

Linda Pollock
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Date: 05 May 2026
Our reference: JC/AO/SPS/2026/01

Dear Linda,

Management of Transgender People in Custody - request for information

I write in advance of our scheduled meeting on 7 May 2026 where I look forward to learning more about your early priorities in your role as CEO of the Scottish Prison Service.

SHRC's programme of meetings with your predecessor has engaged discussions on a wide range of matters impacting on the human rights of people in detention in Scotland, including overcrowding and early release, OLR sentencing, the prison complaints policy, and the implications of the current policy on the management of transgender people in custody, which is of course currently subject to judicial review.

On that point, Members of the Commission have been reflecting on the current circumstances and the information available to us, and the public, about the implementation of the current policy as it impacts on the human rights of people in detention in Scotland, most recently at our meeting 13th April 2026.

The Commission would therefore now like to directly request information from the SPS subsequent to the hearings in the Court of Session regarding the For Women Scotland Judicial Review of the SPS's "Policy for the Management of Transgender People in Custody: Operational Guidance."

In our submissions to the Court, the Scottish Human Rights Commission (SHRC) expressed concern that the policy in question "does not facilitate adequate consideration of all affected parties' Convention rights and may therefore, in some cases, give rise to an unlawful violation of the Convention rights of women prisoners, in particular". While Lady Ross has not yet issued her judgment on the lawfulness of the guidance, the SHRC is of the view that there are risks to the human rights of prisoners which are extant, regardless of the outcome.

In order to ensure that as Scotland's National Human Rights Institution (NHRI) we can be assured that the SPS is appropriately identifying and mitigating risks to all prisoners, we formally request the following:

1. The number of transgender prisoners in Scottish prisons, specifically;
 - How many biologically male transgender prisoners are currently housed in the female estate
 - How many biologically male transgender prisoners are currently housed in the male estate
 - How many biologically female transgender prisoners are housed in the female estate
 - How many biologically female transgender prisoners are housed in the male estate
2. For each of the above four categories, please identify number by relevant institutions;
3. What steps the SPS has taken to assess, monitor, and mitigate the human rights risks, particularly with respect to Article 2, Article 3, but also Articles 8, 9, 10 and 14 of the ECHR, for
 - a) these transgender prisoners and
 - b) other prisoners with whom they share accommodation;
 - c) Prison officers and other prison staff who are
 - (i) Male
 - (ii) Female
4. Details of any incidents, actual or potential harm to prisoners or staff (whether physical or psychological) or other conduct likely to interfere with human rights as mentioned, owing to the allocation of transgender prisoners under the SPS policy .

We are particularly concerned to understand how SPS has evaluated the risks to the internationally protected human rights of female prisoners and prison staff in the

application of its policy on the allocation of transgender prisoners, taking into account the specific characteristics and vulnerabilities of the female prison population, and the right to non-discrimination in the enjoyment of human rights on grounds of sex.

We recognise that the numbers of transgender prisoners are small and that sharing this information in the public domain may risk disclosing the identities of some prisoners (or prison officers) so it would be helpful when sharing it with the SHRC you could indicate what is being shared in confidence, and not to be disclosed into the public domain, and why.

While we can appreciate you may have reservations about sharing the information, given that decisions about where to house transgender prisoners may impact on prisoners' safety, privacy and dignity, we consider it appropriate that the NHRI is provided with information relevant to whether SPS is taking the necessary steps and collecting the relevant data to fulfil its human rights obligations under domestic and international law. We are also aware that much of the information has already been published in the mainstream media or referenced by MSPs in the Chamber of the Scottish Parliament.

In addition to the above, I look forward to an update on the issues we discussed when we met last November, including overcrowding and management, FAI Review Report, Sentencing Review Report, and the report and next steps on Talk to Me.

I appreciate this is a substantial agenda, and am looking forward to discussing these matters with you and with Members of the Commission who have been invited to join the meeting along with SPS colleagues.

Yours sincerely,



Angela O'Hagan
Chair, Scottish Human Rights Commission