

Angela Constance MSP
Cabinet Secretary for Justice

By email only via CabSecforJHA@gov.scot

CC: Linda Pollock, Deputy Chief Executive, Scottish Prison Service
Linda.Pollock@prisons.gov.scot

Date: 2 March 2026
Our reference: SHRC202605

Dear Ms Constance,

Scottish Prison Service policy for the Management of Transgender People in Custody

I write with respect to the petition for judicial review brought by For Women Scotland against Scottish Ministers on the legality of the Scottish Prison Service policy for the management of transgender people in custody.

You are aware that the Scottish Human Rights Commission (SHRC) was granted permission by Lady Ross to intervene in this case. We have subsequently provided both written and oral submissions to assist the Court in its consideration of the human rights implications of the issues raised in the petition, in line with our mandate as the independent National Human Rights Institution for Scotland.

During the oral hearings for this petition across 3rd, 4th and 5th February 2026 at the Court of Session, Counsel for the SHRC made clear our concerns that the current SPS policy does not adequately reflect the relevant Convention rights engaged for the different groups of rights-holders affected by the policy; and that in particular, it does not sufficiently engage with the rights of female prisoners at all.

On 5th February 2026, Counsel for the Scottish Government appeared to accept the submissions of the SHRC on that point, and told the Court that the Scottish

Government acknowledged that there may well be a conversation to be had on this matter.

We recognise that it would be premature for said conversation to take place in advance of the judgment from Lady Ross on the lawfulness of the guidance.

However, on behalf of the members of the SHRC, I would like to note that regardless of the outcome, the SHRC would wish to engage with the Scottish Government and SPS on the future approach to the design, implementation and monitoring of policies which require a human rights-based assessment, particularly in contexts such as these where the rights of multiple and particularly at-risk groups are engaged.

I would therefore appreciate it if you could ensure that your officials prioritise arranging a meeting with the SHRC to discuss this following the judgement in the case of FWS vs Scottish Ministers.

Yours sincerely,

A handwritten signature in purple ink, appearing to read 'A. O'Hagan'.

Angela O'Hagan
Chair
Scottish Human Rights Commission