

Equally Safe: A consultation on legislation to improve forensic medical services for victims of rape and sexual assault

Note relating to disabled and learning disabled women's experiences

INTRODUCTION

1. Engender welcomes this opportunity to contribute to the Scottish Government's Consultation on legislation to improve forensic medical services for victims of rape and sexual assault. As a policy and advocacy organisation, Engender works to secure women's rights and we are ambitious in our aspiration to see a gender-equal Scotland for all women and girls.
2. Engender works closely with our colleagues across the women's sector including Scotland's violence against women organisations. We face a shared task given that violence against women is a cause and consequence of women's inequality, but we have specific areas of expertise and focus.¹ We are therefore responding to this consultation only where we have additional evidence to share about the experience of disabled and learning disabled women. On the wider issue we are pleased to endorse the evidence and analysis of Rape Crisis Scotland.

OUR BODIES OUR RIGHTS

- 3.1. In November 2019 we published our report *Our Bodies, Our Rights*. Working with disabled people's organisations in Scotland, and led by an advisory group, the project saw us speak with disabled women across Scotland to hear about their experiences of puberty, sex education, relationships, family planning, maternity services, parenting support and the menopause.
- 3.2. The report is divided into four sections: parental rights; training and education; reproductive, sexual and maternal health; and violence against women. In each area

¹ Scottish Government and COSLA (2016) Equally Safe

we found a distinct absence of the rights and needs of disabled and learning disabled women across all relevant national policy frameworks.

3.3. Specifically relating to violence against women, we found that a lack of control over reproductive rights contributes to an increased risk of sexual violence, abuse and coercion of disabled women. Research in Scotland concerning rates of violence, including sexual violence, towards disabled women is limited, but one small-scale survey conducted in Glasgow showed that 73% of participating disabled women had experienced domestic abuse and 43% had been sexually assaulted.² International evidence puts reported rates of sexual violence among disabled women between 51% and 79%.³

3.4. Investigation and forensic examination following sexual violence is intrusive, inaccessible and traumatic for many women. Although the women who took part in *Our Bodies, Our Rights* did not speak specifically about forensic medical examination, they did discuss both routine sexual health screening and examination experiences, and experiences of sexual violence. Extrapolating from this, we think that it is almost inevitable that disabled and learning disabled women will face additional barriers, including negative assumptions and limited knowledge and understanding relating to their impairments and communication barriers. We also think it likely that there may be a lack of specialist equipment, such as hoists, and of specialist clinical skills among those delivering forensic examination services, to enable specific types of examination including colposcopy. In relation to reproductive and sexual health care more broadly we found evidence of a lack of practical aids that have been designed in partnership with disabled women as well as inaccessible venues, lack of appropriate information and signage and non-inclusive and inflexible service policies.

3.6. **The recommendations from *Our Bodies Our Rights* can be specifically applied to the context of forensic medical examination as below:**

- Ensure that disabled women and girls' specific experiences are reflected in Equally Safe and its action plan, and that disabled women are involved in service planning for forensic medical examination.
- Develop continuing professional development (CPD) resources for medical professionals carrying out forensic medical examinations around the needs of disabled women who report experiencing domestic abuse or sexual violence, including responding appropriately to learning disabled women and developing physical aids to examination.

² Wise Women (2015) Daisy project: violence against disabled women survey

³ United Nations General Assembly (2017) Sexual and reproductive health and rights of girls and young women with disabilities

4. The intersectional approach articulated within Equally Safe should be emphasised within the potential legislation arising from this consultation and any policy to give effect to improvements within the Government and NHS boards, reflecting the principle of equality and non-discrimination. For example, regard should be had to the Priority Action “Develop a programme of work on service improvement and training around gender based violence with Learning Disability services and workforce in the third and public sectors 2017-20”.

CONSULTATION ISSUES

- 5.1. Engender **supports the creation of a statutory duty** conferred on Health Boards to provide forensic medical services to victims of rape and sexual assault, for people who have reported to the police as well as for those who have not. This would provide the clarity, governance and accountability needed to ensure access and standards. However we would note that disabled and learning disabled women are often excluded from accessible and appropriate medical service provision and the high rates of sexual violence experienced by disabled women.
- 5.2. In order that the duty meet the healthcare needs of the victims, **regard must be had to the particular barriers to reporting abuse** such as discrimination, institutionalisation and lack of independence, particularly where the victim is at risk from a caregiver. Provision of forensic medical services must address other barriers including provision of communication aids and advocacy where appropriate, suitable equipment, accessible service locations and specialist knowledge. The articulation of the statutory duty must ensure disabled people can rely on it to secure their rights.
- 5.3. **In addition to ensuring practical access, the provision of forensic medical services must secure disabled women’s dignity, including crucially their capacity to consent to examination.** SCLD have noted the degree of negative assumptions about learning disabled women’s sexual behaviours and post-violence needs leading to ‘overly-protective models’.⁴ While the risks of re-traumatising should be heavily borne in mind, there should be no assumptions made about ‘what is best for the victim’, and learning disabled women must have access to specialist support to understand what is happening to them and why, if necessary, and make informed decisions which are respected during and after examination. Rape Crisis Scotland have highlighted that women almost always request to be seen by a female doctor. There should therefore be a presumption that disabled and learning disabled women will choose to receive forensic medical care from a woman, including any additional specialist care provision.

⁴ <https://www.sclد.org.uk/wp-content/uploads/2019/04/DESIGNED-Clinical-Pathways.pdf>

- 5.4. There are a multitude of international human rights commitments which consider violence against women and the rights of disabled women. For example, the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) has noted that states should take special measures to ensure that disabled women have **equal access** to reproductive healthcare services.⁵ The UN Committee on the Rights of Persons With Disabilities (CRPD) also highlights the prevalence of multiple discrimination and of intersectional discrimination against women with disabilities.⁶ The latter notes the lack of access to sexual and reproductive health information as a particular risk factor which heightens the risk of being being subjected to sexual violence, and the need to eliminate harmful stereotypes such as disabled women’s inherent vulnerable and “sexual abnormality.”
- 5.5. It should also be noted that *Our Bodies, Our Rights* showed **that a large proportion of disabled children and young people do not receive appropriate sex and relationship education, including learning about consent**, and that mainstream RHSPE does not include sufficiently tailored information for and about disabled and learning disabled women’s experiences and needs. This gap should be urgently addressed, but policy-makers and practitioners should be aware that it exists when providing information to disabled and learning disabled women and girls regarding sexual violence and forensic medical examination and care.
- 5.6. Engender and our women’s sector colleagues have stated our shared concerns that EQIAs are being done at too late a stage of policy development on now a number of occasions.⁷ **The EQIA should be published as soon as is possible and ahead of any draft legislation** in order that its findings shape the policy development process. This will assist the intersectional approach demanded by Equally Safe in the development process.
- 5.7. The specialist service provision and support capacity necessary to deliver a person-centred and appropriate forensic medical examination for all people while delivering services to be owned and delivered locally may pose questions about rural service capability for more specialist care, especially as there is no intention for a prescribed model of service delivery. Forensic Medical Examinations should be provided as locally as is possible and, where needed, specialist staff should be able to travel to local providers. Disabled women may be less likely to secure even local travel for examinations, particularly where a carer is involved in the perpetration of sexual violence or poses a barrier because of their own negative presumptions about

⁵ CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)

⁶ CRPD General comment No. 3 (2016) on women and girls with disabilities

⁷ See, for example, Engender (2017) Parliamentary Briefing: Local Government and Communities Committee Planning (Scotland) Bill

capacity. Ensuing a statutory right that disabled women can rely on to access or challenge care models will be crucial, but best-practice guidelines and sufficient funding will also be key aspects.

- 5.8. While it is welcome that Rape Crisis Centres will be given an additional £1.5 million over the next three years in addition to £8.5 million provided to Health Boards for improvements, the specialist and expert medical needs of disabled and learning disabled women **must be adequately resourced to ensure it is fit-for-purpose**. This may include further investment in Rape Crisis advocacy services and accessible information as well as investment in practical aids.

CONCLUSION

6. Thought must be given the capacity of health boards to deliver appropriate services for disabled and learning disabled women and men, including the provision of expert medical professionals, advocacy and support staff and accessible locations and equipment. In order to give effect to the intent that people should be able to access 'consistent, person centred, trauma informed healthcare and forensic medical services and access to recovery, for anyone who has experienced rape or sexual assault in Scotland,' any new legislative duty must provide a basis for informed policy and service design. The current absence of disabled women from national and local policy frameworks must be addressed.

FOR FURTHER INFORMATION

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ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.