

Citizen Participation and Public Petitions Committee
Wednesday 30 October 2024
16th Meeting, 2024 (Session 6)

PE1876: Accurately record the sex of people charged or convicted of rape or attempted rape

Introduction

Petitioner Lucy Hunter Blackburn, Lisa Mackenzie, Kath Murray

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to require Police Scotland, the Crown Office and the Scottish Court Service to accurately record the sex of people charged or convicted of rape or attempted rape.

Webpage <https://petitions.parliament.scot/petitions/PE1876>

1. [The Committee last considered this petition at its meeting on 24 January 2024.](#) At that meeting, the Committee agreed to write to Police Scotland.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from Police Scotland, the Petitioners, and Michelle Thomson MSP, which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage.](#)
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial position on this petition on 23 September 2021.](#)
7. Every petition collects signatures while it remains under consideration. At the time of writing, 13,463 signatures have been received on this petition.
8. Members may be aware that [Rachael Hamilton MSP referenced the Police Scotland response to this petition during FMQs](#) on 12 September.
9. Members may also wish to note that [the Criminal Justice Committee has written to Police Scotland on the issue of procedures for gender self-identification](#) by individuals who are charged with, or convicted of, serious sexual assaults. The [Criminal Justice Committee received a response from the Deputy Chief Constable](#) on 24 September 2024.

Action

10. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
October 2024

Annexe A: Summary of petition

PE1876: Accurately record the sex of people charged or convicted of rape or attempted rape

Petitioner

Lucy Hunter Blackburn, Lisa Mackenzie, Kath Murray

Date Lodged

5 July 2021

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to require Police Scotland, the Crown Office and the Scottish Court Service to accurately record the sex of people charged or convicted of rape or attempted rape.

Previous action

We have met the Scottish Government's Chief Statistician to argue for the need to collect accurate data on sex in various contexts, including in cases of rape and attempted rape.

Draft guidance subsequently issued by the Chief Statistician rejected this in all but exceptional circumstances, which did not include the recording of these cases.

Background information

Police Scotland recently stated that a person directly charged with rape or attempted rape could be recorded as female. The Scottish Government has stated that 'this is a matter for Police Scotland'.

Rape is defined in law as involving penetration by a penis without consent and is therefore, by definition, the act of a male body (cases involving a surgically constructed penis appear to be unknown to date).

Women may be charged with rape as accessories, but this is extremely rare. Only a very small proportion of offenders directly charged with rape or attempted rape would therefore need to be recorded as female to have a substantial and misleading effect on the understanding of female offending. The same issue appears to arise for information collected in other parts of the criminal justice system.

Recording sex accurately in these cases matters for data accuracy and trust in official statistics, public policy, media reporting, research, and for trust in public bodies.

Annexe B: Extract from Official Report of last consideration of PE1876 on 24 January 2024

The Convener: Our next continued petition is PE1876, which was lodged by Lucy Hunter Blackburn, Lisa Mackenzie and Kath Murray—despite my wonky eyesight, I might have seen some of them in the public gallery. The petition calls on the Scottish Parliament to urge the Scottish Government to require Police Scotland, the Crown Office and the Scottish Courts and Tribunals Service to accurately record the sex of people who are charged with or convicted of rape or attempted rape.

We previously considered the petition on 6 December last year, when we took evidence from two of the petitioners: Dr Lucy Hunter Blackburn and Lisa Mackenzie. During the evidence session, we heard the petitioners' concerns about a lack of ethical leadership from the Scottish Government and Police Scotland on the policy of recording crime statistics and about the possible impact on wider public policy decisions and the allocation of resources. We also explored the issue of public trust in statistics and whether there might be local variations in the way in which the police record data on rape and sexual offences. The committee felt that important issues were raised in the evidence session.

Do members have any comments or suggestions for action?

Foyso Choudhury: We should write to Police Scotland to seek a clear explanation of how its policy on recording the sex of perpetrators of crimes aligns with the organisation's values. We should also seek further information on whether a consistent approach to recording crime data is taken across Scotland and, in particular, on whether there is a central database for recording information on rape and sexual offences.

The Convener: Thank you, Mr Choudhury. There seemed to be a gap between warm words and operational practice in Police Scotland's approach, so those questions need to be put to it directly.

It seems that no other member wishes to comment further. Is the committee content to keep the petition open and to progress the issues with Police Scotland directly, along the lines that Mr Choudhury suggested?

Members *indicated agreement.*

Annexe C: Written submissions

Police Scotland written submission, 8 March 2024

PE1876/FF: Accurately record the sex of people charged or convicted of rape or attempted rape

I write in response to your letter dated 26th January 2024 to Police Scotland's Parliament and Government Liaison in relation to the above petition, for which the Citizen Participation and Public Petitions Committee seek further information, particularly:

- *A clear explanation of how its policy on recording the sex of perpetrators of crimes aligns to the organisation's values, as requested by the petitioner, Lisa Mackenzie, during an exchange with Fergus Ewing MSP as part of the evidence provided to the Committee on 6 December 2023; and*
- *Further information on whether a consistent approach to recording crime data is being taken across Scotland, in particular whether there is a central database for recording information on rape and sexual offences, as raised by Maurice Golden MSP during the same evidence session*

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.

Police Scotland requires no evidence or certification as proof of biological sex or gender identity other than a person's self-declaration, unless it is pertinent to any investigation with which they are linked as a victim, witness or accused and it is evidentially critical that we legally require this proof, or there is reason for further enquiry based on risk. We would look for the most sensitive way to acquire this information.

We recognise that a person may not feel it appropriate for them to be assigned binary options and the situation will be reviewed as we roll out any new IT platforms. We also note the current position of Scottish Government, which is reviewing its guidance on collecting data on sex and gender: Police Scotland will be guided by the outcome of that review.

In further reference to the secondary point regarding a central database for recording information on rape and sexual offences; Core Operational Solutions (COS) has been rolled out nationally and acts as a single crime recording system regulated by the Scottish Crime Recording Standards. This system is now fully implemented ensuring all crimes, including rape and attempted rape are recorded in a consistent manner.

I trust this information is of assistance to you.

Petitioners written submission, 11 October 2024

PE1876/GG: Accurately record the sex of people charged or convicted of rape or attempted rape

It is now over three years since we lodged our petition with the Committee. It has been discussed at five public sessions ([6 October 2021](#), [23 March 2022](#), [22 March 2023](#), [6 December 2023](#) and [24 January 2024](#)). After each meeting, the Committee wrote to Police Scotland, inviting them to submit written evidence. In response, Police Scotland wrote to the Committee on [22 November 2021](#), [3 November 2022](#), [30 May 2023](#) and [8 March 2024](#).

Those responses have failed to demonstrate that Police Scotland understands that having in place a policy which allows rapists to be recorded as female may have a distorting effect on our understanding of patterns of *female* sexual offending. It is also offensive to the – predominantly female – victims of rape. The most recent submission (8 March 2024) shockingly claimed that the policy had been put in place to align with “the values of the organisation” and foster a “strong sense of belonging”.

The 8 March submission came to light in early September, prompting a great deal of media coverage, and political pressure, including [the Criminal Justice Committee writing to Police Scotland](#) for more information about its policy. ([Reply from Police Scotland here.](#))

In response to these developments, Police Scotland have made a number of statements on this issue which indicate that they may have reversed this policy. We have a number of concerns about those statements:

1. In [an interview with Sky News on 25 September 2024](#), the Chief Constable suggested that no such policy was ever adopted by the service. As [we have documented](#), a recording policy based on gender self-identification principles has been in place since at least 2019. Police Scotland has made numerous statements to the media and parliamentary committees to this effect.
2. During a meeting of the Scottish Police Authority on 26 September 2024¹, [the Chief Constable appeared to suggest that concerns about Police Scotland’s policy were based on hypothetical scenarios](#). We have written to the Chief Constable with a compendium of press reports about male offenders who have claimed an opposite sex identity at some point in the criminal justice process.
3. At the same meeting, statements made by the Chief Constable and Deputy Chief Constable Speirs contained some ambiguities which it would be helpful to clarify. [Our letter to the Chief Constable \(which we are attaching\) seeks clarity on those points](#).

¹ Scottish Police Authority Board Meeting, 26 September 2024, <https://www.youtube.com/watch?v=m3gkQk90Re8>

Our petition had one of the highest numbers of signatures of any petition considered by the Parliament. Public and political interest in this topic has increased rather than diminished over the period it has been under consideration.

The indication that Police Scotland may be reversing its policy is welcome. However, in our view, and as set out above and in our letter to the Chief Constable, there remain a number of areas relating to the petition which remain to be clarified.

While we welcomed the opportunity to appear before the Committee in December 2023, we note that the Committee's engagement with Police Scotland has to date been confined to correspondence. We believe that Police Scotland's position is only capable of being properly interrogated and challenged in oral evidence. Should members feel unable to take it forward in that way, we would ask that the Committee considers passing the petition to the Criminal Justice Committee.

Michelle Thomson MSP written submission, 16 October 2024

PE1876/HH: Accurately record the sex of people charged or convicted of rape or attempted rape

I write again to this committee in support of Petition PE1876 - 'Accurately record the sex of people charged or convicted of rape or attempted rape'.

I am aware there have been a number of evidence sessions thus far and that clarity has been sought regarding the policy of Police Scotland on the recording of data by sex and/or gender in general, and particularly for sexual assaults and/or rape.

The most recent Police Scotland submission dated March 2024, but made public more recently included the following statements:

"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.

The practice adheres to legislative compliance, operational need and the values of respect, integrity, fairness and human rights whilst promoting a strong sense of belonging".

These statements caused grave offence to me personally.

The Chief Constable recently undertook a media interview but has not brought sufficient clarity on the operational detail of their policies.

Fundamentally, it is not clear to me that Police Scotland understand the impact of conflating sex with gender, and in particular the extent to which this could skew their crime statistics.

It also remains unclear how and when an offender's records might be changed as they travel through the criminal justice system, up to and including the point where they are released and added to the Sex Offenders Register and possibly subject to MAPPA arrangements.

CPPP/S6/24/16/5

I am surprised, despite the prolonged efforts of the committee that Police Scotland have not been asked to appear in person. With respect, I would request that the committee address this.