

## **HEALTH AND SPORT COMMITTEE**

### **FORENSIC MEDICAL SERVICES (VICTIMS OF SEXUAL OFFENCES) (SCOTLAND)**

#### **SUBMISSION FROM For Women Scotland**

#### **Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill**

Further to media reports on the Committee meeting of 23rd June, we wish to draw your attention to an important point of the Bill which has caused widespread confusion and distress.

The header of an article in The National read "Jeane Freeman has said she is confident rape and sexual assault victims will be able to choose the gender of their forensic medical examiner under new legislation".

Responding to a poster on Twitter who said their membership of the SNP depended on the answer to the question "Do you mean biological sex?" and not "gender", Ms Freeman responded with "Actually what I said was 'choose the sex...' I'm not responsible for how a journalist reports".

However, from the Official Report, the question asked of Ms Freeman was: "How confident is the Scottish Government that, through the bill and the other changes that you have described, victims of rape and sexual assault will have a real choice about the gender of the examiner?", to which she replied with "I agree completely that people should have that choice" before going on to talk about the percentage of forensic examiners who are women.

Whilst Ms Freeman may have been clear in her own mind that she was referring to the sex of the doctors conducting examinations, it was not the question asked. Indeed, it is not the term used in the Victims and Witnesses (Scotland) Act 2014, which states that a person may request that the "medical examination be carried out by a registered medical practitioner of a gender specified by the person". However, what is meant by "gender" is not defined, and it is this ambiguity that has led to many such instances of talking at cross purposes and the unacceptable situation of victims not knowing exactly what they are entitled to ask for.

We note that both the SPICe briefing of the Bill and the Policy Memorandum refer to the sex of the examiner, and the importance of this is stressed by the evidence given by Rape Crisis Scotland who said "The single most common complaint we hear from survivors of sexual crime about their experience of the forensic examination is lack of access to female doctors." NHS Lanarkshire also commented that the "patient's choice of sex of forensic examiner must be guaranteed by this legislation".

The importance of this for women cannot be underestimated. Traumatized women should not be re-traumatized by unexpectedly encountering a male doctor (regardless of his

gender, or gender identity) after requesting treatment from a female doctor. Nor should victims feel they must self-exclude from medical services due to uncertainty over being guaranteed a female medical practitioner, or fear of accusations of bigotry for making such a request. Unfortunately, this is not unprecedented, and several cases have been reported.

The Equality and Human Rights Commission has stated that sex and gender are not synonymous and after scrutinising the Census Bill the CTEEA Committee recommended amendments to avoid conflation. Subsequently, the Sex and Gender in Data Working Group has been established to ensure that the two categories remain distinct from each other.

We urge the Committee to take this opportunity to amend the language of the Bill and the 2014 Act to avoid any ambiguity over interpretation, provide clarity in law, and to reassure victims that the steps taken by the Scottish Government meet their need to choose the sex of the medical examiner.