

# Criminal Justice Committee

6th Meeting, 2023 (Session 6), Wednesday 22  
February 2023

## Transgender prisoners and Scottish prisons

### Note by the clerk

#### Background

1. On 24 January 2023, an individual (named by the Cabinet Secretary as Isla Bryson) was remanded to custody convicted of two counts of Sexual Offences (Sexual Offences (Scotland) Act 2009 (rape) and Sexual Offences (Scotland) Act 2009 (Domestic)).
2. At the conclusion of the trial, the individual was to be admitted to custody at HMP Barlinnie. During the transfer process, the Scottish Prison Service (SPS) decided that the individual should be diverted to HMP&YOI Cornton Vale in alignment with its current [Gender Identity and Gender Reassignment Policy](#).
3. This process led to the SPS conducting an urgent case review, which has now been reported to the Cabinet Secretary for Justice and Veterans.
4. The Cabinet Secretary has now written to the Committee; received on 9 February (**see Annex for a copy of his letter and a copy of SPS's letter to him**). Members will wish to note that the Committee has not received a copy of the full report from the urgent case review. SPS has said it was "not necessary to share the entire report as there is a significant amount of personal detail relating to the individual and that of staff which would not be appropriate to disclose."<sup>1</sup>
5. The Committee has agreed to hold an evidence session with the Cabinet Secretary and representatives of the SPS to question them on the circumstances of the case.
6. In addition to the letter from the Cabinet Secretary, the Committee has received other correspondence from MurrayBlackburnMackenzie. This has been sent directly to members and is available on their website.
7. Members may also wish to note that the wider review of the current Gender Identity and Gender Reassignment Policy is still ongoing. The Cabinet Secretary has said that the SPS will factor the learning identified from this urgent case review into the

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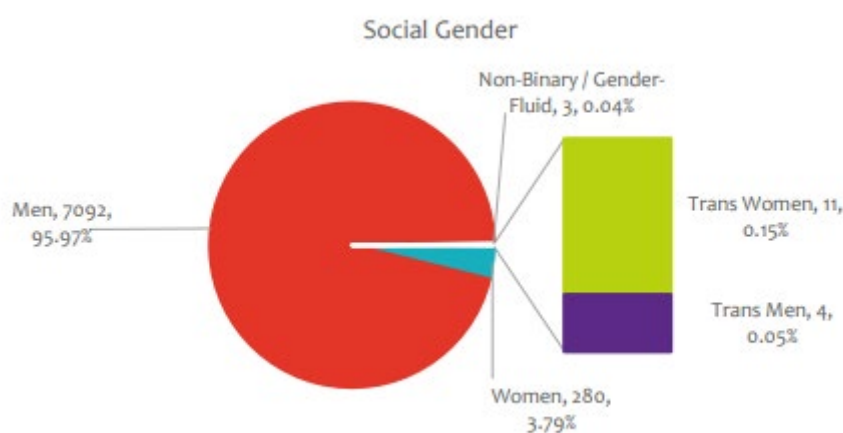
<sup>1</sup> Letter from SPS, received on 9 February, see Annex.

wider review. No timescale for conclusion of the wider review is available but the Cabinet Secretary told the Parliament that it:

“is now at the stage of being considered by legal services—to make sure that it fits into the legal framework—and discussed with the trade unions that are involved. [...]

Those are the two remaining parts to that review. They will be carried out and we will bring the review forward in due course.”<sup>2</sup>

8. By way of information, according to the Scottish Government, around 0.2% of prison population are transgender<sup>3</sup>. In a report<sup>4</sup> from the SPS, in Q2 of 2022 (covering July to September 2022), the Service presented the following breakdown of its prisoners by “social gender”:



9. They also provided this table:

	Men's Estate	Women's Estate	Total
<b>Trans Men</b>	1	3	4
<b>Trans Women</b>	6	5	11
<b>Total<sup>3</sup></b>	<b>7</b>	<b>8</b>	<b>15</b>

10. Members will wish to note that exact figures can vary day-on-day.

<sup>2</sup> Official Report, col 25, 31 January, Scottish Parliament.

<sup>3</sup> Scottish Government statement, 31 January, <https://www.gov.scot/news/justice-secretary-statement-on-protecting-prisoners/>

<sup>4</sup> SPS, SPS Quarterly Public Information Page, Prison by Numbers Quarter 2 (July to September 2022). [https://www.sps.gov.uk/nmsruntime/saveasdialog.aspx?fileName=Public+Information+Page+\(PIP\)+Quarter+2+2022-20238786\\_3886.pdf](https://www.sps.gov.uk/nmsruntime/saveasdialog.aspx?fileName=Public+Information+Page+(PIP)+Quarter+2+2022-20238786_3886.pdf)

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11. By comparison, in England and Wales there were 230 transgender prisoners held on 31 March 2022. Of the 49 transgender prisoners in female prisons, six were trans women; and of the 181 in the male estate, 162 were trans women<sup>5</sup>.

## **Action/Decision**

12. Members are invited to take the attached correspondence into account during their questioning.

**Clerks to the Committee  
February 2023**

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<sup>5</sup> Her Majesty's Prison and Probation Service, Offender Equalities Annual Report 2021/22, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1119803/HMPPS\\_Offender\\_Equalities\\_2021-22\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1119803/HMPPS_Offender_Equalities_2021-22_Report.pdf)

**ANNEX**

**Letter from the Cabinet Secretary for Justice and Veterans (received 9 February)**

February 2023

**TRANSGENDER PRISONERS**

Dear Convener

Further to both my letter to the Committee and Statement in Parliament on 31 January, I am writing to share with the Committee the letter from Teresa Medhurst, Chief Executive of the Scottish Prison Service (SPS) to me regarding the lessons learned review SPS has concluded in regard to the case of Isla Bryson and the recommendations from that process.

Firstly, I want to acknowledge my concern for victims of crime and the distress caused to them. My thoughts remain with them. I am conscious that it is important that consideration of issues relating to the management of prisoners is measured and does not retraumatise victims or risk unintended consequences for transgender people or individuals in the care of SPS.

Transgender people are some of the most marginalised people in society; and legitimate questions and debate should not fuel a discourse which is harmful to transgender people generally. I am open to any suggestions from Committee members which could help to place this debate on a more respectful and calm footing, and reduce any risk of increased stigmatisation against trans people.

I would also like to acknowledge the work SPS has done in continuing to fulfil its operational responsibilities while completing the lessons learned review. SPS has considerable expertise in managing complex, high-profile and challenging individuals within their care and keeping people safe; and I commend their professionalism.

As outlined in her letter, the SPS Chief Executive has offered a number of key assurances, including the following:

- At no time during this period was any women in SPS care at risk of harm as a consequence of the management of the individual.
- SPS policy was followed during each decision making process and risk assessment.
- The individual concerned remains in the male estate after a rigorous risk assessment procedure and multi-disciplinary case conference.
- Full multi-disciplinary reviews are underway for each transgender person in custody.

All recommendations from the lessons learned review have been accepted by Ms Medhurst as Chief Executive and will be progressed by SPS in collaboration with others as needed. The recommendations relate to information sharing, communication between justice partners, individualised risk assessment and the admissions procedure. As confirmed in the letter, SPS will factor the learning identified from this

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review into its Gender Identity and Gender Reassignment (GIGR) Policy Review, which is ongoing.

Pending the outcome of the GIGR Policy Review, protective measures to provide reassurance will remain in place.

Ms Medhurst and I have agreed to appear at the Committee session on 22 February. I will of course welcome the opportunity to answer questions from Committee members.

**KEITH BROWN**

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**Letter from the Scottish Prisons Service (dated 8 February and received 9 February)**

Dear Cabinet Secretary,

**Urgent Case Review Recommendations – Transgender**

I attach a report outlining the main recommendations of our urgent case review, into the management of a transgender individual in the care of the Scottish Prison Service, for your information.

I instructed an urgent case review into the circumstances and decision making rationale underpinning the management of the individual following their court appearance, to their admission to custody to the female estate on the evening of Tuesday 24 January and then transfer to the male estate on Thursday 26 January.

A case review discussion took place on Tuesday 31 January with senior SPS officials involved in the management of the individual. The aim of this review discussion was to systematically and rigorously assess all facts and evidence informing the decision making process. Independent oversight of the case review was conducted by the Interim Deputy Chief Executive (DCE) of SPS and then ultimately myself as Chief Executive of SPS. A final report was submitted to me on Friday 3 February.

I have fully considered the content of the urgent case review report and at the outset I can offer the following assurance:

- At no time during this period were any women in SPS care at risk of harm as a consequence of the management of the individual and;
- SPS policy was followed during each decision making process and risk assessment.

I have accepted the recommendations of the review and you will note, in the main, that they will require collaboration across justice partners. Some of these recommendations have already been initiated by SPS, with a view to the remaining recommendations being taken forward shortly.

I am of the view that it is not necessary to share the entire report as there is a significant amount of personal detail relating to the individual and that of staff which would not be appropriate to disclose.

I trust that this letter and appended Appendix F to the report provides sufficient assurance of the rigorous review that has been conducted, offers reassurance around the facts of the case and highlights the immediate actions already in place.

You will be aware this comprehensive review was undertaken at pace, however, I will ensure that SPS continue to factor in all of the learning identified into our ongoing Gender Identity and Gender Reassignment (GIGR) Policy Review, which is currently well underway.

The review has confirmed the following facts in relation to this case:

- On 24 January 2023 an individual was remanded to custody convicted of two counts of Sexual Offences (Sexual Offences (Scotland) Act 2009 (rape) and Sexual Offences (Scotland) Act 2009 (Domestic).
- As the individual did not arrive from either Police Scotland or SPS custody, there was limited information available prior to them being remanded and then escorted by our contractor GeoAmey.
- The individual's warrant annotated that they were to be admitted to custody at HMP Barlinnie. It is the SPS' understanding that the receiving establishment identified on an individual's warrant is generated at court based on "the sex" that is on record.
- Having been notified by our escort contractor that the individual was to be admitted to SPS custody and as further information gathering was ongoing, it was decided by SPS that the individual should be diverted to HMP&YOI Cornton Vale in alignment with current policy.
- Admission procedures ascertained that the individual would be accommodated within the Separation and Reintegration Unit (SRU) and a decision to do so was made under Rule 95(1) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011. This means that the individual was located in an area where they were separate from the general prison population. At no time did the individual come into contact with any other prisoners at the establishment.
- A transgender case conference was held on Wednesday 25 January chaired by SPS senior management and attended by relevant partners which concluded that further information from partners was required in order to better assist risk assessment. Location and accommodation decisions relating to transgender individuals in our care are made as a result of a multi-disciplinary assessment of both risk and need at a transgender case conference, therefore further information was sought to inform further risk assessments. The individual remained on Rule 95(1) throughout the time.
- On the morning of Thursday 26 January, an operational decision was taken by SPS Senior Management due to the level of risk and remaining uncertainties in the case, to move the individual to the male estate. An immediate transgender case conference was held with all relevant partners at the establishment.
- On admission to the male estate, it was concluded reasonable and proportionate to remove the individual from association under Rule 95(1) until risk elements were evaluated.
- I can confirm that since admission the individual has been managed in line with the current policy including convening case conferences to ensure the appropriate management of the individual within the current location.

It is clear from the conclusion of the review that SPS decisions were in keeping with existing SPS policies and procedures in shaping operational decisions. The application of the current policy and prison rules meant that the individual had no access to women due to their removal from association.

As you will note, progressing the recommendation for better information sharing pre-custody and post admission to custody for transgender people in our justice system has already been initiated by us in collaboration with key justice partners. This will include communication protocols and development of a Memorandum of Understanding to support decision making on admission and subsequent case conferences.

**Additional Measures**

In addition, you will also be aware that I instructed an urgent case review of all transgender women currently managed within the prison estate. In addition, I have implemented the following measures:

- Full multi-disciplinary case reviews are underway for each transgender person currently in prison custody.
- Until these reviews are complete, any transgender person currently in custody and who has any history of violence against women – including sexual offences – will not be relocated from the male to the female estate. In addition, any newly convicted or remanded transgender prisoner will initially be placed in an establishment commensurate with their birth gender.
- If there are exceptional circumstances which support a recommendation that a transgender individual with any history of violence against women be relocated to, or placed in, any part of the prison estate which does not match their birth gender, then I will seek Ministerial approval to do so on a case-by-case basis.
- I have instructed the development of interim Standard Operating Procedures (SOPs) to be put in place with immediate effect to ensure that these above measures are put into operation consistently across the prison estate.

Finally, I must reiterate that SPS remains committed to providing person-centred care to our entire population; this includes managing any identified risks, which are not exclusive to transgender people in our care.

In particular, staff in our establishments have demonstrated their long-standing expertise and strong track record in the management and care of an increasingly complex prison population.

My priority remains the health, safety, and wellbeing of all people in our care, many of whom are the most marginalised in our society, and that of our staff.

Yours sincerely

**TERESA MEDHURST**  
**Chief Executive**  
**8 February 2023**



## **LESSONS LEARNED REVIEW OF TRANSGENDER INDIVIDUAL**

As outlined in the Cabinet Secretary for Justice and Veteran's Statement on Sunday 29 January 2023, the Scottish Prison Service (SPS) has undertaken an urgent lessons learned review in relation to the management of a transgender individual currently in the care of the SPS in the male prison estate.

The purpose of the review was to provide the Chief Executive of SPS with a report into the management and decision-making rationale underpinning the management of the individual from when they were first remanded into SPS custody from court on 24 January 2023 to their most recent Case Conference review on 31 January 2023.

The key recommendations concluded from the case review are:

**INFORMATION SHARING PRE-CUSTODY AND POST-ADMISSION:** There was limited information, beyond the nature of the immediate convictions, available regarding details of the individual's current and previous offending or their life pre-custody within the community from external partners to inform the initial assessment on admission to SPS custody. Since the individual's admission into SPS custody, there has continued to be conflicting and limited information obtained in relation to the individual and their life previously in the community. Therefore, it is recommended that a shared justice process is explored for the admission of transgender people to Scottish prisons, setting out relevant roles and responsibilities, including communications and information sharing processes (including a shared Memorandum of Understanding) to support decision making at admission and subsequent case conferences.

**COMMUNICATION:** Quicker advanced alert and communication is required from justice partners to SPS regarding transgender prisoners. Discussions have been initiated with SCTS, Police, COPFS and ourselves, to ensure there is a clearer approach to the transfer of transgender individuals from court to SPS custody. There will also be discussions with GEOAmev, the escorting contractor, to ensure communication is improved between SPS and GEOAmev in these circumstances. It is further recommended that agreed communications are reviewed on a regular basis.

**INDIVIDUALISED APPROACH TO RISK ASSESSMENT:** The review has concluded that SPS policy was followed during each decision making process and risk assessment. It is evident that the focus throughout each stage was utilising an individualised approach for the risk assessment and management of the individual. It is recommended that this person centred, individualised approach, which seeks to balance the rights of the individual with the risks they pose to themselves and to others continues and is encouraged.

It is clear from the review that SPS staff carefully considered how to balance the rights of the individual with the risk they posed to themselves and to others during every decision making process and risk assessment process completed. However, due to the particular circumstances and heightened risks concerning this case, it is recommended that the wider SPS Gender Identity and Gender Reassignment (GIGR) policy review considers improvements to 'admission' as well as 'placement and management' and sets out how the SPS should consider the weight of an individual's previous offending history as part of the case conference process.

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**ADMISSION PROCESS** - SPS would propose an urgent exploration of the process of immediate admission into a prison, where an individual may be removed from association under Rule 95 conditions, for the sole purpose of risk assessment, as a distinct and separate position from that of general admission, and located in the men's estate, or the women's estate. This would offer the opportunity to strengthen the balance between assessment of risk and harm to others, and the individual's needs, welfare, and equality.

**Scottish Prison Service**