

Chief Constable Gavin Stephens
National Police Chiefs' Council
50 Broadway
London
SW1H 0BL

6th June 2024

Dear Chief Constable Stephens,

On 4th June we attended a meeting with Rebecca Grey and colleagues as part of the consultation on the review of withdrawn NPCC guidance, *Searching by Transgender Officers and Staff*.

This review is not fit for purpose. We call on you to stop it now, and restart it only after making a clear statement that no male officer or staff member (however they identify, and whether or not they possess a gender-recognition certificate) may search a female detainee beyond removal of jacket, outer coat and gloves (JOG), or head and footwear.

The restarted consultation should have clear terms of reference that reflect this fundamental commitment. Everyone involved – staff, external counsel and all those consulted – should also accept this.

The withdrawn guidance allowed male officers to search female detainees. This is contrary to UK law (Police and Criminal Evidence Act 1984) and a breach of the European Convention on Human Rights Articles 3 and 8. Moreover, it told police forces that a detainee who complained about a trans-identifying male officer being allowed to search and strip-search female detainees might be committing a “non-crime hate incident” against the officer.

This is a gross abuse of women's fundamental human rights. It is a basic requirement of PACE that female detainees are not searched by male officers and staff, because such searches are humiliating and degrading. **They should never have been allowed to happen, yet dozens of police forces are still operating this policy.**

We expected that the meeting on 4th June would start by acknowledging that the withdrawn guidance was unlawful and abusive. We expected to be assured that the new guidance would not tell police forces to subject women to the humiliation and degradation of being searched by male officers.

Instead, staff attending for the NPCC took an overtly neutral stance about whether or not trans-identifying male officers should be allowed to search women. This means being neutral between licensing the sexual assault of women, or preventing the sexual assault of women.

This is an unacceptable starting point for a consultation on how to correct guidance that directed police forces to subject women to a human-rights abuse.

For this consultation to be meaningful and trusted by campaigners for women's human rights, and for it to result in a lawful policy, five things need to happen:

1. The current consultation process needs to be halted, as it has not been designed to steer the NPCC towards developing guidance that is consistent with PACE and with the Human Rights Act 1998.
2. Everyone involved in drawing up the withdrawn guidance should be removed, and the NPCC should apologise publicly for having produced it.
3. New legal counsel must be sought. Whoever is instructed must accept that any policy that permits any male person to search a female person is unlawful and an abuse of human rights.
4. Terms of reference for a new consultation must be drawn up, starting from the premise that searches of female detainees by male officers are impermissible.
5. Any internal or external person or group that does not accept that the lawful power of search does not allow police forces to coerce, force or trick female detainees into being searched by male officers or staff must be excluded from the consultation.

The current consultation: flawed premise and design

The process we were expected to engage in at the meeting on 4th June cannot produce guidance that is fit for purpose.

- It did not take as its starting point an explicit recognition that detainees have an absolute human right against inhuman or degrading treatment or punishment, which is the reason for the sex-based rules around searching in PACE.
- It approached the matter of whether some male officers should be allowed to search female detainees as if it were an open question, rather than a choice between abusing women's rights or protecting women's rights.
- It failed to recognise why the previous guidance was withdrawn or offer any assurance that the new guidance will prevent female detainees from being put in the position of being searched by male officers (and vice versa) as required by PACE.
- It is not based on a shared understanding of the material reality that there are two sexes: male and female. During the meeting, we were told that a participant in another session had said there were "72 recognised genders", as if this fringe and counterfactual belief might have some relevance to whether male officers should be allowed to search female detainees.
- Those attending for the NPCC did not accept that it is just as inappropriate, humiliating and degrading for a woman to be searched by a male officer who calls himself a "trans woman" as for her to be searched by any other male officer.
- The consultation was designed as a series of questions in the style of a cross-examination. These were not shared in advance, and led respondents towards a predetermined conclusion.
- We understand that other groups are being asked the same questions, with the same confused language and the same starting point that it might be acceptable for "trans women" to search female detainees.

- The matrix of answers based on these questions is to be fed back for further consideration to Robin Moira White, who is a man who identifies as a woman, and who uses the words “evil” and “vile” to describe women who state the fact that he is a man.

The centring of “LGBTQ+” groups

The development of searching policy should not centre on the wishes of trans-identifying officers, since the question of which officers search which detainees does not solely or even primarily affect them. It affects all officers and all detainees, but most especially women.

For the same reason, it should not be led by the “Lead Officer for LGBTQ+”. Assigning it to an officer in a role designated in that way appears to reflect a belief that this question primarily affects those who identify as trans, and their rights. This is a misconceived framing of the issue, which is primarily about detainees’ rights. There can be no question of any officer having a “right” to search anyone, and any officer who asserted such a right would by that fact give cause for serious concern about his or her suitability for any work with any vulnerable people, least of all detainees.

Trans-identifying officers who do not accept that their biological sex is salient in relation to other people’s human rights should not be employed in the police force, as their beliefs are incompatible with respecting others’ rights. In practice, it is likely that trans officers cannot undertake searches. There is an existing model for a “workplace adjustment passport” system (for example as used in the Metropolitan Police) available for such exceptions from duties.

Objection to current legal counsel

Robin Moira White, the barrister who gave the legal advice supporting the previous guidance, has been retained for this revision. In the meeting, we were told White had helped to design the consultation, and that our responses to the questions asked would be provided to White.

Some of us had already explained to you at a meeting on 23rd April (and in a follow-up email from Sex Matters on 9th May and by WRN to the Minister of Policing on 1st May) that continuing to involve White is inappropriate.

To reiterate, White is an activist with extremist views that do not reflect the law, and frequently exhibits strong animus against gender-critical campaigners. We have already submitted evidence of this to Gavin Stephens, at his request, including screenshots that show White using unprofessional language about such women in public forums.

- White has referred to Sex Matters, to the Chair of the Equality and Human Rights Commission and to Kemi Badenoch MP as “evil”.
- White has called barrister Naomi Cunningham (chair of Sex Matters and a former colleague of White) “vile”.
- White has called Baroness Kishwer Falkner, the Chair of the Equality and Human Rights Commission, “disingenuous”.
- White has called gender-critical groups such as Sex Matters and LGB Alliance “hate groups”.

- In an article about Brianna Ghey, White accused Forstater and Joyce of being “anti-trans campaigners”, and blamed Ghey’s murder in part on them and Conservative politicians.
- White has compared the argument that employers need to know the sex of employees to the yellow stars Nazis forced Jews to wear.

White must be removed from this process immediately. It is impossible for a consultation that draws on White’s input to be impartial, or to be trusted by any stakeholders concerned with women’s human rights.

We will not take part in a consultation process designed to whitewash the development of another abusive guidance document. As we stated in the meeting, we do not consent to the record of our meeting being given to Robin Moira White.

Yours sincerely

Maya Forstater, CEO, Sex Matters

Heather Binning, Founder, Women’s Rights Network

Kate Barker, CEO, LGB Alliance

Cathy Larkman, retired police officer, police lead for Women’s Rights Network