

15 December 2025

By email from: info@forwomen.scot
to: firstminister@gov.scot

Dear Mr Swinney,

We are writing to report a breach of the Scottish Ministerial Code 2025¹ by Angela Constance MSP, Cabinet Secretary of Justice and Home Affairs, and Neil Gray MSP, Cabinet Secretary for Health and Social Care with regard to openness, honesty and accountability.

Specifically, this concerns the following statements made in Parliament:

03/12/25 Angela Constance:

“[T]he Scottish Prison Service, as a public body, is required to comply with the Equality Act 2010 and other legislation, as are ministers.”²

“[T]here is, right across Government, a clear commitment to comply with the law, which includes equality legislation. The Government has clearly stated that it accepts the ruling from the Supreme Court.”³

09/12/25 Neil Gray:

“Again, the Scottish Government accepts the Supreme Court ruling. We accept that judgment and are taking forward the detailed work that is necessary as a consequence.”⁴

Section 1.7(c) of the Ministerial Code states “It is of paramount importance that Ministers give accurate and truthful information to the Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead the Parliament will be expected to offer their resignation to the First Minister.”

It is neither accurate nor truthful for the Cabinet Secretaries to claim the Scottish Government accepts the Supreme Court ruling and will comply with the Equality Act 2010. In fact, the Scottish Ministers categorically **do not** accept the Supreme Court ruling. This is evidenced by the Ministers’ answers to our judicial review petition on the “Scottish Prison

¹ [Scottish Ministerial Code 2025](#)

² https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/recent-publication?meeting=16723&iob=142827#orscontributions_M1735E440P776C2749428

³ https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/recent-publication?meeting=16723&iob=142827#orscontributions_M1735E440P776C2749430

⁴ https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-09-12-2025?meeting=16738&iob=142952#orscontributions_M16180E399P736C2751851

Service Policy for the Management of Transgender People in Custody Operational Guidance” which, from as early as 17 September 2025, claim a duty to uphold Convention rights overwrites the Equality Act as interpreted by the UK Supreme Court. Far from accepting the Supreme Court judgment, the Ministers are actively challenging it by seeking a Declaration of Incompatibility in respect of the single-sex exceptions in Schedule 3 of the Equality Act on the grounds that requiring all transgender prisoners to be placed in prisons according to their biological sex would be incompatible with Convention rights to have their choice of gender respected.

As the Scottish Ministers issued a Notice to Baroness Smith of Cluny KC, Advocate General for Scotland, dated 27 November 2025, informing her that a Declaration of Incompatibility had been sought, it is simply inconceivable that Ms Constance’s and Mr Gray’s later statements in the Chamber were made in ignorance of this direct challenge to the Supreme Court’s ruling. We would contend that both Cabinet Secretaries knowingly and deliberately misled Parliament and should therefore offer their resignations.

There is also no excuse for continued inaccurate press statements such as the one given to the Daily Record on 14 December 2025 which said “The Scottish Government said it has “made clear it accepts the Supreme Court ruling and is taking forward the detailed work necessary”.⁵ This should be immediately corrected and honest, accurate commentary provided from here on in.

We would also like to report a further breach of the Ministerial Code by the Cabinet Secretary for Justice and Home Affairs under section 1.7(b) which states “Ministers have a duty to the Parliament to account, and be held to account, for the policies, decisions and actions taken within their field of responsibility”.

This concerns the following statements made by Angela Constance:

11/11/25

Tess White: “To ask the Scottish Government what its justification is for pursuing legal action in relation to its policy on transgender prisoners, in light of the judgment in the case, For Women Scotland Ltd v the Scottish ministers.”

Angela Constance: “[A]s the question relates directly to live court proceedings, it is not appropriate for me or any member of the Scottish Government to comment.”⁶

24/11/25

Jackie Baillie: “To ask the Scottish Government whether it has carried out a value-for-money assessment of defending the case brought by For Women Scotland in relation to its policy on the housing of biological male prisoners in female prisons.”

Angela Constance: “The Scottish Government does not regard it as appropriate to engage in public comment in respect of live court proceedings.”⁷

⁵ <https://www.dailyrecord.co.uk/news/msp-ash-regan-demands-scots-36396704>

⁶ https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-11-11-2025?meeting=16668&iob=142335#orscontributions_M1735E440P776C2738122

⁷ <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-42082>

24/11/25

Jackie Baillie: "To ask the Scottish Government whether any of its ministers have been involved in any discussions or decisions regarding the case brought forward by For Women Scotland in relation to its policy on the housing of biological male prisoners in female prisons, and, if so, which ministers have been involved, and when any such discussions or decisions took place."

Angela Constance: "The Scottish Government does not regard it as appropriate to engage in public comment in respect of live court proceedings."⁸

03/12/25

Douglas Ross: "...We had to find out the actual reason why they could not speak from their special advisers and press spokespeople, who said that ministers are choosing not to speak, rather than being legally barred.

Will the cabinet secretary find a backbone and tell us exactly why the Government is taking the matter to court? Will she be honest with the public, who want answers, about why taxpayers' money is being used to defend the Scottish Government's position, rather than it respecting the Supreme Court judgment?"

Angela Constance: "It is the Scottish Government's long-held position that it would be inappropriate for the Scottish ministers to comment on live court proceedings."⁹

As confirmed by special advisors to Douglas Ross MSP there is no legal impediment that prevents the Cabinet Secretary for Justice speaking about the policies, decisions and actions taken within her field of responsibility. Given the public interest in the matter it is important and entirely appropriate that the Ministers explain their actions and indeed, under the Ministerial Code, it is their duty to do so.

Section 1.7(d) of the Ministerial Code emphasises that Ministerial office requires candour and openness. Ministers should be as open as possible with the Parliament and the public, only refusing to provide information in accordance with relevant statutes. There is no such restriction here and the repeated failure of Ms Constance to be accountable to Parliament is a significant breach of the Ministerial Code which has resulted in the public remaining, unjustifiably, uninformed as to why the Scottish Government is engaged in further judicial review action at considerable expense to the taxpayer. The responsibility should not fall to our organisation to explain the Government's actions to the Scottish Parliament. Once again, this breach can only result in the expectation of Ms Constance's resignation.

We trust there will be a swift resolution to these matters and look forward to hearing from you.

Yours sincerely,

Trina Budge, Marion Calder and Susan Smith
Directors, For Women Scotland

⁸ <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-42083>

⁹ https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/recent-publication?meeting=16723&iob=142827#orscontributions_M1735E440P776C2749426