

1. My name is Rhona Hotchkiss. My date of birth is [REDACTED]
2. I am providing this affidavit in relation to the judicial proceedings which have been brought by For Women Scotland.
3. My qualifications are as follows:
 - 3.1. LLM, BSc (Hons) Registered Nurse (RN) (no longer Registered)
 - 3.2. Advisor in Nursing & Quality at SEHD (now ScotGov) 1997-99
 - 3.3. Director National Development Unit for Nurses and Midwives 1999-2003

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- 3.4. Interim Director Quality Improvement Scotland 2003-2005
- 3.5. Management Consultant 2005-2009
- 3.6. (Intermittent) Health Advisor to the Chief Inspector for Prisons 2003-2006

4. My career from a deputy prison governor to a governor in charge spans from 2009 to 2019:

- 4.1. 2009-2011 Deputy Governor, HMP Barlinnie (Male Estate)
- 4.2. 2011-2013 Deputy Governor, HMP Shotts (Male Estate)
- 4.3. 2013-2015 Governor in Charge, HMP Dumfries (Male Estate)
- 4.4. 2015-2017 Governor in Charge, HMP & YOI Cornton Vale & Scottish Prison Service (SPS) Lead for the new Women's Estate
- 4.5. 2017-2019 Governor in Charge. HMP Greenock (Mixed Estate)

5. I am asked, as the former prison governor, to comment on the particular vulnerabilities of women prisoners and the practical difficulties of housing male prisoners in their midst and the risks this carries for at least some women who are given no choice but to be accommodated with these men.

6. Three quarters of women and girls in prison have been abused by men – either physically, sexually, or in many cases, both. A significant number of those have experienced abuse on multiple different occasions and/or at the hands of multiple men. The impact this has on them is evident not only in the trajectory of their journeys into criminality but, more importantly, it is clear to everyone working with them in custody with up to 80% suffering some mental ill health and as many as around 30% self-harming in custody or in the community.

7. This makes for a challenging environment for staff working with them. Many find the emotional demands of working with female prisoners not one they choose to opt into.

8. Housing male prisoners, including men who identify as transgender, with women, in my experience poses serious risks to the wellbeing of these women. Not all trans-identified males pose an overt threat to the physical safety of all women, nor do males in the general

population, but we still have sex segregation in key spaces. However, all transgender identified males pose a threat to the mental wellbeing of a significant number of women and some also pose a physical threat.

9. Female prisoners spoke to me on numerous occasions about the feelings of anxiety, distress and fear that resulted from having males accommodated next to them in residential areas, describing threatening behaviour, feeling unnerved and 'triggered' by salacious sexualised comments and a general sense of unfairness over males still being able to exploit superior physical strength in, for example, physical activity and males claiming transgender status being open about the fact that they were not transgender before being apprehended and had no intention of being transgender after liberation.
10. Women who have suffered physical or sexual threat or assault often display symptoms of PTSD and have visceral reactions to males in their personal space, males exhibiting violent behaviour, or behaving in an intimidating manner. That is no less true when a man identifies as transgender, as transgender identity does not reduce women's hypervigilant response to perceived threat. Women in prison cannot opt out of or protect themselves from these situations. They have no choice but to share close living facilities and activities with males they do not trust and, in some instances, actively fear.
11. The practice of putting 'on report', i.e. subjecting to disciplinary procedures, women who use male pronouns for trans-identified males is regarded by many women – and staff – as 'gaslighting', that is, psychologically manipulating someone into questioning their own sanity or ability to reason, and in this case it has real world consequences in relation to progression through prison processes up to and including probation and liberation decisions.
12. I did not hold these views prior to working with women prisoners. Indeed, I was prominent in advocating for the development of the policy relating to Transgender Prisoners published by the SPS in 2014, although I would even then have been extremely concerned that there was little to no understanding of the possible effects on women of accommodating males in females prisons, the policy having effectively been written by trans-advocacy groups with no input from advocates for women. However, having

worked with women in prison, on the basis of the evidence I have seen and my own experience as a prisoner governor, I have become (and remain) very strongly opposed to the policy of housing trans-identified males with women because of what I listened to and what I witnessed. In my experience and in my opinion, it is simply not possible to negate the risk to women's mental and/ or physical wellbeing that this practice poses, and in my view, implementation of this practice elevates concern for males over the wellbeing of women.

13. It is interesting to note that the new SPS Policy for managing trans-identified males in prison suggests that they would be at increased risk of harm if held in the male estate despite there being no evidence of that in Scotland, whilst at the same time dismissing instances of trans-identified males physically and sexually assaulting women in other prison systems because there is no evidence of it in Scotland (although there is ample evidence of the negative impact on the mental wellbeing of women in Scottish Prisons).
14. Further it is simply not true to say that men who identify as women could not be held safely in the male estate. The SPS is adept at managing safely men who are deemed vulnerable for various reasons: informers; gay men; sex offenders; child killers; high profile individuals; convicted terrorists and others.
15. I was the lead for the Women's Estate from 2015-2017, developing the replacement for HMP YOI Cornton Vale which opened as HMP Stirling in 2023. The entire design concept was based on the knowledge that women pose lower risks in relation to security, and the prison has no bars on the windows, more relaxed association spaces and a greater focus on meaningful activity. Crucially the building itself was designed with regard to the very high levels of trauma women in prison have suffered and the mental health issues and PTSD they exhibit. That included the shape and height of the buildings and the colours of their interiors, an emphasis on visible green space, and on the women seeing and being seen while maintaining privacy and dignity and it is almost inconceivable to me that they would sacrifice all of the care, concern and knowledge that went into that world-leading design in favour of men who identify as women when feasible alternatives are available.

16. The SPS also makes much of not adopting a blanket approach to trans-identifying males when in fact they already do that to vast swathes of the prison population: men in general are not considered for accommodation in female prisons despite the fact that many of them have no record of violence towards women; Young Offenders are not considered for accommodation in adult prisons regardless of their level of maturity or vulnerability; women (excepting trans-identified women) would never be held in male prisons – because everyone understands the inherent risks in each case. It is telling that when assessing risk in relation to placing trans-identifying women in male prisons, the assessment is about risk to the women, because of their sex, but when assessing the risk related to placing males in women's prisons, the assessment is about the risk they pose, because of their sex.

17. Prison Officers also see and understand all of this and many more would speak up, were they not afraid of lack of support from their own union and afraid of retribution from within the SPS hierarchy. If these professionals are at least wary of speaking out, what hope for female prisoners who feel gaslit, frightened, intimidated or threatened in an environment where opposing authority can affect liberation?

18. SPS made much of the research conducted in the SPS Policy for the Management of Transgender People in Custody (December 2023) (Production 6/9) which they feel backs their position to an extent, although that is arguable, but they have never acknowledged far less relied on research published in 2019 by Matthew Maycock (Production 6/8), a pro-trans researcher within the SPS, which is much more damning in relation to their new policy. This research by Matthew Maycock (Production 6/8), and the fuller research it is derived from, lays bare the experience of women who have been housed with trans-identified males, and it is clear – despite misleading headlines – that the majority did not have a positive story to tell.

19. As a former Deputy Governor and Governor in Charge of five prisons, I do not understand why SPS dismissed the option of a 'third space' for accommodating trans-identified prisoners or at least giving them the choice of being accommodated in such a unit. Suggestions that small units cannot be operated or managed within the SPS does not reflect the reality of the current situation whereby there are several small units fulfilling several functions across the estate, not least the new women's community custody units

which accommodate 16 and 24 women. These are relatively pleasant environments considering the height of custodial excellence with a focus on rehabilitation and re-integration, and I say that with some confidence since I lead the team that designed them.

[ALL OF WHICH IS TRUTH AS THE DEPONENT SHALL ANSWER TO GOD] / [ALL OF WHICH IS THE TRUTH AS THE DEPONENT SOLEMNLY AND SINCERELY AFFIRMS]

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