

Citizen Participation and Public Petitions Committee

5th Meeting, 2022 (Session 6), Wednesday
23 March 2022

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

Note by the Clerk

Lodged on 5 July 2021

Petitioners 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>

Introduction

1. The Committee last considered this petition at its meeting on [6 October 2021](#). At that meeting, the Committee agreed to write to Police Scotland, the Crown Office and Procurator Fiscal Service, the Equalities and Human Rights Commission, the Lord Advocate and the Scottish Courts and Tribunals Service.
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 a further response from the petitioner. This is included in **Annexe C**.
4. The Committee has received new responses from the following stakeholders –
 - Lesley Warrender

- Scottish Courts and Tribunals Service
 - Crown Agent – Crown Office and Procurator Fiscal Service
 - Police Scotland
 - The Equalities and Human Rights Commission Scotland
5. The written submissions are set out in **Annexe D**.
 6. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
 7. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

Action

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

Clerk to the Committee

Annexe A

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Draft guidance subsequently issued by the Chief Statistician rejected this in all but exceptional circumstances, which did not include the recording of these cases.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 6th October 2021

The Convener: Item 2 is consideration of new petitions. First of all, for those who might be tuning in to see the progress of their petition or others who might be watching this morning, I should make it clear that, in advance of considering petitions, we seek submissions from the Scottish Government and receive submissions from other parties to ensure that we have a certain amount of information at our disposal before we proceed.

Our first new petition is PE1876, which has been lodged by Lucy Hunter Blackburn, Lisa Mackenzie and Kath Murray. It 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 charged or convicted of rape or attempted rape.

In its submission, the Scottish Government states that the crime statistics that it publishes

“are derived from data held on the Criminal History System ... an operational database which is used for the primary purpose of recording of information on people accused or convicted of perpetrating a criminal act.”

The submission argues that it would therefore be

“for Police Scotland to determine how the sex of people charged or convicted of rape or attempted rape is recorded on the CHS.”

Since the publication of our meeting papers, the committee has received several written submissions, including from Fair Play For Women, Dr Shonagh Dillon, For Women Scotland, Sharon Dowe MSP and the petitioners. In their submission, the petitioners highlight that crime recording practices in Scotland are overseen by the Scottish crime recording board. The role of the board, which is chaired by the Scottish Government, is to

“support the production of accurate and objective statistics on crime in Scotland”.

The petitioners therefore reiterate that the action that they are calling for is for the Scottish Government to require Police Scotland, the Crown Office and the Scottish

Courts and Tribunals Service to accurately record the sex of people charged or convicted of rape or attempted rape.

The petitioners also highlight in their submission guidance that the Scottish Government published last month on collecting data on sex, gender identity and trans status and which cites the investigation of “a serious sexual offence” as an example where data on biological sex is required. They argue that the fact that the chief statistician chose to single out sexual offending in this guidance lends weight to the argument that the nature and gravity of such cases justify accurate recording.

After that introduction, I seek comments from members.

David Torrance: I would like to keep the petition open and investigate the issue. I suggest that we write to the many stakeholders that have been mentioned—Police Scotland, the Crown Office and Procurator Fiscal Service, the Equality and Human Rights Commission and the Scottish Courts and Tribunals Service—and see what they have to say.

Bill Kidd: Mr Torrance’s suggestion is perfectly logical and sensible. The petition is one of a group of petitions that make a statement about an issue that is not in the public domain to a great degree. For us to be able to respond successfully to the petition, it is incumbent on us to investigate the issue and to consider it further once we have received the responses.

Alexander Stewart: I concur with Bill Kidd and David Torrance. I think that the petition raises important questions about trust in statistics and data. It gives us an opportunity to seek more views and opinions from stakeholders so that we can make progress on the matter and take a measured approach to what is a very sensitive and delicate situation. It is important that we engage in that way and try to gain as much information as we can so that a more balanced approach can be taken in the process.

Paul Sweeney: I agree that an evidence-led approach is critical, and I concur with colleagues that the routes of research that have been identified and proposed are appropriate, and I support our taking those actions.

The Convener: I am going to be a bit blunt here. I was struck by the following paragraph in the Scottish Government’s submission:

“The crime of rape is committed by someone with a penis, including a surgically constructed penis. As the petition mentions, a person (male or female) can also be convicted of rape when their involvement was art and part (assisted in the perpetration of the crime).”

I note that the petitioners wonder whether, although that is technically the case, such a rape has been the subject of any subsequent prosecution. I do not think that that is entirely clear.

There are a number of people to whom we can write. I invite suggestions as to who they might be.

David Torrance: I think that we should write back to the Scottish Government to ask whether there are any recorded figures that back up the statement that it has made in its submission.

The Convener: David, you have already suggested that we write to Police Scotland, the Crown Office and Procurator Fiscal Service, the Equality and Human Rights Commission and the Scottish Courts and Tribunals Service. We agree to do that. On the back of my comment, you have suggested that we also write to the Scottish Government to ask for validation of the actual prosecutions that have taken place in such circumstances. I presume that, when the Scottish Government talks about the use of prosthetics, such a crime could be committed by a male or a female. I would like to understand the reality of the analysis, rather than just the theoretical and technical aspects of the issue.

Bill Kidd: I think that that is perfectly logical, although I note that the Scottish Government has stated in its response:

“The Scottish Government publishes each year a statistical bulletin known as Criminal Proceedings in Scotland. The bulletin presents statistics on criminal proceedings concluded in Scottish courts, including a breakdown by sex of convicted persons by crime type.”

Therefore, given that the Scottish Government has already given us that information, I think that it would be better to contact the organisations that David Torrance identified before we approach the Scottish Government again with those results.

The Convener: That is fine. I am quite happy for us to take that approach, if members are content.

Members *indicated agreement.*

The Convener: Do members have any other comments?

Paul Sweeney: I wonder whether it would be worth our seeking an opinion from the Lord Advocate on the matter.

The Convener: Yes, we can do that, too.

We will keep the petition open, as it touches on issues that require to be clarified. We will consider the petition again when we have received responses from the various parties to which we have agreed to write.

Annexe C

Petitioner submission of 16 March 2022

PE1876/U - Accurately record the sex of people charged or convicted of rape or attempted rape

This submission responds to Police Scotland's submission and highlights two relevant recent court judgments.

Police Scotland submission

Police Scotland states that its position on recording rape is based on self-declared gender identity and that 'This is the case for all offences'.

We are concerned, in stating there is no risk to data reliability because of the small *proportion* of cases classified as female, that Police Scotland fundamentally misunderstand the risks to data reliability presented by their current policy on recording the self-declared gender identity and not the sex of those charged or convicted with rape or attempted rape.

The risks are specifically due to the very low *number* of women charged with rape. The point here is that a very small number of males recorded as female would show as a large percentage increase *in cases of female sexual assault*, making any trend data unreliable.

Police Scotland has conducted a physical review of 28 crimes for the period 2016-2020 which established that none of the females recorded for the crime of rape were involved in the physical act itself and that their involvement was art and part. **This only tells us about the basis on which the person was charged, not the sex of those involved, which remains unknown.**

The [Scottish Crime Recording Standard](#) states: 'Ethical recording of crime is integral to modern policing and it is vitally important that crime recording and disposal practices are capable of withstanding rigorous scrutiny.'

The ad hoc interrogation of data that is not in the public domain, as undertaken by Police Scotland for the purposes of this submission, does not meet this standard.

We believe the Police Scotland response also fails to address the strong ethical imperative, from the perspective of respect for victims, to record sex accurately in cases of rape and attempted rape. Criminal Justice statistics paint an aggregate picture but are comprised of individual incidents that reflect people's lives and experiences.

We are dismayed that Police Scotland has not reconsidered its position and ask the Committee to reflect on the message that this delivers to victims of sexual offending.

Recent court rulings: implications for police recording practice

Two recent rulings of the Inner House of the Court of Session are of direct relevance here. Both judgments were handed down last month.

These are the [ruling](#) in the Appeal case brought by For Women Scotland (FWS), which overturned an earlier judgment in favour of the Scottish Government in relation to the Gender Representation in Public Boards Act, and the [ruling](#) in the Appeal case brought by Fair Play For Women (FPFW) which sought to overturn an earlier judgment that allowed people to self-identify their 'sex' in Scotland's 2022 Census. While the latter Appeal was unsuccessful, the judgment confirmed key points of law relevant to data collection.

FWS appealed against Scottish Ministers in the Court of Session, in relation to the definition of 'woman' used in legislation aimed at increasing the number of women on public boards. The [judgment](#) ruled that under the Equality Act 2010, the protected characteristics of 'sex' and 'gender reassignment' are separate and distinct, **that 'sex' refers to biological males and females**, and that an individual approach to the protected characteristics is required.

This definition of sex was reaffirmed in the FPFW Appeal case, where the judges argued that a biological definition of sex may be necessary 'in prescribed circumstances involving status, proof of identity or other important rights'.

These rulings put beyond question that public bodies need to collect data on biological sex to carry out their statutory duties under the Equality Act 2010. The protected characteristic of 'sex' is now unambiguously defined in law as biological sex.

At most, people holding a Gender Recognition Certificate (GRC) may be entitled to be treated under the Equality Act as being the opposite sex than would otherwise be the case, by virtue of the specific provisions of the Gender Recognition Act.

Under the Public Sector Equality Duty, as legislated for in the Equality Act 2010, Police Scotland is subject to the General Equality Duty and Scotland Specific Duties. As part of meeting these duties, Police Scotland use recorded crime data, for example in relation to violence against women and girls (see: [Joint Equality Outcomes for Policing 2021-2023](#)). **These duties cannot be properly met using data that is inconsistent with Equality Act definition.**

We also draw the Committee's attention to a [letter](#) from the Chair of the Equality and Human Rights Commission to the Cabinet Secretary for Social Justice (26 January 2022). This sets out the Commission's concerns about the Scottish Government's proposals to reform the Gender Recognition Act and refers specifically to 'data collection' as an area that merits attention.

For this reason, we suggest that the Committee make a fresh approach to the Commission to submit evidence on this petition.

Annexe D

Lesley Warrender submission of 27 October 2021

PE1876/Q - Accurately record the sex of people charged or convicted of rape or attempted rape.

I am a private citizen and wish to share my views on and support for the above petition. I am also a retired police officer, having retired from the Scottish police service in 2010. For the last 7 years of my service, I was seconded to HM Inspectorate of Constabulary (E&W), during which time I had specific responsibility for rape and serious sexual offences.

In 2007, I was co-author of a report, 'Without Consent', published following a review of the investigation and prosecution of rape offences carried out jointly with HM Crown Prosecution Service Inspectorate. Although now 14 years old, many of the issues raised at the time continue to be raised and remain relevant today.

One of these in particular, **attrition** - the process whereby cases 'drop out' of the criminal justice system - continues to be highlighted in the media each year when the annual crime statistics are published. As you will be aware, in Scotland, for the year 2019/20, of 2343 crimes of rape and attempted rape reported to the police, 130 resulted in a conviction - 5.5%. This, however, reflects an ongoing pattern - in the last ten years, of 18,287 crimes of rape and attempted rape reported to the police in Scotland, 960 ended in a conviction - 5.2%.

This is attrition. **And this is the reality that every victim faces** when deciding whether to take the first step towards justice and report the crime to the police. If they do, there are further barriers to be overcome at each stage of the criminal justice process. These are well-documented and it is little wonder that an estimated 85% of victims choose not to report.

The last thing victims now need is a further barrier to reporting.

As already pointed out in the petition submissions, how physical sex is recorded matters, not only in terms of data credibility, but in the way it could impact on victims through its effect on the language used to

describe the perpetrator. Only someone with a penis can commit the crimes of rape and attempted rape, someone who is physically male. I can only imagine the impact on victims, especially vulnerable victims such as children or the elderly and frail, of having to refer to the perpetrator, or of hearing or seeing the perpetrator referred to, as anything other than 'he'.

Whilst all of those convicted of rape in 2019/20 in Scotland were recorded as male, and the number of future cases where this may become an issue is likely to be small, unless police recording practice for, at the very least, rape and attempted rape changes, this will become **yet another reality** that **every victim** will face in considering whether or not to report to the police.

Attrition in crimes of rape begins early and continues throughout the whole criminal justice process. Time and again, research and reviews highlight the importance of the **victim's experience** in securing a conviction and positive criminal justice outcome. This is also recognised in the Victims and Witnesses (Scotland) Act 2014, which places an obligation on a number of people and institutions, including the Chief Constable of the Police Service in Scotland, in relation to victims of crime. Not least are having their needs taken into consideration, sensitive and respectful treatment and having protection from secondary and repeat victimisation.

'Without Consent' concluded as follows:

*Victims of rape remain at the heart of this process. In no other crime is the victim subject to so much scrutiny during an investigation and at trial; nor is the potential for victims to be re-traumatised during these processes so high in any other crime. It should not be surprising, therefore, that so many choose not to report or not to continue with the process. **Maintaining victim confidence in the criminal justice process, however, is absolutely key if offenders are to be brought to justice.***

If victims truly are at the heart of the criminal justice process, then their perspective also needs to lie at the heart of considerations which affect them.

Scottish Courts and Tribunals Service submission of 2 November 2021 PE1876/R - Accurately record the sex of people charged or convicted of rape or attempted rape.

Thank you for the email of 7 October 2021 seeking the views of the Scottish Courts and Tribunals Service (“the SCTS”) on the actions called for in the above petition.

The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and tribunals in Scotland and does not include the views of the Judiciary. In carrying out this role the SCTS must:

- Take account of, in particular, the needs of members of the public and those involved in proceedings in the Scottish courts and tribunals, and
- So far as practicable and appropriate, co-operate and co-ordinate activity with any other person having functions in relation to the administration of justice.

The SCTS uses a live operational case management system (COPII) for the processing of court business. The information held on the system is structured for these operational needs, rather than for statistical reporting or research purposes.

In criminal proceedings the SCTS receives information on the sex of an accused from a data file sent electronically by the Crown Office and Procurator Fiscal Service (with information which originates from Police Scotland). The information is then held within the background information on the COPII system. The available sex field options on COPII are male, female or unknown.

The sex of a person being prosecuted for an alleged offence is not displayed on any court paperwork and so it would not be immediately obvious to a clerk of court if there was an inaccuracy in the recorded data. In the sheriff court, it is practice when a case is called in court to confirm the name of the person appearing in the dock. The sex of a person would not typically be verified by court staff in this way. There are occasions where a person’s address or date of birth is confirmed by the clerk of court. These details are produced on court papers and are

verified to ensure the accuracy of court issued documentation for example any bail orders or extract warrants of imprisonment/detention.

The SCTS is willing to work with justice partners to help improve the accuracy of recorded data. Should IT changes be deemed necessary to facilitate this, we would anticipate there would be associated costs for the SCTS and other justice partners.

In terms of our operational processes, given that information relating to sex is not displayed on court papers, nor confirmed by the clerk in court, it is difficult, at present, to envisage circumstances in which a member of court staff would amend or update records in relation to the sex of an individual.

Crown Agent submission of 4 November 2021 PE1876/S: Accurately record the sex of people charged or convicted of rape or attempted rape.

The primary functions of the Crown Office and Procurator Fiscal Service (COPFS) include the prosecution of crime. In order to fulfil that function, information regarding the sex or gender of accused persons is not essential. In respect of the offences of rape and attempted rape, the law requires that there is penetration or attempted penetration of the complainer's mouth, vagina or anus by the perpetrator's penis, which includes a surgically constructed penis. The sex or gender of the accused person are not relevant to proof nor prosecution of the offence.

Any information routinely received by COPFS about the sex or gender of an accused person, is provided by the reporting agency. As COPFS use data that is provided by the police it is a matter for Police Scotland to confirm that data about accused people, including their sex, is recorded accurately.

Police Scotland submission of 22 November 2021

PE1876/T: Accurately Record the Sex of People Charged or Convicted of Rape or Attempted Rape

I refer to your correspondence of 7 October 2021 to Police Scotland in respect of the above petition and your request to provide a response.

I note the comments of the petitioners, in so far as they have asked 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. Having considered the content of the petition, I offer the following by way of comment.

At present Police Scotland's current operational and recording practice is that sex and gender will be used interchangeably. The sex/gender identification of individuals who come into contact with the police will be recorded on police systems such as crime management and custody databases on how they present unless an alternative gender is disclosed. This is the case for all offences.

In the context of operational duties, officers do not routinely ask the sex or gender of people they interact with. Police Scotland requires no evidence or certification as proof of biological sex or gender identity. There are, however, circumstances where the issue of biological sex may require to be explored for a legitimate policing purpose, for example sexual offences of Common Law Rape and Common Law Sodomy (pre-2010) and more specifically reports of contraventions of Sections 1 and 18 of the Sexual Offences (Scotland) Act 2009. The essential elements to allow the completion of these crimes outlined in the Sexual Offences (Scotland) Act 2009 is the penetration of the vagina, anus or mouth of the victim by a penis or surgically constructed penis. In order to charge a suspect / accused with rape it is therefore evidentially critical to ascertain if they have a penis or surgically constructed penis.

Their self-identified gender is of no relevance to the charge.

The relevant sections of the Sexual Offences (Scotland) Act 2009 have been reproduced below for your information –

Section 1 Rape

(1) If a person (“A”), with A’s penis -

(a) without another person (“B”) consenting, and

(b) without any reasonable belief that B consents,

penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B then A commits an offence, to be known as the offence of rape.

(2) For the purposes of this section, penetration is a continuing act from entry until withdrawal of the penis; but this subsection is subject to subsection (3).

(3) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (2) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.

(4) In this Act—

“penis” includes a surgically constructed penis if it forms part of A, having been created in the course of surgical treatment, and

“vagina” includes—

(a) the vulva, and

(b) a surgically constructed vagina (together with any surgically constructed vulva), if it forms part of B, having been created in the course of such treatment.

Section 18 - Rape of a Young Child

If a person (“A”), with A’s penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child (“B”) who has not attained the age of 13

years, then A commits an offence, to be known as the offence of rape of a young child.

The first point of note is that the Sexual Offences (Scotland) Act 2009 is sex and gender neutral in respect of a section 1 or 18 offence (Rape & Rape of a Young Child). It defines the perpetrator and victim of the crime as 'Person A' and 'Person B'. Secondly, in terms of Section 1(4) above, it is therefore irrelevant, for the commission of the crime, if the perpetrator is legally defined as male or female or self identifies as male or female, it is only relevant that the perpetrator has a penis, and this includes a surgically constructed penis which has penetrated one of the defined bodily orifices.

There are specific circumstances where a woman may be recorded on police systems as having committed contraventions of Sections 1 and 18 of the Sexual Offences (Scotland) Act 2009.

I can confirm this will occur in the following scenarios:

If a woman is art and part of the rape.

Where a person, born male and who identifies as a female (whether they have a GRC or not) and then commits rape (providing they have a penis).

It is of note that the Background Information posted online in respect of the petition asserts

“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.”

The first part of the narrative is indeed correct, in so far as it is very rare for a woman to be charged with rape. It may be helpful for you to be aware that following a Freedom of Information request, in July 2021, Police Scotland, in recognition of the public interest in this matter, conducted some analysis and provided data in respect of females who

have been recorded as a suspect/ accused for the crime of rape between 2016 and 2020, the figures are as follows –

Table to be found in Annexe A. 101.7KB pdf posted 24 January 2022

Furthermore, Police Scotland conducted a physical review of these 28 crimes for the period 2016-2020. Following that review, it was established that none of the females recorded for the crime of rape were involved in the physical act itself i.e. the penetration of a vagina, anus or mouth with a penis or surgically constructed penis. Their involvement was art and part (aiding or abetting in the perpetration of the crime).

As such, and given the very low proportion of female suspects/accused, it is inaccurate to suggest, as per the petition, “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” It is worthy of note that between 2016 and 2020, Police Scotland recorded 10,842 Rapes, this equates to 0.27% of perpetrators recorded as female, as such, any assertion that inaccuracies around the biological sex of a perpetrator recorded are of little if any statistical significance.

From the inception of Police Scotland in 2013 until 2015, we are unfortunately unable to provide the same qualitative data on this subject but once again there are no known cases where a biological male has been charged with the physical crime of rape and has self-identified as a women.

Police Scotland also recognise that there are additional challenges in this area as sex / gender is also used more broadly to denote a range of identities that do not correspond to established ideas of male and female.

It may be helpful for you to be aware that in light of recent guidance from the Scottish Government’s Chief Statistician, Assistant Chief Constable Gary Ritchie has instructed Police Scotland’s Data Governance Board to review our internal policies and recording procedures.

It should also be noted, however, that Police Scotland still uses a number of legacy IT systems and we are therefore limited in our ability to record gender as anything other than the binary option of male or female. 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.

Equalities and Human Right Commission Scotland submission of 17 March 2022 PE1876/V Accurately record the sex of people charged or convicted of rape and attempted rape

Thank you for letter addressed to Lynn Welsh Head of Legal Scotland for the Equality and Human Rights Commission seeking the Commission view on this petition. I am responding on behalf of the Commission.

Collection of data regarding protected characteristics

The Commission supports and encourages accurate data collection in relation to all protected characteristics, including sex.

It is for all bodies collecting data to ensure they do so lawfully. Any public body collecting data, including Police Scotland, should have a clear and transparent policy relating to the data they collect and the use they put it to. Such a policy should be equality impact assessed to ensure that it is non-discriminatory, that it advances equality of opportunity, and fosters good relations in line with the needs of the Public Sector Equality Duty. The collection of data must be necessary and proportionate, and ensure that privacy rights are not breached.

Proportionality means that where a body carries out a number of functions, the data they collect and the way it is collected will vary, depending on the purpose the data collected is intended to serve. So, for example, Police Scotland may collect information on the protected characteristics of those to whom they are providing a service, or who are the victims of crime, differently from those charged with serious offences.

‘Accurately recording’ the sex of people charged or convicted of rape or attempted rape

How best to record data on the sex of people charged or convicted of rape or attempted rape will depend on how this data is to be used. It is important that this is clearly defined and stated.

This notwithstanding, the Chief Statistician's recently produced guidance on "Sex, gender identity, trans status - data collection and publication: guidance" seems to us to provide some helpful information on an appropriate balance to be struck in relation to the recording of data in relation to those charged with or convicted of rape or attempted rape.

We hope you will find our response helpful in your consideration of this matter.