



Consultation Response

Reforming the Criminal Law to Address Misogyny: A Scottish Government Consultation

The Scottish Commission for People
with Learning Disabilities

June 2023



Introduction

The Scottish Commission for People with Learning Disabilities (SCLD) welcomes the opportunity to respond to this consultation.

SCLD aims to make a significant contribution to creating an environment in Scotland in which systems and culture are changed to ensure people with learning disabilities are empowered to live the life they want in line with existing human rights conventions. At SCLD, we base everything we do on what people with learning disabilities tell us their priorities are - their hopes and dreams for the future, their fears, and their experience of discrimination.

In principle, SCLD agrees with the five legislative provisions drafted by the Scottish Government¹, to implement the four recommendations for criminal law reform contained in Baroness Kennedy's report, *'Misogyny, A Human Rights Issue'*².

At the time of writing this response, due to other ongoing work, SCLD did not have the organisational capacity to engage with the consultation in full. Therefore in responding to this consultation, SCLD has:

- Outlined our work on gender-based violence and crime with women with learning disabilities
- Outlined the existing evidence base on the systemic discrimination facing women with learning disabilities who experience gender-based violence and crime in Scotland today
- Highlighted our suggestions for the legislative provision of impact assessments to reform the criminal law to address misogyny.

¹ [Reforming the criminal law to address misogyny: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/criminal-law-reform-2018/pages/10.aspx)

² [Misogyny – A Human Rights Issue - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/criminal-law-reform-2018/pages/10.aspx)

SCLD's Work on Gender-Based Violence and Crime

In 2021, SCLD welcomed funding from Delivering Equally Safe to co-design and deliver a project to tackle gender-based violence, with and for women with learning disabilities who have experienced gender-based violence³.

The project offers women with learning disabilities the opportunity to be involved in decision-making that impacts them through a collective advocacy group facilitated by People First (Scotland). Group members will also be central to developing solutions, including an evidence-informed equality impact assessment for services who support victims of gender-based violence and crime.

As part of this project, SCLD undertook research with women with learning disabilities, and the services who support them, about their experiences of accessing support and justice for gender-based violence. The research report, '*Unequal, Unheard, Unjust: But Not hidden Anymore*'⁴, provides clear evidence that women with learning disabilities in Scotland are facing multiple barriers and discrimination when accessing support and justice for gender-based crimes in Scotland.

In addition to this project, SCLD, People First (Scotland), and the Scottish Government facilitate a National Steering Group on Gender-Based Violence and Learning Disability. The group includes members from a range of key stakeholders such as Public Health Scotland, Safe Lives, Scottish Learning Disabilities Observatory and others from across fields of service provision, health, and policy.

³ [Gender-Based Violence Project - SCLD](#)

⁴ [Unequal, Unheard, Unjust: But not Hidden Anymore – new report launched at Scotland's Learning Disability and Gender-Based Violence Conference 2023 - SCLD](#)

Women with Learning Disabilities' Experience of Gender-Based Violence and Crime in Scotland

SCLD's research uncovered the extent of gender-based violence and abuse facing women with learning disabilities in Scotland today. During our research interviews, women with learning disabilities reported experiencing severe, frequent and repeated forms of abuse, including threatening and abusive behaviour, coercive control and sexual assault, occurring both online and in-person.

The women we interviewed also faced multiple barriers to justice, including barriers to reporting gender-based violence, not being believed or taken seriously when they did report these crimes, and cases reported to the police seldom reaching prosecution and rarely resulting in convictions.

Instead, women with learning disabilities are being subjected to restrictive legislative processes such as the Adults with Incapacity (Scotland) Act (2000)⁵, Adult Support and Protection (Scotland) Act (2007)⁶ and Guardianship orders in response to their experiences of gender-based crime. As a consequence of these protective measures, women with learning disabilities report feeling punished, instead of those perpetrating these crimes against them.

It is therefore essential that these barriers are removed so that women with learning disabilities are treated fairly and equitably when they report gender-based crimes, such as misogyny.

Critical to this is ensuring the collection of data on the intersectional experience and impact of gender-based crime on women with learning disabilities, as without this robust data, women with learning disabilities will remain invisible, enabling exclusion, and leading to failure to safeguard. This is best illustrated by the case of Margaret

⁵ [Adults with Incapacity \(Scotland\) Act \(2000\)](#)

⁶ [Adult Support and Protection \(Scotland\) Act \(2007\)](#)

Fleming⁷, a woman with a learning disability from Inverclyde, who was missing for over 17 years before her murder and disappearance were ever reported.

Yet, despite evidence of the issues facing women with learning disabilities, we are still to see disaggregated data being produced on the intersectional experience and impact of gender-based crimes on women with learning disabilities in Scotland. This was highlighted in SCLD's research, when a Freedom of Information request was sent to 32 local authorities in Scotland, and the Scottish Government⁸, for information about the their use of the Adult Support and Protection (Scotland) Act 2007 with women with learning disabilities who had experienced gender-based violence. However, the Scottish Government did not collect any data about this group of women, and only 12 local authorities were able to provide information about this population.

Furthermore, the Fraser of Allander Institute⁹ explains that: *"Without better data to underpin policy-making, Scottish Government ambitions to improve the lives of adults with learning disabilities are unlikely to be realised."*¹⁰

The need to improve disability disaggregated data in relation to crimes of gender based violence was raised as part of SCLD's submission to the 4th cycle of the Universal Periodic Review of the United Kingdom. SCLD's recommendation, *"to take measures to improve data collection on gender-based violence, including disaggregated data when reporting such violence"* was highlighted by the Human Rights Council and was accepted by the UK Government¹¹.

⁷ [Inverclyde Council \(2020\)](#)

⁸ [Adult concern referrals: FOI release - gov.scot \(www.gov.scot\)](#)

⁹ [Invisible-No-More.pdf \(fraserofallander.org\)](#)

¹⁰ [Recommendation 257: UK Government \(2022\)](#)

¹¹ [UK Government \(2022\)](#)

Recommendations for the Legislative Provision of Impact Assessments to Reform the Criminal Law to Address Misogyny

SCLD believes that a significant barrier to delivering a consistent response to women with learning disabilities who experience gender-based crimes, is data collection, and that not gathering evidence of gender-based crime against women with learning disabilities allows it to be ignored. Whilst gathering data on disability is increasingly mainstreamed, failing to disaggregate the data to acknowledge the identity of women with learning disabilities is discriminatory and a violation of their human rights.

As discussed in the evidence section of this submission, there are significant gaps in data concerning the prevalence and impact of these crimes on women with learning disabilities' in Scotland. To support the delivery of high-quality and consistent responses, we believe that investment is required to develop robust national data sets, which includes disaggregated data on women with learning disabilities who experience gender-based crime, including misogyny. This work should be undertaken to ensure Scotland meets international obligations in line with Article 31 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)¹².

Based on this evidence, SCLD strongly recommends that impact assessments identify and act upon incidences of gender-based crime, including misogyny, affecting women with learning disabilities in Scotland, through the collection of disaggregated disability data.

As stated in Baroness Kennedy's report

“Application of the law needs to provide meaningful data and thus insight on the behaviour that the law is seeking to address – ensuring a continuing mandate to invest in ongoing programmes (education, campaigning, policy development) that promote change.”

¹² [Article 31 – Statistics and data collection | United Nations Enable](#)

To address this lack of meaningful data about women with learning disabilities experiences of gender-based crimes, such as misogyny, SCLD recommends the following:

1. The development of an accessible framework for reporting crimes of gender-based violence
2. The robust collection and monitoring of incidents of gender-based crime, including misogyny, against women and girls with learning disabilities
3. Data collection frameworks that comply with Article 31 of the UNCRPD and are in line with recommendation 212 of the 4th United Nations Universal Periodic Review (UPR) on the United Kingdom¹³, and build evidence on whether women with learning disabilities can realise their human rights

Conclusion

From reviewing relevant evidence, SCLD is clear that the changes outlined in this document are potentially helpful in addressing gender-based crime, including misogyny, against women with learning disabilities, in line with human rights conventions. SCLD would welcome future opportunities to be involved in discussions around the bill as it progresses.

SCLD welcomes this consultation and thanks the Scottish Government for the opportunity to respond.

¹³ [uks-response-fourth-universal-periodic-review.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414242/uks-response-fourth-universal-periodic-review.pdf)



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To find out more about SCLD and the work we do, please visit: www.sclد.org.uk

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