

Women and Equalities Committee

Oral evidence: Reform of the Gender Recognition Act, HC 884

Wednesday 10 February 2021

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Members present: Caroline Nokes (Chair); Elliot Colburn; Angela Crawley; Alex Davies-Jones; Kim Johnson; Kate Osborne; Bell Ribeiro-Addy; Nicola Richards.

Questions 46-94

Witnesses

I: Sally Brett, Head of Diversity and Inclusion, Law Society, Naomi Cunningham, Barrister, Outer Temple Chambers, Karon Monaghan QC, Barrister, Matrix Chambers and Robin Moira White, Barrister, Matrix Chambers.

Written evidence from witnesses:

Examination of witnesses

Witnesses: Sally Brett, Naomi Cunningham, Karon Monaghan and Robin Moira White.

Q46 Chair: Welcome to this afternoon's session of the Women and Equalities Committee and our inquiry into the Gender Recognition Act. I welcome all four of our witnesses: Karon Monaghan, Robin White, Naomi Cunningham and Sally Brett.

I will bring in members of the Committee individually to ask you questions, but I will start by asking each of you to introduce yourselves very briefly—for no more than a couple of minutes, please. Can I ask that you also indicate how you would like me and members of the Committee to refer to you throughout this session?

Sally Brett: My name is Sally Brett. I am head of diversity and inclusion at the Law Society, and I am happy for you to refer to me by my first name.

Naomi Cunningham: I'm Naomi Cunningham. I am an employment and discrimination barrister practising at Outer Temple Chambers, but I am appearing today on behalf of Legal Feminist, which is a collective of feminist lawyers.

Robin Moira White: Hello, I'm Robin White. I am a barrister at Old Square Chambers. To preface anything that is heard from me, effectively I am wearing three hats today because I was part of the team that produced the Employment Lawyers Association consultation response for the Committee, but I have also submitted a personal response and, of course, I transitioned myself in 2011. If I give an answer that departs from the Employment Lawyers Association response because it is more personal, plainly the ELA response is that that is in the document that was given. I am delighted to be called Robin.

Karon Monaghan: My name's Karon Monaghan. I am a barrister, also practising in the sphere of equality law. I am here in a personal capacity, and please call me Karon.

Chair: Thank you very much. The first set of questions will come from Alex Davies-Jones.

Q47 Alex Davies-Jones: Thanks to all of you for appearing before the Committee this afternoon. Robin and Karon, my first set of questions are for you both. Robin, can you briefly explain what rights someone with a gender recognition certificate currently has?

Robin Moira White: Yes. The Gender Recognition Act is, in a sense, a little outdated, because it dates from as long ago as 2004. I think it is important to remember that then we did not have equal marriage and we did not have equal pension rights. The two particular areas that generated the need for the Gender Recognition Act were the need for trans women to



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have pensions at the earlier age that women received pensions back then and for someone to be able to marry in their affirmed gender. That was generated by some cases brought to the European Court. Strangely, there were not too many cases brought by trans men who wanted to have their pension later. If there is a hint of cynicism from us lawyers, you will understand why that is so.

The GRA dealt with quite a number of other matters. It has a core in section 9. One of the themes I think we will be referring to is the muddling of sex and gender. What it says is that somebody who receives a gender recognition certificate will be recognised thereafter in their chosen sex. Unless another enactment does something different in terms of sex, for things such as data processing, for example, were you to process someone's data and not respect the sex that they are then registered in, potentially you would be unlawfully processing their data. There are a whole series of subclauses within the Gender Recognition Act that deal with particular matters.

Q48 Alex Davies-Jones: Karon, do you have anything else to add to that?

Karon Monaghan: Not particularly, except to emphasise what Robin says: one of the difficulties with the Gender Recognition Act is that it conflates gender and sex. As we know, and I think this is worth emphasising, because it is important in law as well as socially, sex is about biology and gender is about the social attributes that generally are associated with sex. That is important both because of the way the Gender Recognition Act works and because of the way the Equality Act 2010 works, which I know you are interested in as well.

Q49 Alex Davies-Jones: You have both touched on my next question, which was about how clear the Act is from a legal perspective. You have both discussed how muddled it is regarding sex and gender, but is there anything else within the Act that is not very clear from a legal perspective?

Karon Monaghan: I would say so. I was just going to say in relation to the criteria for qualification for a gender recognition certificate, there is also a lack of clarity. There is a requirement, which also reflects the difficulties in the language of the Act, that a person live, or be able to certify that they have lived, in their acquired gender for two years. I think somebody else has made a contribution about this; I am not sure whether it was somebody in this group, but somebody has. It is very unclear what that requirement means and how one determines whether one is living in the gender that a person is seeking a certificate in relation to, and how we assess that. There is a real danger, as others have identified, of falling into gender stereotypes. What are the social ascriptions relating to being a woman or a man?

Q50 Alex Davies-Jones: Yes, this Committee has heard evidence arguing that the phrase "for all purposes the acquired gender" is misleading. Is that something you would agree with?



Robin Moira White: Having been through gender transition myself, frankly, some of the things we will talk about this afternoon will include should there be more definitions, should there be more guidance, and while I appreciate that from a lawyer's perspective it may seem that that aspect of the Gender Recognition Act is difficult to understand, I have to say I had no difficulty spotting the moment when I stopped living in one gender and started living in the other, and spent my time writing to the gas company and the electric company and changing those things over.

A theme we may return to is that there is a social aspect to what we are talking about this afternoon and a legal aspect to it, and defining the edges of that is not always easy. Having talked to a number of people who have been through gender transition and made their application to the panel, I think experience has been that they have not found it difficult to define that living in the acquired gender, because of things such as the ones I have referred to, such as changing over your utility bills and the way in which you are referred to. In practice terms, I changed my middle name and my pronouns on a particular day, and that for me was easy to mark. Were I applying, I could identify very accurately when that occurred.

Given that it is a panel assessment, it is for the individual to provide evidence of that, and I don't think it has proved particularly difficult for people who have been through transition to evidence that to the panel in particular ways. I appreciate the point about stereotypes, but any definition is based to some extent on stereotypes.

Naomi Cunningham: We are quite troubled about the clarity of "for all purposes" at section 9 of the GRA. There are two respects in which we think that is quite unclear. The first is that it only means, it only can mean, for all legal purposes. It doesn't actually purport to govern social interactions between people or how people think of or regard other people, and it couldn't. Of course, self-evidently, the law cannot touch biology. That is not the kind of thing that the law can do. So it does not literally, and it could not literally, change somebody's sex any more than King Canute could literally hold back the tide. That is just not the kind of thing that the law deals with. So that is one aspect of unclarity that troubles us in section 9.

The other is simply how extremely it puts it at section 9(1), albeit it retracts from that quite briskly at subsection (3). Subsection (1) says: "Where a full gender recognition certificate is issued...the person's gender becomes for all purposes the acquired gender". Then you look at subsection (3): "subject to provision made by this Act or any other enactment". It would be clearer and more obvious, certainly to the lay reader, if the fact that it is limited by all kinds of other Acts and other provisions elsewhere were right up front where it says that your gender becomes the acquired gender. It should be mentioned in the same breath that this is subject to various legal exceptions.

Q51 **Alex Davies-Jones:** What are some of the exceptions, then, to the legal recognition under the GRA?



Robin Moira White: There are exceptions for things like—in fact, that is another one that has moved historically; if you remember, car insurance tended to be different depending on whether you were a man or a woman. That is written into the Act. There are exceptions for things like medical treatment, although the Act is not particularly well drafted in respect of that. It is right that a medic may need to record properly the treatment that somebody has been given on a particular basis, and they don't run into difficulties in that regard. There are a series of other, more esoteric exceptions, like primogeniture in terms of Members of the House of Lords, for example, so inheritance is not altered; for whatever reason, that was written out of the Gender Recognition Act. There are also some exceptions for things like social service payments, and once again I think they are becoming more historical. There were differences in things like widows' pensions and widowers' pensions that were not affected by the Act, either.

Karon Monaghan: Robin may tell me I'm wrong about the ones within the Act, but it seems to me that the more controversial ones are ones that arise because of statutory provision elsewhere and, in particular, in the Equality Act, which I know you want to explore. In relation to the impact of section 9, some of the more controversial exceptions are those that apply because of the impact of the Equality Act.

Q52 **Alex Davies-Jones:** I have some more questions on that in particular. Looking at the legal implications of the gender recognition certificate, how does this operate in relation to parental leave? Karon, did you want to come in, or Robin?

Karon Monaghan: The answer is: I don't know. But I suspect—Robin will tell me if I am wrong—that it will operate by reference to a GRC. As you know, the effect of a GRC—leaving aside the language, which is pretty impenetrable, one assumes that the language is intended to have the effect that your sex, as well as your gender, is changed by a gender recognition certificate.

There has been a case on whether you can be a father when you are the mother, and of course the courts have held, "No, you can't be registered as a father if you are the mother." I do not know if that impacts on parental leave. Robin, do you know?

Robin Moira White: I am not aware of a case that has argued parental leave per se, but I have advised on it for a pair of trans parents—two people who had both transitioned who were then parents. My advice was that the maternity leave went to the trans woman, and the trans man had to be dealt with under the paternity provisions. The couple were quite happy about that. This was a case of an employer coming to me for advice, wanting to get it right, as many employers want to.

Karon Monaghan: That is quite a challenge, isn't it? Because a lot of the statutory provisions addressing maternity are designed to address the biological consequences of having a baby, and some of them, I have to say, are very hard fought-over.



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It is not something I had thought of, so this would require some discussion, but certainly my initial thoughts are that the woman who has given birth—the mother—ought to be entitled in law to enjoy all the rights that maternity law gives them. Certainly, I would not want to see any eating away of that—

Robin Moira White: There wasn't in—

Karon Monaghan: I appreciate that is a particular case, Robin, but the point I am making is that particularly if there is going to be a more liberal view, that is a wider view, about when one ought to be entitled to a GRC—I have got views about that—and one is going to liberalise that, I absolutely think that should not encroach upon maternity rights in any sense, because they are there for very good reasons.

Robin Moira White: The circumstance I was dealing with was on behalf of one of the two employers. Both people were employed and the employer wanted to do the right thing. Prompted by me, there was a very open discussion, frankly, between the couple and the two employers—they were employed by different people. A situation was come to that was acceptable to all parties and that all parties were happy with. That was a fortunate situation—here is a lawyer promoting the idea of not litigating. If we got into litigation about that, at the moment the situation is quite tangled and complex.

Alex Davies-Jones: Naomi, I saw you raise your hand. Do you want to come in?

Naomi Cunningham: I very much agree with Karon on this. I think it would be very surprising indeed if the legal entitlement did not stay with the person who has physically given birth. I think the fact we are even discussing this may be quite a striking illustration of the extent to which how the Gender Recognition Act is seen and how the implications of a gender recognition certificate are seen have drifted since the Gender Recognition Act was enacted.

I think it is all but inconceivable that this possibility was thought of in the drafting of the GRA. There would have been an assumption—it was repeatedly emphasised in the course of debates on the Gender Recognition Bill—that the numbers of individuals involved would always be very small and would be people with profound gender dysphoria. It would not have been expected that that would coexist with, in the case of someone who was biologically female, feeling profound gender dysphoria and wanting to transition to become a man—I do not think it would have been expected at the time that it would ever arise that a person in that situation would also want to give birth, because that is such an absolutely centrally female thing to do.

Q53 **Alex Davies-Jones:** Sorry to interrupt you. For me it is more about parental leave as a whole, because there are so many occasions where you can become a mother without giving birth—there is adoption, surrogacy and so many other things. That brings me on to my next



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question—I know you want to come in Sally, but I just wanted to make that point.

There is currently no statutory right to time off work for fertility treatment. I know some employers and organisations do offer this leave for people who are receiving treatment. Robin, how do these policies operate for trans people who are trying to become pregnant, whether they have a GRC or not? Are they treated fairly?

Robin Moira White: Once again, I am regularly asked by employers to help them pick their way through this difficult circumstance, and I agree with comments about GRA not being perhaps the best-drafted Act. I have a point to make about that. I know we are going to talk about section 22, so I will leave that point until we come to section 22, which points up the difficulty with the drafting. What is plainly right is that we are dealing, still, with very small numbers of people in terms of trans and even smaller numbers of people who are in the circumstance of wanting to adopt in the circumstances that you have met with. At the moment there is little or nothing in the way of litigation that sorts that out. At the moment it is being dealt with through people like me regularly advising, and, frankly, good employers working hard to accommodate valued employees. At the moment, fortunately, there is not too much fighting about it, but if we got into litigation there are a whole raft of positions that are complex and difficult and could give rise to litigation.

Q54 **Alex Davies-Jones:** My next question is for all of you and I would like to get brief answers if possible. We are short on time, and there is so much to discuss here. Do you believe that the requirement to live in the acquired gender for two years should be removed or retained, and why, based on your reasoning?

Karon Monaghan: I think it should be removed, principally for the reasons that I already alluded to—that I am not clear what that is. Robin has said it is very clear, and obviously I will defer to Robin because she has had that experience to some extent. Not fully, Robin, I am afraid.

Robin Moira White: We will have a cup of coffee afterwards, Karon.

Karon Monaghan: But I think there is a danger of entrenching stereotypes. I don't know what living as a woman is, apart from name. I would describe myself as female and a woman but I don't know how that—apart from the social attributes like not wearing makeup, not wearing skirts, whatever—I don't know how, otherwise, that would be assessed except by reason of entrenching social ideas, social norms about men and women. So I think that is problematic. That's problematic, I think, because of the impact that has on women. But I also think it's problematic because, frankly, I don't understand why you should have to show that you've lived in the gender that you are hoping to acquire, or aspiring to acquire, for two years. And certainly if the cost of that is to have to say, "This is how women live, this is how they are and therefore I have to show that's how I am," that would be my concern too—the impact on social norms. I think there is a risk they entrench them—and the

impact on people who want to transition. Why should they have to wait two years?

Robin Moira White: I transitioned in my late 40s, and I had struggled with my gender for, at that point, more than 25 years. The fact that I had done that for all that period of time was perfectly evident at the time when I socially transitioned. I actually don't have a GRC, for reasons that are set out in my written evidence, but why, at that point, in my late 40s, should I have to wait two years? Equally, you cannot apply for a gender recognition certificate till you are 18, and people transition younger and younger these days. If someone has lived their teenage years in their acquired gender and gets to 18, why should they have to wait? Why can they not apply? What does it achieve by making people wait in that way?

Sally Brett: We would support its removal for reasons similar to those that have already been given—particularly the point that Robin has just made, as well, that for young people it may be harder for them to have acquired all the necessary documentation. Many of them will already have been living in that identity for some time. Also, if someone can put their life on hold, for example, if someone was seeking to marry in their gender identity, it could mean that they couldn't do that. It is a fairly arbitrary time period, especially when the real-life experience requirement for gender reassignment surgery is just one year. We also note that in Ireland there's no requirement to live in the acquired gender for two years.

Q55 **Alex Davies-Jones:** Naomi, in the written evidence you submitted to us via Legal Feminist, you mentioned that the requirement is unworkable and relies on those retrogressive sexist stereotypes that Karon touched upon. Are you able to elaborate on those?

Naomi Cunningham: I am not sure I can elaborate much further than Karon has. I am happy to align our views with hers on that. We don't know what it is to live as a woman. Most of us have serious doubts about whether we are doing it right, if it involves clothes, makeup, hairstyle, stereotypical interests and stereotypical occupational choices. What does it mean? We don't know.

Q56 **Alex Davies-Jones:** Agreed. My next question is to all of you. I'll ask the question and, if you want to answer, pop your hand up. I would like to get your views on the operational wording of the statutory declaration.

Some people have argued that the Government should remove the "until death" clause of the statutory declaration, because, for example, someone who may want to detransition should not fear the legal penalties for doing so. Would you agree, and if so, why?

Robin Moira White: I have heard it referred to as the "sign in blood clause" because that is what the wording reads like. Referring to an earlier comment, the GRA was passed pretty rapidly through Parliament. The stats on detransition are that between 1% and 3% of people who transition express at some point some degree of regret. That is not always because they want to go back to the previous gender, but because they

find the process of transition really difficult and tough. There is no doubt about that.

Although it is right that someone, at the point they sign, might have that intention, they can run into difficulty in life and their intention can change. In fact, plainly one of the lacunae in the existing GRA is no straightforward route to go back, if one is in that position. Why shouldn't there be? Perhaps not an easy route.

We are going to talk about self-identification. I'm sure there should be a degree of formality, whatever analysis we have in future about how we change our gender. Once again, I dealt with that in written evidence. A person can run into difficulty in life, reach a point where they regret what they've done, and why should they not have a route back?

Perhaps, if there is a declaration that reflects that, and reflects that this is their intention at the time they transition, and it is possible for an individual to change their mind later, then some different wording might be sensible.

Naomi Cunningham: We don't think that the "until death" requirement should be removed. The whole justification for the availability of gender reassignment always was that there is a small minority of people who have such profound gender dysphoria, or such a profound conviction that they're physiologically the wrong sex, that their best hope of flourishing as human beings is some form of transition.

That, of course, is understood and accepted, but transition does make quite serious demands on the rest of society. It is fair that those demands should not be lightly made. It is not reasonable to expect everyone to learn to use a different name and new pronouns, and strive to think of you in the affirmed sex, and make what may be in some ways quite inconvenient accommodations to ensure that you have the physical privacy that you need and so on, unless you intend at the time that you make it that that should be a permanent change.

That, of course, is not to say that you should not be allowed to transition, any more than the solemnity of marriage vows and the expectation that you mean them for life when you speak them should mean that you cannot change your mind later and divorce, but it does mean, in our view, that at the point that you seek gender recognition, you should have an intention that that transition should be for life.

Karon Monaghan: The only thing I would say is that there needs to be an intention that there be a degree of permanence about this status, because it does have consequences—I do not just mean social consequences, pronouns and so on, which I don't myself think are terribly important, but social and legal consequences. There needs to be an anticipated degree of permanence; I think it is impossible to say that there could never be a situation where somebody could detransition. I cannot see how that would survive law or the convention, but certainly there should be a commitment

and a declaration that this be a permanent state, so “until death” serves that. It is only an intention. It does not—

Q57 Alex Davies-Jones: That was my next point, and Robin, maybe you are best placed to answer this. There is a lot of discussion in the written evidence we have had about the legal penalties that exist for those people who breach that statutory declaration. Are they effective? Are you aware of anybody who has ever faced that penalty? Should they even exist, or what should exist instead?

Robin Moira White: The Committee has been correctly referred to the Perjury Act 1911 as the Act that determines what the rights are if somebody makes a statutory declaration, not believing it. Now, come on—you would have to establish in law that the person did not believe what they said when they made the statutory declaration. We have a perfect example in the Bell case. Keira Bell, of course, has had to bring her case under the male name that she used for a period after she had transitioned, and now she wants to detransition. There is no easy route for her to go backwards other than to go through a full legal gender transition again under the present Act.

Even with all the difficulties that she has set out in her litigation, she is very clear that at the time she transitioned, that was her intention. That is a practical example, which you have been looking at in other ways. No one would seek to suggest that, at the time she went through transition, it was anything other than her firm intention. I suspect that policemen think they have more work to do in terms of pursuing burglars than suing people for making declarations they have come to regret under the Gender Recognition Act.

Alex Davies-Jones: Thank you, Chair; no more questions from me.

Chair: Thank you, Alex, and thank you, panel, for those answers. May I ask that we try to keep answers quite succinct? We have a lot of material to go through.

Q58 Angela Crawley: Coming back to the points made earlier regarding the gender recognition panel, the Committee has received a number of submissions to this inquiry arguing that changes need to be made to the gender recognition panel and the way it operates. I am conscious that you have already given a view on whether you agree on this matter, so may I ask Karon this first of all: are the tribunal judges, in your view, the legal professionals best qualified to sit on the panel? The Act requires only “a relevant legal qualification” and does not specify whether it is a judicial appointment. Do you consider that other legal professionals might be suitable for the appointment, and if so, which ones?

Karon Monaghan: I don’t have a view on that. I think probably the prior question is what ought to be the criteria for determining whether you get a gender recognition certificate, and then, I suppose, working forwards or backwards, who would be best able to determine whether the criteria are met. I do not have any experience of the panel itself.

Q59 Angela Crawley: Do any other witnesses have anything to add? Sally,



you have your hand raised.

Sally Brett: Not specifically on the question, but more on how the panel operates. Speaking to lawyers who have supported clients with gender recognition, they say that generally they found panel members very sympathetic and good to work with, but, speaking to some of our trans members, there is unease about the anonymity of panel members and the fact that there is not much transparency around the process. You are asked to submit very detailed medical information, and sometimes, particularly if you have been through reassignment surgery, you have no idea who is going to be looking at that and it can make you feel very uncomfortable. I am not sure why there is a requirement for panel members to be anonymous.

Q60 **Angela Crawley:** Now, the concept of the gender recognition panel is obviously to review applications for gender recognition. Robin, I appreciate you said you do not have a gender recognition certificate, but what process or system do you think should be considered in place of a gender recognition panel?

Robin Moira White: Here I am speaking really quite personally. At the time I went through transition, the idea of then resubmitting myself for assessment by a group of people to validate what I have done— As it happens I tick every box, and here I am 10 years on, thinking why would I bother now, frankly. But I would be perfectly happy to go before a registrar and make a declaration at the same level as a birth, marriage or death, or something like that. That would be useful because that would assist me in writing to utility companies or the Passport Office or whatever, and would give a degree of formality. But as for the idea of submitting myself to a panel for validation of myself, we do not do that for sexuality. If you decide that you want to come out as gay, you don't have to go off to a panel and say, "Am I being assessed as gay enough to be recognised as gay by society?" That is my view.

Q61 **Angela Crawley:** Thank you, Robin; I appreciate those remarks. Naomi, I will come to you. I am going to move on to the next question and I will perhaps bring you in at that point if that's okay. I am conscious of time.

Naomi Cunningham: I just wanted to say something briefly on that question. Our only observation on this is that we certainly think it would be a very bad thing if there were any expectational requirement to appear in person before a panel and, if you like, perform your affirmed gender. That would be repugnant. It does strike us that there could perhaps usefully be a right to appear—an optional right to appear—and give evidence in person if you want to. That's it.

Q62 **Angela Crawley:** Thank you. That is helpful. Turning to my next question, in reality how workable is section 22 of the GRA regarding the privacy and disclosure of a person's legal gender identity? I will start with Karon. First, some people have argued that section 22 of the GRA needs to be reformed because the provisions on disclosure of a person's legal gender history are not strong enough. Do you agree? If so, why? Or if you disagree, why?

Karon Monaghan: I will leave it to Robin to answer first, because she has made a particular contribution on that. If I have anything to add, I will.

Robin Moira White: In the spirit of keeping it short, if an HR person makes a mistake in handing the certificates of a person to a panel, they commit a level 5 criminal offence and are subject, potentially, to a £5,000 fine. But if the panel, knowing of the person's gender, then do not appoint them to a particular post, that is only a civil wrong, which we would then try in an employment tribunal, and that is completely disproportionate. It is one of my reasons for not wanting to apply for a gender recognition certificate under the existing position.

The saving grace is that there has never been a prosecution under section 22. There have been some interviews under caution. In fact, the last time this matter went through consideration by this panel, there was a recommendation for there to be an investigation. It is why there have not been more prosecutions. I don't think the criminal law has a place in this area. I, as a member of ELA and as an individual, don't think the criminal law has a place in this part of our society.

Q63 **Angela Crawley:** You have very helpfully answered my next question, Robin, so thank you. Are you aware of any practical difficulties resulting from section 22 where perhaps there are legitimate reasons to require a person's complete history—for example, for the purposes of a DBS certificate? Is there anything that can be reconciled with that?

Robin Moira White: I did a case called *A v. Telford* that looked at this area in particular, and I said that I would say something briefly about the speed with which the Gender Recognition Act went through Parliament last time. There was a madness in the Act when it was first enacted. To go back to my example about the HR person who has made a mistake about certificates, for the first year the Act existed, if they went to their lawyer and took advice about what they had done, they committed another breach under the Act. That exception had to be amended into the Act a year later.

Section 22 is frightening to a number of human resources people. They are shocked by it, and they come to lawyers for advice on it. I thoroughly adopt the ELA position that perhaps there should be some sort of offence only if it is done deliberately. There is a need to protect someone's data carefully, but if it remains as a criminal offence that should be because someone did something deliberately, not because they made a mistake.

Q64 **Angela Crawley:** Thank you, Robin. Sally, did you want to come in on that question? I can see your hand is up as well, Naomi.

Sally Brett: Putting aside the HR context, we do think that there are situations where it should be a criminal offence. If it just became a civil offence, there are fears that only those with the deepest pockets would be able to enforce it. The risk of costs orders in the civil courts might deter some people. I think there are also situations where, for example, tabloid media may be willing to pay compensation for the sake of a story but would maybe think twice if it was a criminal offence.

Naomi Cunningham: We completely agree with Robin that there is no place for the criminal law in protecting this sort of information. The criminal offence itself is quite limited, but one of the things that we think is concerning about it is that it creates a much wider chilling effect. There does seem to be a widespread belief, and a belief often written into organisations' policies, that it is criminal to ever reveal that somebody is trans. It is not. It is only criminal even now under section 22 if the information has been learned in an official capacity.

Of course, the reality is that in the overwhelming majority of cases people will be able to tell for themselves. If somebody identifies as one sex or presents as one sex, people will know if they are in fact trans. The result of this is that, although everybody knows, it makes people nervous about mentioning it, even in those fairly few but important circumstances where biological sex does matter. That makes it difficult for organisations to recognise sex when they need to.

For example, in 2009 the NHS set up a data standard for all its IT systems to record sex and current gender separately. It was recognised that recording sex was crucial for clinical reasons, because all sorts of things and all sorts of medicines operate differently between men and women. But the practice of recording both bits of information has not been consistently followed. Medical records often record only gender and not sex, and GPs are telling their administrators to change a patient's recorded gender on request. That creates real risks. If clinicians do not know what sex people are—what actual biological sex they are—they may treat them wrongly and that may put them at risk.

It also creates problems in running single-sex services and spaces, or separate spaces, in an orderly fashion. It is, as we will come to later, perfectly lawful of course to advertise certain sorts of services as being for women only. It is good practice to make that clear. Imagine, for example, that somebody turns up at an all-female yoga class who is obviously male-bodied. It is perfectly fair for those organising that class to say, "Sorry, this is a women-only session." I think there is quite a widespread belief that if the person then says, "I'm a woman," that is the end of the story and they simply have to be let in, and that it is unlawful even to ask whether they have a GRC, which of course—

Q65 Angela Crawley: Naomi, we will come to the single-sex exceptions that exist within the provisions of the Equality Act. Perhaps we can come back to that. I am sure you will appreciate that there is a rather controversial debate around that.

Naomi Cunningham: The reason I talk about that in this context is that I think there is a particular problem with section 22. It makes people terrified, as Robin pointed out. It causes fear—it causes justified fear. You can't expect every HR person to understand exactly what the conditions are for the offence. The result is that it makes people fearful in doing the things that legitimately and lawfully they may do, and in many cases ought to do, for the protection especially of women and children.



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Q66 Angela Crawley: On that point, I am interested to understand how you would reconcile a definition of transphobia, for example, and the single-sex exception provisions within the Equality Act, or the free speech provision. How do you reconcile the difference between those three things?

Naomi Cunningham: I am not sure that I understand the question. Sorry. Try again.

Angela Crawley: My question concerns the difference between the definition of transphobia, when someone is acting in a hateful manner towards an individual who is transgender. What is the difference between an act of transphobia or hate crime? Perhaps the two can be conflated between the use of—let me think of the correct word—

Robin Moira White: Ms Crawley, I think I understand your question, so forgive me if I jump in. I think section 22 is designed to act, particularly for people who have definite data, as has been said, in an official capacity. That could be a doctor, an HR person, or somebody holding records. The intention was to protect that special data because they have particular knowledge about the people concerned. I think that is quite a different circumstance from someone expressing a view in a public domain about matters of political interest, for example. The two are quite separate and we should be quite careful about conflating them.

Karon Monaghan: I agree.

Angela Crawley: Thank you. I have no further questions.

Chair: Thank you. Can I bring in Kate Osborne with the next set of questions?

Q67 Kate Osborne: Thank you, Chair. My questions are going to concentrate on the Equality Act. Karon, how does the Equality Act protect trans people from discrimination? We have received written evidence highlighting that a two-tier system has developed whereby some people believe that only those with a GRC are protected under the Equality Act. What are your thoughts on that? Do you agree? Please expand why, if that is the case.

Karon Monaghan: I don't agree with that. The Equality Act works by protecting people against discrimination because they have got particular characteristics. One set of characteristics that is protected under the Act concerns gender reassignment. If you are a person who is undergoing, or has undergone, gender reassignment, you are protected against discrimination, just as you are protected against discrimination because you are disabled, from an ethnic minority group and so on.

Separately, the Equality Act protects against sex discrimination, and it defines sex very precisely as being a man or being a woman. Then it defines being a man or being a woman as being male or female. So "gender reassignment" is concerned with protecting trans people or people who are undergoing gender reassignment against discrimination, and the Act separately protects females and males against sex discrimination.

The next question is this: how does a trans person with a gender recognition certificate fit into that framework? The answer is that, generally, a trans person with a gender recognition certificate will be treated as a man or a woman—in other words, within their reassigned status as a man or a woman. But whether they have a GRC or not, there are exemptions that apply, or might be applied—they apply very rarely, but they might be applied, even where a trans person has a GRC. So there is protection against gender reassignment discrimination and protection against sex discrimination—that is, for being male or female. Where a person has a gender recognition certificate, in general terms they will be treated as if they were a man or a woman—depending on their gender reassigned status—but there are exemptions that apply or may apply in certain limited circumstances.

The exemptions may apply; it doesn't mean they automatically apply. They may apply in circumstances such as, for example, women's refuges and women's sexual health services, where women might be particularly vulnerable as females. But they are rare and they don't automatically apply; there has to be an assessment of proportionality—in other words, "Is there a good reason?" and so on. But there are exemptions that apply whether or not a person has a gender recognition certificate, so the idea of a hierarchy—regrettably, there is lots of confusion about that. There isn't a hierarchy. For the exemptions, it doesn't matter whether you have a GRC or not.

Kate Osborne: Naomi? Briefly, please.

Naomi Cunningham: I part company with Karon on this question of exceptionality and rareness. The single-sex exceptions in the Equality Act are, in application, utterly commonplace. We all use them all the time. They are the justification for having women-only toilets and women-only changing rooms. They are the justification for providing a women-only swimming session at the swimming pool, or a women-only yoga class, or any single-sex space or service. There is the ability to exclude male people from certain women-only spaces or services where there is a good reason for that. Although the circumstances in which those exceptions arise are quite carefully defined in the Equality Act, they are in practice utterly commonplace. And they are all, or almost all—there may be very rare exceptions to this, but it is almost without exception—founded on differences of biological sex. The reason—

Kate Osborne: Can I stop you, Naomi? I am very sorry, but we are going to touch on exceptions further during this conversation.

Naomi Cunningham: I would just like to finish this thought, if I may. The fact that all those exceptions are founded on biological sex means that although the legal formalities of justifying excluding an individual with a GRC from a women-only service or space may be slightly different, in practice the answer is likely to be the same in almost every situation, because in practice it makes no difference whether someone has a certificate or not. It doesn't make a difference to whether it impinges on

the dignity and privacy of women using that service, or overrides their consent.

For example, if I use a women-only changing room, my consent is to undress in the company of other women, and the reason why Parliament has said that I am entitled to have the benefit of those exceptions is to do with biological sex. The fact that somebody has a gender recognition certificate doesn't actually change that. It doesn't mean that I feel more comfortable in the presence of somebody, in that particular situation, who I experience as male. A certificate doesn't make a difference. I think that is quite important to understand, and how commonplace this is and how fundamentally it is based on consent. To override that is seriously concerning.

Q68 Kate Osborne: Thank you. Robin, I am going to bring you in on the next question. If it was on exceptions, we will come back to that.

Robin Moira White: I slightly disagree with Karon on the analysis of the Act and I think it is important.

Kate Osborne: If it is on the original question, please go ahead.

Robin Moira White: Absolutely. The definition in the Equality Act is that a woman is a female of any age and a man is a male of any age. Forgive me, Karon's analysis is perfectly intellectually valid, but a different analysis—and we haven't tried this through—is that all that those definitions do is say that a girl is a woman and a boy is a man. ELA's view is that there is a complete lack of clarity about that in the Act, so working out who is in which sex for the purposes of the Act is still something that needs to be clarified either in terms of litigation or in more legislation.

Q69 Kate Osborne: Thank you. Staying with you, Robin, some of the written evidence that we received also argues that the Equality Act does not fully protect trans people because it does not recognise non-binary or other gender-fluid identities. Is there evidence that this is a gap in protection in the law?

Robin Moira White: Yes, plainly so. The Committee has been referred to the case of Taylor, in which I acted before Christmas, and there was a very strong view that gender reassignment only protects people who move from one end of the binary to the other end. It was strongly argued in Taylor that anybody who identifies differently from one end of the binary spectrum or the other end was not protected—that had to be argued in that case. It is only a first instance case, so it can be reargued. Any employer can take the point. The case is not being appealed, so there are only two ways to produce certainty: a different case going to a higher court or Parliament working out whether it ought to protect those additional identities very firmly by amended legislation.

Karon Monaghan: I think, first of all, that non-binary and gender-fluid people are already protected in some of our laws—article 8 of the convention protects gender identity, for example. I think there are problems with introducing it under the Equality Act. They may not be



insurmountable problems, but we would need to take very great care to ensure that that did not impinge on the exceptions that already apply in relation to trans people. How that would fit is difficult to see. If you have a single-sex space where you are entitled to exclude trans people, then how does that work with non-binary protection, for example? I think there would need to be clearly crafted provisions that don't impinge upon, for example, the exceptions in relation to sex—females and males—withstanding that Robin doesn't agree with me on that analysis.

Q70 Kate Osborne: I am going to move on to the next question, because I am so aware of the time we have used and the time we haven't got left. Naomi, the Legal Feminist written evidence says that the rights of trans people must also be balanced with the rights of others to freedom of speech. Can you expand on that please?

Naomi Cunningham: Happily. There is a worrying trend to define transphobia so widely that it includes any dissent from the view that trans women are literally women and trans men are literally men, et cetera, any defence of the single-sex exceptions, or any opposition to a change in the law to bring in self-identification. These are—obviously, I would suggest—matters that profoundly concern women and their rights, their dignity and their safety, including their article 8 privacy rights. It is very troubling that there is this trend towards giving transphobia a much wider definition than what we would all be opposed to: hatred of, or hostility towards, trans people or people with the protected characteristic of gender reassignment.

In this context, it is particularly important to remember that the gender critical position is fundamentally a defence of the law as it currently is. It is quite astonishing, and unprecedented in my experience, for it to be seriously suggested that saying, "We shouldn't change the law; the law as it is is okay," should be put beyond the pale of civilised conversation and dispute. That is quite an extraordinary state of affairs. I think it is important to notice that. That is the threat to freedom of speech that we are concerned about.

A case in point is that—I do not know whether any of you noticed—there was a little flurry of controversy recently about the definition of transphobia that Edinburgh University had put on its website, with exactly what status it was not wholly clear. That has now been taken down, but it was that wide. It effectively said that any dissent from the view that "Trans women are women, and trans men are men—this is literally the case," and any opposition to self-ID and so on was transphobic. That was in a university's policy. How does that fit with academic freedom or freedom of speech?

Q71 Kate Osborne: Sally, I am happy to bring you in on this, but can you be very brief, please?

Sally Brett: I just wanted to draw attention to the definition of harassment in the Equality Act on the grounds of all protected characteristics, including gender reassignment, which is treatment that violates someone's dignity or creates a humiliating, offensive or degrading



environment to them. Particular weight is given to how that treatment is received by the individual. Baroness Hale, in a judgment that she gave, recognised the deep need of trans people to live successfully and peacefully in their reassigned gender, so it is not just about the extremes of transphobic abuse.

When the Legal Feminist talks about people being entitled to express their experience of the trans person's sex and that there should be no restriction upon that, I read that as saying that people in a workplace, for example, could repeatedly and deliberately misgender a trans employee. If you had a dignity at work policy in that workplace, I would find it hard not to take any action.

Naomi Cunningham: May I come in?

Q72 **Kate Osborne:** No, I am really sorry, but we need to move on. My next question is to all of you. Do you think that the terms "gender reassignment" and "transsexual" in the Equality Act need updating? If you do, maybe you could expand on why. Also, we have received written evidence calling for the term "gender reassignment" to be replaced by the term "gender identity" in the Equality Act, in order to encompass the growing number of gender identities. What impact, if any, do you think that would have? I am going to go to Robin first.

Robin Moira White: I will try to hold your three questions in my head and run through them quickly. Gender reassignment is now thought to be a fairly outdated term. People who have been through the process do not like that idea. I am old and ugly and do not care, personally, but it is a very sensitive term for some people, and it is much more common now to refer to gender confirmation, particularly as far as surgery is concerned.

Transsexual is also thought to be very outdated, because it appears to a lot of people to bring in sexual orientation. The word "sexual" in there appears to have that conflict for some people, so that is a fairly outdated term. Whenever I speak or write about this, I tell employers that that is what the law says, but those are not terms that it would be appropriate often for employers to use in the workplace.

Should we change to gender identity? Arguably, the case of Taylor has done that already, and there is evidence from around the world that it is not an unhelpful thing to do. There is evidence from New York. New York State has had gender identity as a protected characteristic for nearly 20 years now without any particular difficulty, and it seems to have worked through those difficulties. Sorry, what was the third part of your question?

Q73 **Kate Osborne:** What impact would it have, in your view?

Robin Moira White: It makes matters much more complex. I absolutely agree with Karon's statement that were we to widen that protected characteristic, if we haven't done already, it is more complex for employers to get it right and for legislators to get it right, so we have reached a policy balance. Are we going to make a change that is definitely going to support a very small proportion of the population that go through



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great difficulty? That would undoubtedly add a burden on to service providers and employers. Of course, we might have done that already, anyway, with Taylor.

Karon Monaghan: Taylor is a first instance decision, Robin, as we know, so although I know it was a victory for you, I don't think the law has changed.

Robin Moira White: I look forward to meeting you in a higher court to argue it, Karon, at some stage.

Karon Monaghan: I would be delighted, Robin. To confirm what I have already said, it would create some tensions. I want to come back—I am going to take 30 seconds so you can't stop me—on what Naomi said. I think there is a difference between free speech and harassment. That is a difference that the law recognises. It is one thing in a work environment to deliberately misgender somebody and harass them because of their transgender status. It is a quite different thing in talking about whether or not sex is biological and whether or not it can be changed—what gender means in that context—and the views of gender-critical feminists. Expressing those views is not unlawful or ought not to be unlawful. What is unlawful is harassing transgender people in the workplace. Harassing them means undermining dignity, but that does not mean that there is no space for discussion and debate, or support for discussion and debate, for gender-critical feminists engaging—I can see Robin nodding. I am particularly firm about that because if I was required to identify where I was, I would certainly feel that I should be able and would want to express those views myself. Indeed, some of the views I have expressed here would probably be regarded as gender-critical.

Q74 **Kate Osborne:** Thanks, Karon. That is very helpful. Naomi?

Naomi Cunningham: I will come back first on that last point because I couldn't agree more that there is a difference between free speech and harassment. If the view that colleagues ought to be free to harass trans colleagues in the workplace has been in any way attributed to Legal Feminist, I repudiate that unhesitatingly. That is not what we are arguing. What we are arguing is that we should be free to argue the sorts of points that I have been arguing here, and that should not be characterised as transphobia and made something that can be the subject of either disciplinary procedures in the workplace or a criminal process. So that's that.

The problem with substituting the word "transgender" for "transsexual" in the legislation, in our view, is the extraordinarily expansive definition of transgender that has come into popular usage. I think that is probably very substantially down to the efforts of Stonewall and the definition that they have publicised. I can't rattle it off, but that includes a whole range of different kinds of gender behaviour or performance, including cross-dressing. Certainly, until fairly recently, at least the Stonewall Scotland definition—I don't know what the whole history of this is—used to include



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erotic cross-dressing: cross-dressing for erotic purposes. I would suggest that is far too wide for these purposes.

I don't know what the answer is. I certainly don't want anyone to be upset or offended by having a legal definition of transsexual that they now find inappropriate and offensive, but I do think that the word "transgender" is problematic for that reason, so maybe there needs to be some other term or some other definition written into the law.

Q75 Kim Johnson: Good afternoon, panel. Naomi, in your recent blog, "Submission and compliance: risks for Stonewall Champions", you argued that there are legal risks involved for companies who have signed up to Stonewall's diversity champion programme. Can you explain the blog post about Stonewall's diversity champion programme? You said that there were legal risks involved for companies who have signed it.

Naomi Cunningham: Yes, and the reason I say that is, there are demands placed on companies by Stonewall in signing up and submitting to their programmes. I am not completely clear what the relationship is between the diversity champion programme and the workplace equality index, but it seems to be fairly clear that they are linked. The thing that I looked at most closely was the workplace equality index, because that was made possible by a freedom of information request that had been made to Edinburgh University. We were able to examine in some detail the whole submission that Edinburgh University had made to Stonewall in order to be included on the workplace equality index—I think it ran to 15,000 words—together with Stonewall's detailed feedback on that.

What you can see from that material is the sheer extent to which participating in those programmes commits organisations to submitting a wide range of their policies and practices to Stonewall's scrutiny and tweaking them—or rewriting them, probably more than tweaking them, and in many cases, substantially rewriting them—to meet with Stonewall's approval.

Part of the reason that is problematic is that the understanding of the law that Stonewall has been promulgating is erroneous in various respects, for example, suggesting that, in order to comply with the law, it is always necessary to give self-identifying trans people access to facilities and services provided for the use of the opposite sex. That is simply not the case. That is just wrong.

So, the kinds of legal risks that organisations face, if they submit to this process, are quite wide-ranging, to my mind. There is the possibility of judicial review of individual policies if they are founded on an incorrect understanding of the law. An example of that is a judicial review that was completed last year, or that was withdrawn, after the policy was withdrawn, of Oxfordshire County Council's trans-inclusion toolkit. A teenage girl challenged that by way of judicial review because it was telling schools that, for example, they had to allow self-identifying trans girls to use the girls' toilets and changing facilities and so on. After

permission was granted, that toolkit was withdrawn, because it was contrary to the law.

So, that is one kind of risk that organisations face. They may also face challenge to the decision to sign up to Stonewall's programmes in the first place, if those are taken to excessively influence their performance of their public functions. There has been a judicial review on those lines that failed.

My argument, as I set out in more detail in the blog post, is that other organisations shouldn't take any comfort from that, because the judge was not made aware of the full extent of Stonewall's interest in the organisation's public-facing operations and role, and thought that Stonewall championship was all about employee relations, but it actually goes much further than that. Those are the two different sorts of judicial review risks.

There is employment discrimination, if you end up indirectly discriminating against female employees by withdrawing, in effect, their access to single-sex toilets etc, because that is a legal requirement. There is potential for indirect religion or belief discrimination in employment. There is potential for indirect discrimination on all those grounds—sex, religion or belief. I'm trying to think of a third thing. There is a whole range.

There are also much more serious legal risks. The one I want to emphasise before I finish is the risk of not only exposing your clients and your service users to assaults or serious injury, in the case of contact sports, but one of the most worrying situations. If an NHS trust, for example, has allowed its policies to be Stonewalled, to be rewritten in accordance with Stonewall's wishes, it may expose its trans staff to the horrible risk of being, in effect, imposed unwittingly on individuals who have asked for a female healthcare provider.

If the trust takes the view that it is none of the patient's business that the healthcare provider is trans, and the patient consents to an intimate procedure on the basis that she has asked for a female healthcare provider, and the trans healthcare provider undertakes that procedure, there is a horrible risk for both the patient and the trans healthcare provider in that. That is something that we should be very slow to expose anybody to. I'm sorry that I've gone on longer than you wanted me to, but those are important points.

Kim Johnson: Thank you, Naomi. I can see that Robin is disagreeing, but we really don't have the time. I'm very aware that we still have a lot of questions to get through. Thank you for providing a response to that question.

Q76 Elliot Colburn: Just to repeat what Kim Johnson said, we are running short of time and have a lot to get through. I ask everyone to be as pithy as they can. If you feel you have not managed to say what you wanted to, the Committee will be happy to accept follow-up evidence in written form after this session.



I will move on to a section of questions about the exemptions in the Equality Act. To begin with Karon, earlier in your evidence we touched on the occupational requirement exemptions in the Act, in relation to those with a gender recognition certificate and those without. Could you expand a little more about the difference, about how that exemption applies to those with and without a certificate?

Karon Monaghan: The Equality Act doesn't distinguish between those who have a gender recognition certificate and those who don't. There are exemptions that allow for single-sex services or occupation requirements, typically, for example, to work in a single-sex service, that permit the employer to exclude trans people from a particular role or as a service user, in limited circumstances. It doesn't matter whether a person has a gender recognition certificate or not. The fact that a trans woman, let's say, has a gender recognition certificate does not mean that a service provider—an employer—cannot exclude them if the single-sex service provisions apply. As I have said, there are constraints over when those exemptions apply. One cannot exclude a trans person because one does not want a trans person around. There are qualifications that apply, but it does not make a difference if you have a GRC.

This is one of the real problems. I think this was discussed the last time I gave evidence on a similar issue. It is a real issue because people assume that if a trans person has a GRC they are entitled to be treated differently in relation to the exemptions. They are not. I make it clear that those exemptions apply only in limited circumstances and where certain conditions are meant. It does not matter whether the person has a gender recognition certificate or not. That is not the test.

Q77 **Elliot Colburn:** Thank you, Karon. In the interests of time, I am just going to ask any panellists to indicate whether they have anything to add or disagree with that assessment.

Robin Moira White: Just as a practical example, I formulate this as the supermarket test. I absolutely agree with what Karon has said, and all I am doing is slightly enhancing what she said. If on a Saturday morning I am caught short in Sainsbury's and need to go and use the women's lavatories in Sainsbury's, it would be completely disproportionate to prevent me from doing so. Alternatively, as I have not done very much with my voice in transition, if there needed to be a receptionist at some particularly female service it would probably be appropriate not to have me as the telephone answerer. Exactly as Karon says, it is in very rare and very particular circumstances that it would be proportionate. Whatever view you come to has to work practically with the examples that I have given you.

Karon Monaghan: I know I introduced this word, so it is my fault, but I think we probably need to move away from the "it's rare"—[*Interruption.*] Sorry, you are pushing away your cat or your partner—one or the other.

Elliot Colburn: It's the dog!



Karon Monaghan: We probably need to move away from, "Is it rare, or is it not rare?" I know that I introduced that word. I think probably a better way to say it is that there are criteria and constraints, so it cannot be based on prejudice, and so on. I endorse what both Robin and Naomi say. It is not quite as polarised as it might be on Twitter, but I think moving away from the language of "unusual", "rare" and so on is probably a better way of going about it.

Q78 **Elliot Colburn:** Thank you, Karon; that is very helpful. Naomi, very quickly?

Naomi Cunningham: Just a tiny point on language. Can we try to talk about the "exceptions" in the Equality Act, not the "exemptions", because "exemptions" makes them sound like something special that has to be applied for, and they are not. The general rule is that you cannot discriminate in various circumstances and there are exceptions to those rules, and those exceptions always apply in the circumstances where they apply. You do not have to make a special application for an exemption from the rule; they are just situations where the rule does not apply. That may be a very small, lawyerly point, but I think that is a clearer way to think about it.

Q79 **Elliot Colburn:** Thank you, Naomi. That leads us on to the next question. In terms of the occupational requirement exception or exemption, whichever one you want to adhere to, does this, or indeed any of the exceptions within the Equality Act, rely on the disclosure of someone's transgender status? The Government's consultation highlighted that some people said that this disclosure could happen without the trans person's consent. Is that indeed the case? Karon, could I come back to you to kick us off on that one?

Karon Monaghan: This is something that Robin picked up earlier: the disclosure issues, and how that works within an employment context. There may well be circumstances where—to use Robin's example—not just inadvertently but for what is perceived to be a positive purpose, the trans status of a particular employee is disclosed. I will give an example—somebody could say, "No, that's bonkers," but it's just off the top of my head. If a healthcare facility is setting up a particular service—let's say a sexual health and counselling service or whatever—and knows that one of its employees is trans and that the exemption or exception, however it's described, may apply, that may be a circumstance where it is reasonable, and indeed appropriate, to pass on that information: the status of the person. I could see Robin, I think, nodding there, because that's, I think, pretty much what she was suggesting. There may be circumstances where that information needs to be transmitted, because an exemption/exception may apply.

There is a more general issue, and that is people saying, "How do you know whether a person is trans?" If you say, "We don't want a trans woman refuge worker; we only want a non-trans woman—female—refuge worker," that is problematic, but that happens all the time. You can apply for a job and they say, "Do you speak fluent French?" If I applied for the



job, I would have to say no, but if I really wanted the job, I could be persuaded to say yes—probably. And if it was discovered that I did not speak fluent French, I would be sacked. And in certain circumstances, I might be guilty of a criminal offence—not by applying for a job and saying I can speak fluent French, but if I make a declaration in an official capacity that indicates that I am trans or non-trans, as the case may be, and that is a lie, I can be prosecuted. That would be unusual, but otherwise it's—sometimes the reality is that it will be obvious, and a person will be able to make a decision on that basis. But if you are going on somebody's self-declaration, if you like—well, that happens all the time. We all declare ourselves in particular ways, and sometimes it's spin and sometimes it's a lie, but that has to be dealt with in the ordinary way.

Naomi Cunningham: This is also where the chilling effect of section 22 may well come in. I think there is an impression in many organisations that they are not allowed to ask, or not allowed to set rules and expect people to respect them. But if, as an employer, you have a reason to set an occupational requirement and you set one, you are entitled to expect and demand that only people who can meet it apply for the job. And if someone who applies for the job doesn't meet it, or they don't tell you but you suspect, it seems to me perfectly plain that you are entitled to ask. And if they apply, you don't realise that they don't meet it and they don't tell you—in that case, they have got the job by deception. So I would add, to Karon's consequences, that if and when your employer finds out that you got the job by deception, they are entitled to dismiss you for gross misconduct or for getting—

Q80 **Elliot Colburn:** Thank you for that, Naomi. Sally, do you think that employers have a good understanding of how that actually works, and if not, what do you think could be done to help them?

Sally Brett: Sorry, whether or not the occupational requirement works or whether—

Elliot Colburn: Whether or not employers have a good understanding of how the occupational requirement works.

Sally Brett: Yes, I think that generally they do have quite a good understanding, or those—probably large—employers with specialist HR and D&I staff would probably have quite a good understanding of how it should work. It is always helpful to have good statutory guidance that sets out the key principles that they will need to consider. If you look at the EHRC code at the moment, it does explain that, as Karon said, there is no difference, whether or not you have a GRC, in how the occupational requirement applies.

One thing I would pick up, and that I picked up looking at the EHRC code and GEO guidance, is that they do say that employers should not ask for GRCs. That might be something that leads to misunderstanding among employers, or confusion. If they were relying on an occupational requirement, they may be confused because they may think, "Well, the code is saying this but then telling me I can't ask for a GRC, so how would



I know if someone is transgender?" As Karon said, in many instances it would just have to be taken on a self-identification—self-declaration—basis.

Q81 Elliot Colburn: Naomi, can I come back to you to explain to the Committee how the single-sex and separate-sex exception in the Equality Act works, and whether this applies to someone who has a gender recognition certificate?

Naomi Cunningham: I think I may have covered this already in my earlier evidence, but essentially, the exceptions are absolutely commonplace and ought to be wholly straightforward to operate. It should be, simply, a matter of consensus that if a space is marked for women only then only women will access it. My view is that, in practical terms—and I think I may differ a bit in the legal analysis from Karon on this, which causes me some terror but there it is—it makes it more complicated. I think it makes the legal justification of exclusion somewhat more complicated, but my view is that in almost every case where there is justification for having a single-sex service, space or separate service, etc, that is on grounds of biological sex, and because of that it will also be justifiable by a slightly different legal route to exclude a trans woman with a GRC. The underlying reason for that is that Parliament has decided that there are certain circumstances in which it is justifiable to discriminate on the grounds of sex. The underlying reasons are biological sex and not about what certificates people have, so although it may look like a different sort of discrimination and it may need to be legally justified in a slightly different route, the result, I think, will in almost every single case be the same.

Q82 Elliot Colburn: Robin, I saw your hand up. Can I tie that in with the next question and get you to answer both, if that is all right, in the interests of time? In your view, what does a "proportionate means of achieving a legitimate aim" mean, and how does a service provider demonstrate it?

Robin Moira White: Perfect—the same answer covers both points. What is lost in this debate, often, is the definition that you have just read out of proportionate means of achieving a legitimate aim. What we are effectively doing, on one analysis, is allowing discrimination. The Act broadly says that you cannot discriminate, but there are exceptions and it says that in particular circumstances you can. I argued for exceptions on at least two occasions for clients, arguing against trans access to a particular service. Because what you are doing is allowed discrimination, it is tested very carefully by the courts, so there has to be proportionate means—it has to be the most proportionate means. If there are easier things you could have done to accommodate the trans person, you should do them, not discriminate. An example that is given in the paperwork is a trans woman who is early in their transition attending breast scanning. You could then book them in at the start or end of the service, or on a different day—you don't exclude them from the service. On legitimate aim—back to the supermarket example. I have been greatly more familiar with female toilets over the last decade than I was in the previous part of my life. I have never done anything in there except wash my hands, other

than behind closed doors, so how would it be a legitimate aim or proportionate to exclude me from the toilets in a supermarket on a Saturday morning? It plainly wouldn't be—it doesn't meet the tests. Those are quite carefully run tests when matters come to litigation.

Q83 Elliot Colburn: Thank you, Robin. Very quickly, Naomi, if that's okay.

Naomi Cunningham: What I want to say on this is that, when it comes to justifying the operation of the single-sex exception to exclude a male-bodied person with a gender recognition certificate, it may very often, in lots of different contexts, be required to show that that exclusion is a proportionate means of achieving a legitimate aim.

What it is important to recognise is that a lot of the heavy lifting of establishing that justification has already been done in these cases. The reason I say that is that Parliament has already decided that there is good reason to permit discrimination on grounds of sex.

Since that is almost exactly the same reason—the reason for discrimination on grounds of sex is the same as the reason for discrimination to exclude the trans person with a GRC, which in my view would formally be discrimination on grounds of gender reassignment—it is not going to be as difficult to justify, to show a proportionate means of achieving a legitimate aim, as it often is when you have to show that thing. Because Parliament has already done that heavy lifting by providing an exception for sex discrimination in the first place.

The other short point on this is that usually the best way round these problems is simply to provide mixed or gender-neutral services alongside single-sex services. Then everyone can be accommodated without undermining or invading anyone's privacy.

Q84 Elliot Colburn: Thank you. Would Karon please kick off on my last question? What more, if anything, could be done by the GEO and the EHRC to provide clarity in the guidance on these exceptions?

Karon Monaghan: Well, they can provide guidance. At the moment, there is really no guidance at all. The statutory code of practice that was referred to earlier, by Sally I think, contains virtually no guidance and is pretty confused about what the purpose or effect of a gender recognition certificate is.

There is no guidance indicating when it is likely to be lawful to exclude trans people. One can't do a list because circumstances will vary but, nevertheless, there can be some indicative examples, which can help give some sort of illustrative framework for those who may have to apply the exemptions.

At the moment, there is a chilling effect. I think that's what I said last time. Because people don't know. They think, "I can't do this because it would be unlawful. Or I might have to ask that person if they've got a GRC, because that will make a difference. Then, if I do that, I might be breaking the disclosure rules," and so on.

There needs to be very clear guidance, some illustrative examples of the sorts of things you need to take into account, in language that is accessible, so that people can work through the exemptions, as they have to do in other contexts.

The ordinary occupational requirements, such as the requirement to be from a particular minority group, to speak a particular language—there is pretty good guidance on that. There needs to be good guidance and people need to feel confident in doing or not doing what they think they might need to do or not do.

Elliot Colburn: In the interests of time, I am going to have to leave it there. I invite all the panellists to follow up in writing if they feel they have not said all they wanted to.

Q85 Nicola Richards: To save time, I have condensed my questions from a longer one, if you want to take some notes. Could each of you tell me your view on self-identification and how it could work in practice? What safeguards would need to be implemented? Would it impact on other areas of the Equality Act? Would it create any new legal difficulties? Who would like to go first?

Karon Monaghan: I am happy to make myself unpopular on Twitter with whatever I say, one way or another. I think self-ID is less of an issue than some people do. The starting point is what we already have under the Gender Recognition Act. We have this requirement to have a diagnosis of gender dysphoria. We then have the requirement to live for two years in the particular gender, and all of us have already commented on what that might mean and how there may be difficulties with that, in terms of entrenching gender stereotypes.

As for the requirement that there be a diagnosis of gender dysphoria, I am not a clinician, but as I understand it, that is a highly contested diagnosis anyway. It medicalises what some people think is not strictly a medical issue, and it is very intrusive, obviously. Those two reasons are themselves problematic. Is there such a thing as gender dysphoria, in a medical sense? Why do we need people to prove it, in a clinical sense, particularly if it is a contested diagnosis anyway? Why do we need people to go for two years? What, in two years, do they need to demonstrate that is not really just gender stereotyping, or conformity with gender stereotypes? If we do not have those two things, what else could replace it except self-ID?

I am less worried about self-ID than some people. I think there need to be safeguards, there needs to be a declaration of permanence and there needs to be some evidence that there is a true commitment to reassigning oneself in the gender that one aspires to acquire or has acquired. Otherwise, I think the most important thing is the consequences of self-ID. What are the consequences of a gender recognition certificate if it is achieved by self-ID? Not the consequences of whether one can self-ID, but what are the legal consequences?



That is where we would need to be sure that the exceptions in the Equality Act are properly understood, so that if one self-IDs, that does not mean that there is any special protection under the Equality Act—they are in no different a position by not having a gender recognition certificate or not having gone through the whole process of two years of showing that they meet these social norms about being a woman, wearing clothes or whatever. I think much more important than how you get the gender recognition certificate is what it means when you have got it.

Robin Moira White: I think my position is very close to Karon's. Just to speak as a trans person for a moment, I had known that I thought differently about myself since the age of seven or eight, and I had a clear idea of what I thought I was from the age of 12 or 13. I am 57 now—I have outed myself as an aged person—and that has not changed through all that time. However, that is a personal sense of self, and to have to medicalise that process— I actually do not like the term “self-ID”, because I think, just as Karon suggested, that there needs to be a degree of formality—some form of quite formal declaration is my view as to what we should change to. The rest is pretty much irrelevant. However, working through the societal position of where there is genuinely a need to recognise that I am in a different position from a natal woman when I am using services or being provided services or whatever— Is there really a difference in a particular circumstance, exactly as Karon says? That is the important bit of the process.

Sally Brett: I am probably endorsing what Karon and Robin have already said. The Law Society supported a move to self-ID, for reasons that Karon said, including the difficulties and the reclassification in World Health Organisation guidelines about the diagnosis of gender dysphoria and the move to recognise that being trans is not a mental illness. Gender incongruence is a matter of your gender identity not fitting your sex assigned at birth, so we should not have doctors required to diagnose and gatekeep legal recognition of your identity. The way it would work would be for more statutory declaration.

Also, the Law Society, when we made our submission to the consultation and gave our written evidence, we did not propose any changes around the exceptions within the Equality Act. We think the single-sex exceptions should remain. What this whole debate around the Gender Recognition Act has really brought to the fore is the confusion around how those single-sex exceptions operate within the Act.

Naomi Cunningham: I am going to be the outlier on this one. Karon kicked off by saying that self-identification was less of an issue than some people think. We at Legal Feminist are some of those “some people”. We are very troubled by the idea of making qualification for a gender recognition certificate dependent on self-ID, or self-ID alone.

I agree first of all with Sally that gender incongruence is not itself a medical matter, but then most, if not all, the gender-critical feminists I know, and that is quite a lot now, will describe ourselves as to some degree gender incongruent. We do not hold with gender stereotyping. We



are feminists. We think gender is mostly an unnecessary performance. Certainly speaking for myself, it is not something I can be bothered with. In that sense I am gender incongruent, but gender dysphoria is another matter. It has for a long time had a medical diagnosis, or been treated as a medical diagnosis, and I find it very hard to understand how profound unhappiness with your sexed body to the extent that you need to undertake some sort of transition in order to live at peace is anything other than a medical matter. I do not mean by that, of course, to stigmatise it, because I do not regard medical conditions as carrying a stigma, but nevertheless that is a condition, and it is a condition that clearly very often calls for treatment.

One of the problems that has been looked at in this consultation is the inadequacy of medical treatment available for people with conditions of gender dysphoria. As we know, exactly how that medical treatment should proceed or what form it should take is a matter of bitter contention. So it does not seem to me to be coherent to say that this is not a matter of—well, one of the cases that we are not discussing because it is still ongoing, for example. So that is that side of it. There does seem to me to be something real that you can ask, something real and objective: is there a diagnosis of gender dysphoria?

To proceed on the basis of self-identification alone, what that is capable of doing is massively expanding the category of people who would be capable of being granted a gender recognition certificate. I come back to this point that was discussed when the Gender Recognition Bill was going through Parliament in 2003. It was emphasised over and over again that this was a tiny minority of people with a very rare medical condition. That was the purpose of this change in the law to accommodate a tiny minority of people with a rare medical condition. If we proceed on the basis of self-ID, we are looking at the expansion of that very small category of quite tightly defined individuals with a particular condition to the whole trans umbrella as defined by Stonewall, including potentially cross-dressers or people who do not adhere to particularly conventional ideas about what dress is appropriate to their sex or what interests or other stereotypes are appropriate to their sex.

At that point, it becomes a hopelessly woolly concept that simply is not suitable to have legal consequences and that will have dangers for women. Our view is that it at least makes the business of justifying exclusion more complicated. Once a gender recognition certificate has been granted, it makes it more complex to exclude the holder from single-sex services. That is not a trivial matter, because a lot of single-sex services are small, cash-strapped charities that may be existentially threatened by a need to make a decision on legal advice every single time somebody identifying as the sex to which they are seeking to confine their services comes along banging on their door. It will have serious consequences, not just for individuals but for organisations providing essential services for individuals.

Q86 Nicola Richards: Has it not been argued, though, that a certificate does



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not change the way the Equality Act works and that you are considered? Therefore, would the number of people requiring this through self-ID really have a big impact, were that to happen?

Naomi Cunningham: We are concerned that it might. My view of the way the Equality Act and the Gender Recognition Act interact with each other is that holding a gender recognition certificate moves an individual on a blanket basis from a category that can simply be excluded from single-sex services, because a single-sex service is justified, to a category that may have to be justified on an individual basis. That is quite seriously threatening, potentially, for organisations that have to apply those exceptions. That is the worry. If it makes no difference, it is not clear why it is something that is being fought for. In which case, why don't we simply leave the law as it is? Our view is that it potentially does make a difference, and it is quite a concerning difference.

Q87 Chair: Some of the written evidence that we received suggests that the Gender Recognition Act and the Equality Act provide different interpretations of the word "woman". I appreciate that this can be quite contentious, but in the panel's view—I will come to each of you individually, or put your hands up if you would like to comment on this—should the Equality Act be clearer in its definitions of woman and man, and whether it is referring to biological sex or legal gender?

Karon Monaghan: It seems to me that it does. It defines sex. It says that sex means being a man or woman, and then it says, under the interpretation provisions, that being a man is being male and being a woman is being female. In other words, male and female are biological characteristics, so it defines sex very specifically as a biological characteristic. Then it defines gender reassignment as the process or outcome of having gender reassigned. It does define sex. It may be misunderstood, but it does define it.

Q88 Chair: And you think that it is adequately clear?

Karon Monaghan: Yes. It defines it as a biological characteristic.

Naomi Cunningham: I agree with that.

Robin Moira White: They might, but the word "biological" does not appear anywhere in the Act. I would answer the question, in a sense, with a question: what is the point of the definition? If what we do is redefine the Act, or add to the definition in the Act, to say that it is limited to biological sex, we create all sorts of evidential difficulties for particular people. Are we going to take away a perception that somebody is a particular sex if they are perceived in a particular way? It is a bit like the question we were asked a moment ago about the Gender Recognition Act: do we need to change it and, if so, what would be the consequences?

You know that Karon and I disagree about whether there is a definition in there at the moment that is of any use. I do not think that there is. My question would be: if we strengthen it or add to it, what is the consequence of doing that? If we strengthen "biological", are we going to

exclude trans women from circumstances where they should not be excluded? Remember that I have accepted there are particular circumstances where perhaps an exclusion is justified. Or are we going to create a wholly different category who are kept in a little box and not allowed to engage with society properly? Understanding what the consequence is of doing anything about a definition is the important bit about deciding whether to define something in a particular way.

Chair: Thank you. Sally.

Sally Brett: I think I would more endorse what Robin has said. It has highlighted as well that there is a difference of legal opinion on this and, given that difference of opinion, if there were going to be any move to create specific definitions that refer to biological sex, that should be carefully considered and properly consulted on—because there is this difference of opinion there. If someone has reassigned their gender, they have a desire to live in their acquired gender, not to live as a third gender, separate from man/woman.

Chair: Our final set of questions are from Bell Ribeiro-Addy.

Q89 **Bell Ribeiro-Addy:** My questions are about the Gender Recognition Act, and my first question is for Naomi. In written evidence submitted by Legal Feminist, you mention that the Government should have included a bar to applicants with unspent convictions for violence against women offences. I was hoping you could elaborate on that.

Naomi Cunningham: For once, I am not sure I have a great deal to say—you may be grateful to hear. It seems to us that if an individual has unspent convictions for violence against women, especially sexual offences and most especially any offence part of whose nature entails being male—as it almost always will be—that should be a reason for revoking a gender recognition certificate, because that is something fundamentally incompatible with being a woman.

Q90 **Bell Ribeiro-Addy:** Thank you. Can I ask the rest of the panel whether you think that this action would mitigate fears regarding the Gender Recognition Act and whether there might be any legal issues with it?

Robin Moira White: I am not a criminal practitioner; I have to make that very clear. There are routes to rehabilitation of offenders that recognise that offenders, even for really quite serious offences, can turn themselves around and become useful members of society. As I say, this is not my area of practice at all, but I would be cautious about departing from those other routes that allow people to rehabilitate themselves, because we know that that can occur in other ways, and potentially living as you ought to live might be, could be—I postulate—a way to remove a tendency towards criminal behaviour. Forgive me: this is a very tentative answer. This is not my area of practice; it is not an area that I have any great interest in. But I think that if that were to be explored, some proper evidence from those who deal with the rehabilitation of offenders ought to be explored by the Committee.



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Sally Brett: This is not something that the Law Society has had an opportunity to really consider, so we need to take it away and consult on this internally. My initial thought is that obtaining a GRC would not enable an individual to escape their previous convictions any more than those convicted who change their name could. But I really need to consult more widely within the Law Society and perhaps do a written response.

Bell Ribeiro-Addy: That would be very helpful. Thank you. Karon?

Karon Monaghan: It is not something I have thought about. Sorry, I should have read the submission, but I haven't. Is the question: you ought not to be able to get a GRC if you've got a criminal conviction as a man—as a sexual offender, for example?

Q91 **Bell Ribeiro-Addy:** Yes. This comes from the evidence submitted by Naomi—well, by Legal Feminist. Would it mitigate some of the fears about the changes to the GRA if this was put forward?

Karon Monaghan: There are genuine concerns, particularly in the context of prisons, as you probably know, about trans women who have committed serious sexual offences, or indeed any sexual offences, as men. Whether a GRC would make a difference to that, I don't know. Again, the exceptions in the Act apply, for example, in relation to prisons. I do not think there is any dispute about that.

In the case of trans women who, as men, have committed serious sexual offences, a prison can ensure they are not in the women's estate. I am not quite sure how it would work in practice. I am not concerned about rehabilitation if you are a serious serial rapist. As far as I am concerned, Robin, you are not going to be rehabilitated. That is the first answer. I am less concerned about that. It is just more in terms of practicability. I suspect more workable is to ensure that people understand the exceptions, and in circumstances where women are vulnerable, such as in prisons, it is understood that trans women with a history of sexual violence are not automatically entitled to be in the female prison estate, for example. I am not sure that answers the question. It is probably more muddled, but I think it is probably not the right way through the question, really.

Naomi Cunningham: Just coming back briefly, if I may, on the subject of prisons, can I commend to the Committee's attention the evidence of Professor Michael Biggs, who has given detailed written evidence on this subject, and a very important and cogent argument that you should pay attention to?

Q92 **Bell Ribeiro-Addy:** Thank you. There has been a lot of disagreement about how to define sex and gender, and you have touched on it here. These disagreements, I believe, will persist even if statutory definitions are agreed. Do you think there should be statutory definitions of these terms, and could you tell us of any potential problems that might arise from having a statutory definition of sex and gender? I will go back the other way now and start with Karon.



Karon Monaghan: I think they are defined. I know that there is disagreement about this, but I am completely satisfied that female woman—natal woman, as it is sometimes described—is perfectly well defined in the Equality Act. Sex is the category. Sex covers being a man or a woman, and the Act doesn't stop there. It tells us that being a man or a woman means being male—that is, biologically—or female, also biologically. I know Robin disagrees, but I disagree with her because there would be no need to add "female" and "male" if woman and man was wide enough, or narrow enough, to tell the reader what they meant. The reason they have added "female" and "male" is so that everybody knows—I mean, you might disagree with the law, but it is certainly the case that Parliament has made it clear that when they talk about "men" and "women" in the Equality Act, they mean biological men and women. As I say, you may disagree with the law, Robin, but that is what it says—in my view. And Parliament has defined "gender", by reference to gender reassignment, separately.

So I do not think there is a problem; I think there is a problem in that it is muddled in the way that people interpret it. And as we have just been discussing, there is virtually no guidance on it, which is why it is problematic. However, I myself do not think that it is a problem of definition. But there we are—I know we disagree on this.

Q93 **Bell Ribeiro-Addy:** In the interests of time, I will ask Robin next and then I will address my last question to Naomi and Sally, if that's okay. So, Robin, would you like to come in on this question?

Robin Moira White: I am not going to go over the disagreement with Karon, and I will repeat the comment that I have made previously that if what we do is to enhance or expand definitions, then we need to recognise the consequences of doing so.

There is another consequence of not doing so, which is that if you as Parliament do not do it, Karon and I will end up in a court somewhere arguing this through, and either she is right or I am right, and the court will define—

Karon Monaghan: I am right, Robin. *[Laughter.]*

Robin Moira White: Of course—always, Karon. But the court will end up defining that difference, and that is one way to make law. The other way to make law is for Parliament to make law. There was no debate—I have looked at *Hansard* and there was no debate about that little bit of the Equality Act as it went through Parliament previously, and I do not regard it as clear. And if Parliament does not sort it out, the lawyers will, ultimately.

Q94 **Bell Ribeiro-Addy:** My final question will be about some other pieces of written evidence that were submitted to the Committee, which argue that there are too many different interpretations of "trans", "gender-fluid" and "non-binary". Following on with the theme of statutory definitions, do you think the Government should consider introducing statutory definitions



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for these terms? I will ask Naomi first.

Naomi Cunningham: No. I think it would be hopelessly difficult to introduce statutory definitions of “gender-fluid”, “non-binary”, etc., because I don’t think there is any generally understood consensus as to what those terms mean, and I think it would be very, very hard to arrive at any such consensus.

Also, and more fundamentally perhaps, I do not see any useful purpose to be served in producing definitions of those terms. The Equality Act prohibits discrimination in certain circumstances on grounds of nine specific protected characteristics. It does not prohibit all arbitrary discrimination. So, it doesn’t prohibit discrimination on grounds of left-handedness, or red hair, or being born in a month with an ‘F’ in it, or any of a huge number of other arbitrary grounds on which it would no doubt be unfair and arbitrary to discriminate between people, but which have not been the subject of legislation, because they are not seen as a sufficiently significant social problem.

So, before you specifically protect from discrimination on a particular ground or a particular group, I would suggest that you should start with some clear evidence that that group is suffering discrimination on that ground, and I am not aware of a cogent case having been made that there is a widespread social problem, requiring legislation, of discrimination on grounds of being non-binary or gender-fluid, etc.

I will just go back momentarily, if I may, to the question of definitions of “sex” and “gender” in the Equality Act. I absolutely agree with Karon that the meaning of “sex” is clear in the Equality Act. I do think that the use of the words “sex” and “gender” in the Gender Recognition Act ought to be tidied up, because they are apparently random and that is quite confusing.

Q95 **Bell Ribeiro-Addy:** Sally, do you think that the Government should consider statutory definitions for these terms?

Sally Brett: I am not sure that there is any point in having statutory definitions unless you were introducing them as protected characteristics or part of a protected characteristic within the Act. To go back to some of the earlier comments that were made around the language of the Act, we think that the use of “gender reassignment” and “transsexual” does not really reflect the current language and terminology that the people who this is meant to protect would use.

There is evidence—it may not be widespread, because we are not talking about a very widespread social problem; we are talking about a very small group of people—that non-binary people and people with trans identities that might not currently be covered by the protected characteristics do suffer similar issues of discrimination and harassment within the workplace, for example.

At the Law Society, we have not had the opportunity really to consider what it might mean to move to including gender identity as a protected characteristic. So, that is another issue that we probably would like to take



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away, to consider in more detail what some of the unintended consequences or complexities of doing that might be.

Bell Ribeiro-Addy: Thank you. And unless Robin or Karon would really like to add to that, I will hand back over to the Chair.

Chair: Thanks, Bell, for that. And may I just thank all the witnesses for some really extensive evidence this afternoon? I appreciate that there will be an enormous amount that you feel we may not have covered, or that there are additional bits of information that you think would add to the answers that you have previously given. We would certainly be delighted to receive any of that in writing after the meeting, if you would like to provide it.

I will conclude by thanking you all for your contributions; they have been hugely appreciated.