

P1183/25



IN THE COURT OF SESSION

AFFIDAVIT OF LINDA ANNE POLLOCK

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

THE SCOTTISH MINISTERS, Victoria Quay, Edinburgh, EH6 6QQ

FIRST RESPONDENTS

THE RIGHT HONOURABLE DOROTHY BAIN KC, His Majesty's Lord Advocate, Lord Advocate's Chambers, 25 Chambers Street, Edinburgh, EH1 1LA

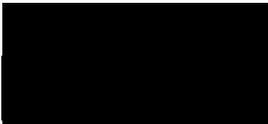
SECOND RESPONDENT

BARONESS SMITH OF CLUNY KC, Advocate General for Scotland, Office of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ

THIRD RESPONDENT

At  Edinburgh,  via Microsoft Teams video conference on the FIFTEENTH day of December Two Thousand and Twenty-Five, before me, Alison Toledo, Solicitor and Notary Public, attending from my address at 

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Edinburgh,  COMPEARED Linda Anne Pollock c/o, Scottish Prison Service Headquarters, One Lochside, 1 Lochside Avenue, Edinburgh EH12 9DJ, who, being solemnly sworn depones as follows:-

1. My name is Linda Anne Pollock. I am 44 years old. I reside care of the Scottish Prison Service Headquarters, One Lochside, 1 Lochside Avenue, Edinburgh EH12 9DJ. I am currently employed by the Scottish Prison Service (“SPS”) as the Deputy Chief Executive. I have been in this role since August 2023. Prior to starting my current role, I was employed by the Scottish Government as a senior civil servant. In my current role I support the Chief Executive of the SPS and have oversight of the Policy, Operations, Change and Engagement Directorates as well as digital, estates, planning and risk functions. I can speak to the SPS Policy for the Management of Transgender People 2023 (“the 2023 policy”) and the Operational Guidance that supports the SPS Policy for the Management of Transgender People 2023 (“the operational guidance”) as both documents straddle both strategic policy and operational delivery.
2. The 2023 policy outlines the overarching position and principles for managing transgender people in custody; and the accompanying operational guidance provides operational direction for staff when managing and making decisions about someone who is transgender.
3. I first became involved with the development of the 2023 policy when I joined the organisation in 2023. I was involved in the final sign-off stages of the 2023 policy and operational guidance; and in my role as Deputy Chief Executive, I chair any panels required for Executive Panel reviews for placement of transgender individuals as per policy and operational guidance.
4. As I understand in 2019, the then Cabinet Secretary for Justice committed the Scottish Prison Service to a policy review of the Gender Identity and Gender Reassignment Policy 2014. The 2023 and the Operational Guidance to support the Policy was developed following this review. As I understand, the review and development of the new policy took place started in 2021 and I was in post when it was concluded in 2023.
5. The purpose of the 2023 policy is to protect the legal rights and welfare of transgender people living in Scotland’s prisons in a way which promotes the safety of all people in custody.
6. SPS requires such a policy not only to articulate SPS’s commitment to managing transgender people in accordance with our statutory obligations as a prison service and Executive Agency of the Scottish Government, but also because transgender people are the only group of people that the SPS has to make decisions about where

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in the prison estate they should be admitted and located with reference to gender. The policy was developed to provide prison officers with the guidance to make safe and appropriate decisions about the management of transgender people.

7. Without this policy, the SPS would be admitting transgender people on a blanket approach. If not giving consideration to their transgender identity, SPS would need to revert to biological sex. This would result in all transgender people, irrespective of where they were in their transition being placed into an estate based on biological sex. As an example, this would see a biological woman who is fully transitioned to transmale being placed in the female estate. SPS does not operate a blanket approach by transgender identity either, but the 2023 policy affords flexibility around individualised risk that allows SPS to consider transgender status as part of the decision-making process.
8. In reality the 2023 policy allows us to work through situations such as these hypothetical examples:
 - a. If a biological male entered custody who sometimes identified as female, asking for female pronouns, they would immediately be housed in the male estate and a risk assessment undertaken to consider the risks to them and those around them. If during the initial risk assessment this person had markers or information regarding previous or known violence against women and girls, the risk assessment would deem that they would continue to be housed in a male establishment and operational staff would put protective factors around the person, knowing the increased risk to them given their transgender status. Without the 2023 policy SPS would not have a process to consider the risk and ensure the safety and support for this person.
 - b. In another hypothetical example which helps demonstrate the need for flexibility: if a biological female, who is transitioning to transmale, enters custody they are immediately housed in the female estate pending risk assessment. If through risk assessment it is clear this individual is progressed on their transition and presents as physically male, it could be that in assessing risk it is identified that risk of continuing to house this individual within the female estate could cause alarm and distress to the female estate, as well as increasing distress to the transgender male who has been living and presenting as male in the community. The 2023 policy allows flexibility to support this transmale in the male estate, with protective factors from staff, to allow them to continue to live as transmale and without causing alarm and distress to the female estate. Without the 2023 policy, this would not be possible and the trans person would be placed by biological sex, in this case that would mean being housed and managed in the female estate.

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- c. A further hypothetical example to demonstrate the needed flexibility could be if a biological male who is fully transitioned to transfemale enters custody, they would be immediately housed in the male estate given they are biologically male. If the risk assessment notes the person is fully transitioned and has been living as female in the community for many years, and their offences are not related to violence against women and girls and there is no other information about risk to women or girls, the initial risk assessment may consider the risk to the individual of being placed in the male estate could be risk, alarm and harm to them individually as a fully transitioned transfemale. It could be assessed that the risk to them individually would be greater than the risk to others of them being placed in the female estate. The 2023 policy allows an individualised risk-based decision that allows the support and minimisation of risk to the transgender female whilst not introducing increased risk to the female estate.
9. Without the flexibility of the 2023 policy there could be a risk of increase in harm, including potentially unacceptable risk of harm or suicide, to transgender people in being housed by their biological sex where the risks are manageable in the estate of transgender person's affirmed gender. The 2023 policy balances the risks inherent to both the transgender person and any risk to women and girls and others in custody, including those working in establishments, from the transgender person.
10. To manage transgender people safely and respectfully, we require a policy that considers not only the specific rights of transgender people but also the rights of all others in SPS custody, including those who work in prisons, and balances the risk that they could pose. This policy, and the rights it seeks to adhere to and respect, inherently considers the potential harm and risk to them as individuals and the potential harm and risk that could be caused to them should they be held in an estate of their biological sex. It then balances this potential risk against potential risk that they could pose to others in custody. It is worth noting that this policy sets out a presumption against transgender women being housed in the female estate should they have violence against women and girls markers.
11. Through operating a policy that assesses by an individualised risk-based approach this allows the SPS to support and care for individual needs whilst meeting legal requirements for transgender individuals and promoting an environment that is supportive as possible for rehabilitation as well as assessing the risk posed to others in custody. This is the reality of the balance of risks undertaken by prison officers in managing transgender individuals and the policy seeks to offer an open and transparent approach setting out the rights and risks for all involved.
12. The 2023 policy intent is to:

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- operate a legally compliant approach which supports the individual needs of those in SPS care; notably for this policy transgender individuals;
- admit, place, and manage transgender people in a way which is rights-based, consistent with the obligations of the SPS as an Executive Agency of the Scottish Government, as a public body, and as a prison service which seeks to promote the health, safety, and wellbeing of all people who live in Scotland's prison system. This approach enables prison staff to consider multiple factors when making decisions about management of transgender people, including any risk they may pose to other individuals or groups in prison, and the safety and wellbeing of the transgender individual;
- align with the strategic intent set out in SPS Corporate Plan 2023 – 28¹ for: 'person-centred, inclusive, trauma-informed and rights-based prison services which promote the health, safety, and wellbeing of all people who live in Scotland's prison system';
- be consistent with SPS commitment to Equality, Diversity and Human Rights and the statutory requirements upon us through an evidence-based approach to the design, delivery, and improvement of prison services;
- promote an individualised, case-based, evidence-based approach to the admission, placement, and management of transgender people in SPS custody; and
- seek to assess risks to other, specifically through confirming that any transgender woman with a history of violence against women and girls, who presents a risk to women and girls, will not be placed in the women's estate. Any exception to this, as per the 2023 policy, would be referred to an Executive Panel; if required it can be escalated to the Chief Executive.

13. The 2023 policy and the operational guidance recognise that each individual and their circumstances are unique. The operational guidance provides detail to staff in the practical day-to-day processes that are necessary for all transgender people in custody to support them making evidence-based decisions for admission, placement, and management of transgender people. The operational guidance provides considerations for scenarios where an individualised approach should be taken and provides staff flow-charts to follow and reference for escalation where unclear.

14. The 2023 policy notes that any change to circumstance will be considered and risk reassessed, which can result in a change of placement. Any exception to policy, as per the operational guidance, must be submitted to an Executive Panel, which I chair and has representatives from operations and a Social Work Advisor from the Scottish Government.

¹ [CorporatePlan_2023-2028_CorporateReports.pdf](#)

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15. The 2023 policy was published on 5 December 2023 and the operational guidance on 26 February 2024. The policy was operational from 26 February 2024. The gap was to allow time for education, training and feedback before becoming operational for staff and ensuring the operational guidance addressed all areas that operational staff would encounter in day-to-day decision making around the management of transgender people in custody.
16. The 2023 policy and operational guidance are operational policies of SPS. As set out in the SPS Framework document (2024)², as an Executive Agency, Scottish Ministers agree the strategic aims, objectives, and key targets of SPS as part of the corporate planning process, and regularly scrutinise progress made towards the aims and objectives. The Scottish Government's Justice Directorate sets the overall policy direction of justice and prisons policy and ensures SPS objectives take into account the overall strategic aims of relevant government policy.
17. The SPS Chief Executive is accountable to the Scottish Ministers for the economic, effective, and efficient operation of SPS, including the development of operational policy (paragraphs 12 & 13 *ibid*). In exceptional circumstances, the Chief Executive may seek advice and comment from the Scottish Ministers on operational matters and procedures (paragraph 20 *ibid*). Scottish Ministers were advised by SPS in the final stages of policy development prior to publication of the 2023 policy and operational guidance.
18. The policy review and the 2023 policy development identified an individualised approach as the most appropriate way to make decisions about transgender people in custody. The 2023 policy made key changes to the 2014 policy, which include the introduction of a more detailed level of prescription in operational processes, the introduction of improved, more detailed case management processes which placed risk assessment at the centre of decision making including specific reference to risk of violence against women and girls, an improved set of searching arrangements to better reflect staff wellbeing, and a clear set of assurance arrangement for evidence-based, defensible decision making at prison and corporate levels. It also allows for escalation for Complex Cases and if an exception is recommended to be considered.
19. Before the 2014 policy, guidance around the management of transgender people in custody was not directed by any specific or dedicated policy. We believe that decisions to place transgender people in an estate that does not align to their biological sex has operated since at least 2006, but we do not have clear records as 2014 was the first time that SPS began to collect specific data related to a person's transgender status through the introduction of specific markers on our Prisoner Records System. As such, we know we have had 73 transgender people who have been in custody at the time

² [Governance | Scottish Prison Service](#)

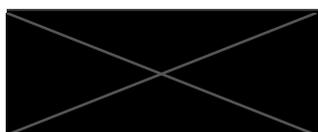
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of, or after, the 2014 changes to our records systems. 17, or about 23%, of transgender people have been accommodated long-term in an estate that does not match their biological sex. We know that 51 of these transgender people identified as transgender women, and 14 of these 51 people, or about 28%, have been accommodated in an estate that does not match their biological sex (the women's estate). As such, the other 22 transgender people identified as transgender men, 3 of whom (or about 14%) were accommodated in the male estate.

20. Our operation and understanding of the Prison Rule which requires that female prisoners be held separately from males (Rule 126), is that our approach to placing transgender prisoners into a prison of the opposite biological sex is still compliant with that rule.
21. The SPS's operational model is based on a model of separation of men and women living in custody for the purposes of accommodation or participation in day-to-day activities. The SPS have three establishments that house only women, and another three establishments that hold both women and men. In these mixed establishments, men and women are not accommodated in the same areas of halls and in nearly all circumstances are kept separate from each other when participating in day-to-day activities.
22. There are very limited and regulated occasions when women and men would be permitted to mix. For example, there are hospitality training courses in prisons where both men and women are accommodated which are delivered to a mixed cohort of men and women who learn together in the same space.
23. SPS Governors-in-Charge must comply with the prison rules, and any updates or information they need to know for operation is shared through the distribution of Governors and Managers Action reminders. Governors-in-Charge are required to provide assurances to the Operations Directorate that they are complying with SPS standards.
24. The 2023 policy was implemented in February 2024 following extensive consideration and consultation, including with people in custody, prison staff and stakeholders in the community. The purpose of this consultation was to develop a policy that provided security and safety for everyone in custody, which was legally compliant with all legislation and rules which govern the way we manage the accommodation of everyone living in custody.
25. An Equality and Human Rights Impact Assessment was carried out in parallel with the policy development and identified the individualised approach for managing transgender people which was endorsed in the 2023 policy as the most robust approach to protecting the rights of transgender people. It acknowledges that there will

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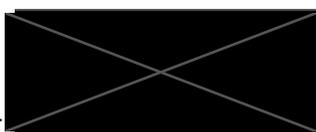
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be times where protecting the safety of other people in custody means that we need to accommodate transgender people in a way that does not align to their affirmed gender and accommodate them in an estate that aligns with their biological sex. We believe that the 2023 policy, which can result in transgender people being housed in an estate that matches their biological sex following risk assessment, is a balanced and proportionate approach which allows the SPS to ensure the safety and security of everyone living and working in custody.

26. Currently, almost 80% of accommodation decisions made about our current transgender people are to accommodate a transgender person in line with their biological sex. As with all decisions, the SPS consider the risks which accompany decisions, and with regards to housing transgender individuals in the estate of their biological sex, the risks can manifest in relation to the hardships that transgender people might encounter as a result of the decision to house them by biological sex. This has seen staff having to put in place protective measures to keep transgender people separate from mainstream populations, monitoring mental health concerns for transgender people who are anxious, confused or fearful that they will not be able to live in their chosen gender, and applying the provisions under the 2023 policy to provide people in custody the support that they might need to continue living in their affirmed gender in an environment where we know they feel more stigmatised and that this is not conducive to a supportive, rehabilitative environment.
27. In light of these potential hardships, when we decide to accommodate a transgender person in an estate which does not align to their affirmed gender but by their biological sex, SPS staff need to provide adequate, which may be increased, support due to the risk for their wellbeing and safety. This support might range from affirmation of a person's chosen name or pronouns through to continuity of gender affirmed healthcare which they have accessed in their community.
28. In considering whether the current policy infringes on the dignity of women or leads to the creation of a hostile or humiliating environment, our experience of this has been limited. Operational colleagues in the two establishments where transwomen are currently accommodated in line with their acquired gender were asked specifically with regards to any infringement of dignity, hostile or humiliating environment. Both have advised that that this has not been their experience. During our development of our policy, we engaged with women in our custody and the position expressed by women in custody was generally a supportive one for transgender individuals in custody.
29. Fundamentally, SPS role as a prison estate is to provide a safe and secure environment in which people in custody can engage with purposeful activity which can better prepare them for progression through the prison system and prepare those that will eventually leave custody with the best possible chance of successfully

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integrating into their communities. We know that in order to support people and do our work as effectively as we can, people need to feel and be safe. Multidisciplinary risk assessment processes are relied upon to give us the best possible understanding of how we can provide that safety and security for everyone living in custody. Under the 2023 policy, accommodation decisions about transgender people are made with a full understanding about the risks that are associated with such decisions – either the risk that they might encounter as a result of those decisions, or the risk that they might represent to others they are placed alongside. The 2023 policy puts in place additional mechanisms through which the risks associated with location decisions about that person are assessed as well as allowing for recognition of where information may be missing and this impeding a decision. Placing a transgender person that has been appropriately risk assessed, through both the standard and specific mechanisms in place to assess that risk, into an estate of the opposite biological sex will only happen where a Risk Management Team is content that such a decision will not undermine the safety of that individual, or the safety of anyone living or working alongside that person. As such, the 2023 policy represents the means through which we can be confident that we are not making our prison establishments less safe or secure when we make a decision to accommodate a transgender person in an estate which does not match their biological sex.

ALL OF WHICH IS TRUE AS I SHALL ANSWER TO GOD.

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