



Women and Equalities Committee

Oral evidence: [Transgender Equality Inquiry](#), HC 390

Wednesday 28 October 2015

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Written evidence from witnesses:

- [Government Equalities Office](#)

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Members present: Mrs Maria Miller (Chair), Ruth Cadbury, Maria Caulfield, Jo Churchill, Angela Crawley, Mims Davies, Mrs Flick Drummond, Ben Howlett., Siobhain McDonagh, Jess Phillips.

Questions [198-298]

Witnesses: **Karen Bradley MP**, Minister, Preventing Abuse and Exploitation, Home Office, **Jane Ellison MP**, Parliamentary Under-Secretary of State for Public Health, Department of Health, and **Will Huxter**, Regional Director of Specialised Commissioning (London), NHS England, gave evidence.

Q198 Chair: Can I thank the Ministers and also Mr Huxter, who is joining us from the NHS, for taking the time to give evidence to us today? We really appreciate that you have very busy diaries and we are most grateful to you for taking the time out to talk to us and we really value your contribution. As you have probably been to evidence sessions like this before, you know that colleagues will ask questions as we move through our session today. I am sure I will not, but I might need to chivvy people along a little and pause you on your contributions if they get too lengthy. Can you forgive me if I do that? It is just to make sure we get through what is quite a lengthy list of questions for you this afternoon. Perhaps if you could just state your name and your position for the record.

Karen Bradley: Karen Bradley. I am the Minister for Preventing Abuse and Exploitation at the Home Office.

Jane Ellison: Jane Ellison, Parliamentary Under-Secretary for Public Health, Department of Health.

Will Huxter: I am Will Huxter. I am Regional Director of Specialised Commissioning for London for NHS England and the lead on gender identity services from a commissioning perspective.

Q199 Chair: If I could ask you all to make sure you are speaking up. You are quite a long way away from us here. I know the reason for that, but it is helpful. Mr Huxter, I really wanted to start with you, if I may take the Chairman's prerogative and start first. Could you tell the Committee how many trans, non-gender and non-binary patients you commission services for in your role as commissioner for the NHS on this area?

Will Huxter: NHS England, as a commissioner, commissions across the whole of England. We then arrange that on a regional basis for the commissioning. There are roughly 4,500 new referrals a year to gender identity services. There is a range of different services people choose to access thereafter and a subset of those individuals then go on to choose to have surgery. It is about 4,500 new people a year.

Q200 Chair: When you say "new people a year", those are individuals seeking what sort of support?

Will Huxter: They could be seeking a whole range of different support. In the first instance, individuals are referred to one of the network of gender identity clinics across the country. They may want everything from advice and support about their options to investigating what treatment they could have. Some individuals come already very clear about what they want to receive and, for other people, it is very much an opportunity to find about the support that may be available and what their treatment options are.

Q201 Chair: What increase in demand have you projected in this area?

Will Huxter: It is really significant. If we start with the children and young people's service run by the Tavistock and Portman, they have seen 50% year-on-year increases, and so far this year they have seen an even greater increase in the numbers coming forward. For other services it varies because there are some much bigger clinics and some much smaller ones, but 25% or 30% would be an average, probably, across the clinics.

Q202 Jess Phillips: I think from the evidence we have gathered over the sessions, by the current projections of demand there will be around a 42-month waiting list in a very short space of time. I just wonder what, specifically, the plans are to deal with this at the moment.

Will Huxter: We start with the early split of pathways. When people are referred to a gender identity clinic, we are investing more money in those services. Take the children and young people's service as an example. We put almost £1 million more investment into that service for this year. I know that Steve Shrubbs from West London Mental Health NHS Trust when he gave evidence recognised that commissioners had put more funding in for their service for this year to get more capacity. The fundamental solution is about looking at how we grow the capacity within those providers. One of the pieces of work we are doing with support from organisations including Health Education England is looking at what can be done to encourage more people to come forward into these specialities. It is not capacity that we can turn on immediately, but we are working with all the clinics on a plan about how we can increase capacity further.

Q203 Jess Phillips: Do you think that all that you have outlined will stop there being a 42-month waiting list for this treatment? At what point?

Will Huxter: I chaired a meeting with six of the seven adult clinics on Friday last week where we talked about things that could be done to reduce the waiting times. What I committed to from that is that we will work with the clinics to model through how many people will be coming forward to them for service and what extra capacity we need to put in. On the back of that, we will then be able to see how quickly we can reduce the waiting times. With genital surgery, we have a plan in place that has looked at the capacity and is relatively rapidly reducing the length of time people are having to wait. In terms of absolute assurance about how quickly we will get to an acceptable wait, I cannot give that yet, but in terms of reduction against your projection, I am confident that we will be able to do that. NHS England is committed to spending more money in this area.

Q204 Chair: Jane, just to bring you in here, in some of the evidence that we have been given we have been quite shocked at some of the comments that we have had. In particular, Jess Bradley of Action for Trans Health told us that gender identity clinics were “just completely routinely rubbish”. Whilst a lot of what Mr Huxter has said I am sure will improve the situation in the future, are you content that that is the situation right now?

Jane Ellison: The first thing I would say is that the NHS is definitely on a journey here. If I look at the changes just over the last two years and some of the work that is underway now, there is a real openness to improvement. There is an understanding and acceptance that current services are not good enough and there are some plans in place to improve that. This inquiry could not have come at a better time, because there is a chance to influence a number of those pieces of work that are going on. Will and I can talk about that and about how we can feed the inquiry’s findings into that.

In terms of that particular criticism, one needs to recognise there are some really dedicated and skilled professionals working in the specialist areas. They are doing a tremendous job. We need to grow that capacity. The wider NHS, like society, has a mixture of attitudes in this area and is, like society and like Parliament, on a journey to a better understanding and better provision of service. I would not expect that everybody had had a universally good experience, but I understand that the service knows we can do better and we have a plan to do that. As I say, in terms of the wider attitudes, we are hopefully reflecting where as a society we are going, with much more positive and supportive attitudes.

Q205 Chair: On that point about attitudes—I know a couple of colleagues want to come in here—we heard evidence around GPs’ attitudes to some trans people. What training are you hoping to put in place to make sure that GPs are aware of their absolute obligation to support trans people in the support services that they provide?

Jane Ellison: I will make two general comments and ask Will to talk about the specific piece of work that is underway. More generally, it goes without saying the more that we talk about the needs of service users and the more that we identify those needs, the better the service is at responding to it. Like most public services, the NHS is a needs-driven service. One of the problems about commissioning well—I know this from other areas of my portfolio, like FGM—for something that is not spoken about very much and does not have much of a public profile is that it is really hard to do. It is easier to commission well and drive improvement in the service the more one talks about it and highlights it. That is a general comment about where we are going.

There is a specific piece of work going on that involves the royal colleges and Health Education England specifically to address that wider training issue. Will can perhaps talk about where that process is at.

Will Huxter: We have a broader group bringing together interested parties and representatives of them from across the field in the NHS, as the Minister said. What we are seeking to do through that is look at what further guidance and support can be given. We are working with the General Medical Council, the BMA and others to try to make sure we have joined-up advice and support, but also that we are able to try to make sure there are strong links between the specialist expertise in the clinics and GPs, because a lot of what gets reported to us is that it is often people in primary care, GPs in particular, not being confident about dealing with some of these issues that causes some difficulties. The stronger we can make the links between the clinics and the specialists there and GPs, the more progress we hope to be able to make.

Q206 Jess Phillips: I am not sure whether you have seen it in the media today, but Dr John Dean came and spoke to us here about the act of not treating not being a neutral act, but one that causes people harm. What is your view on that, first?

Will Huxter: John is the chair of the clinical reference group and he provides the advice on adult services around gender identity services. I would support his view.

Q207 Jess Phillips: I just wonder why the Government would and why we would allow what seems to be avoidable harm in this instance. I wonder also if you could tell me the exact amount of money that NHS England will spend to prevent this avoidable harm.

Will Huxter: In terms of the spend on gender services overall, which is a slightly different question, we spend about £25 million a year on gender identity services in total and that is going up significantly year on year. We are spending an extra more than £4 million this year on surgical treatments for people with gender dysphoria. I am not so sure it is about spending money; it is about how we provide, as I said earlier, advice, support and guidance to primary care around that rather than necessarily about our spending more money to tackle it.

Jane Ellison: Can I comment very briefly on that? In a lot of areas that require quite specialist knowledge and skills, money usually is not the issue. Usually the issue is that people need to see a certain number of cases and a certain number of people; they need to grow their clinical experience. Undoubtedly, that is happening now in the NHS and there is a programme to do that and to make sure we grow that expertise, but that expertise is largely grown not just through investing in it, but through giving people exposure to more patients and to more different situations. It cannot be done overnight because some of it is very specialist work, but that is what is being planned for.

Q208 Maria Caulfield: Further to that, do you think there is an attitude problem in terms of how trans people are treated in the NHS, not just in the gender identity clinics but accessing any type of healthcare? In our evidence sessions we definitely heard from a range of people who said that they worry about going to the doctor's and they worry about getting their blood pressure checked because there is such an issue in the way they are treated. If you agree with that, what is being done to try to deal with that attitude?

Will Huxter: I suppose the first thing to say is the feedback that we receive from individuals who access gender identity clinics is overwhelmingly positive. The concerns that they raise are mostly about being able to access those services and how long they have to wait to get them. We have very positive patient experience fed back to us from individuals who are using those services.

The issue—and again, I know John Dean mentioned it in his evidence before—is that people with gender dysphoria will spend a very short proportion of their lives needing to access specialist services and the great majority of their lives needing to access generic primary care services. That is why, as I mentioned earlier, we are trying to do some work with the BMA, the GMC and others about the guidance and support they can give primary care. NHS England also has a role in commissioning primary care in looking at, again, what guidance we can provide to primary care on that.

Q209 Chair: May I take slight issue with your saying that there is such an overwhelmingly positive attitude towards receiving these services? I hope you are able to review our report when we write it, because that is certainly not the evidence that we have had. I would just like to pick up on some evidence that we have from Action for Trans Health, which told us that the requirement to undergo “real-life experience” before genital reconstruction surgery forces trans people to conform to “outdated norms of gender and sexual orientation and behaviour in order to receive treatment”. Do you think that is true?

Will Huxter: I respect that perspective. The system that we have in place is clinically led. As I mentioned earlier, the clinical reference group provides advice to NHS England on best practice in this area. As the Minister mentioned earlier, we are doing work looking at the specification both for adult services and for children’s services and we are very open to comments and views that we can take on board. We absolutely welcome the Committee’s distilled information that is being produced.

I am well aware of individuals who have raised with me and with other commissioners concerns about services, but I was reviewing data from the West London Mental Health NHS Trust gender identity clinic that had been completed by hundreds of their patients that were reporting very high levels of contentment. I do not dispute that there are individuals and groups of individuals who are not experiencing what they would wish.

Q210 Ruth Cadbury: Why do people who are very clear that they want a transition have to spend so long proving that before they can access the treatment that is going to enable that transition to go ahead?

Will Huxter: As I said, the services that we commission and the way in which they are operated are based on clinical advice that we get from the clinical reference group, which reflects good practice. There are different ways it could and does happen in different countries. We are very open, as I say, to looking at comments and representations about its looking different, but in terms of the role in commissioning services, that is guided by that clinical advice that we receive.

Chair: We are very glad to hear you are open to receiving comments. I know that there are many people who would be very pleased to hear that.

Q211 Jess Phillips: I know you are guided by clinical views, but I would like to go back again to this idea of living in one gender identity. I wonder if you could tell me, clinically, what living like a woman or, alternatively, a man actually means.

Will Huxter: I am not a clinician. I cannot tell you what that is like clinically.

Q212 Jess Phillips: Do you think there is a clinical way to live as a woman or a man?

Will Huxter: The point I am making is that we are guided by specialists who work in this area and the clinical consensus in the UK among gender identity specialists about how services should operate. We are absolutely open to looking at how that might change, but I am not in a position to make a change to the way in which those services are commissioned without having gone through a clinical process.

Q213 Chair: Mr Huxter, sorry, I think we are going to have to press you on that. This is just factual. We have read that people have to live like a woman or live like a man. We as a Committee have struggled to know what that looks like in a day and age where men and women live in very similar ways. Factually, what does that mean?

Will Huxter: In terms of what is required by the clinic, I would be very happy to provide some details from clinical colleagues after this. I do not deliver the services, nor am I a clinician. I feel that I would give a better representation to the Committee if I provided that outside.

Q214 Chair: Is the Minister comfortable with the fact that the Government require that an individual has to live like a man or live like a woman in order to be able to change their identity?

Jane Ellison: Put as you put it to us, it gives cause for concern. Who would not have sympathy with someone put in that situation, etc.? Clearly the Committee has heard, I know, some really difficult evidence and I quite understand why you wish to reflect that. As Will has said, there is currently a review going on anyway about this very issue, which is essentially about looking at the current clinical guidelines, understanding whether that represents current best practice and giving some challenge to that. Even five years ago, there was not really a mechanism for the NHS to receive that sort of feedback from critical friends or otherwise. Those now exist. The transgender network has been set up; there are various stakeholder groups that are really locked into the process of understanding.

Clinical understanding of situations is rarely completely frozen in time and this one particularly is not because, for a lot of people, this is a very new speciality and therefore I would imagine that over the next few years you will see an evolution. That process is underway, which is exactly why the NHS is consulting and looking particularly at its clinical specification. That process is going on at the moment and, as Will has said, we are very open to the Committee's recommendations being fed into that. Equally, I am not a clinician either. From other areas of my portfolio that I know perhaps better than this one because I have been doing them longer, I know that you need to test. Once you have commissioned to a standard and once you have that, you need to make sure that you have tested your views and that you capture clinical consensus because that is the only way you can move forward. That consensus will evolve.

Q215 Jess Phillips: Minister, I suppose what I am looking to hear is that you recognise that there is not a single list of attributes that represents what it is to be a woman and/or a man, and therefore there cannot be a clinical list of things that a person can be told to do by a doctor in order to tick those boxes. Do you recognise that fact?

Jane Ellison: I understand what you are saying. It would be very helpful if we, subsequent to this hearing, write to the Committee with an example from a clinician operating in the field as to what they would mean by that. People are sitting down with individual people and requiring them to do that, so they must have an idea of what the requirement is and what that looks like. I think we should ask the question of clinicians and supply the Committee with perhaps some examples, obviously anonymised, of where that is happening already in clinical practice and what that looks like.

Q216 Jo Churchill: You stole my thunder with the GPs thing. To lead on from that, you have explained about the wider NHS and that you are talking to them, but the GPs' evidence was quite scathing about the level of knowledge within their profession in order to deal appropriately with people who come to them with specific issues around this area. Maria has alluded to it. The whole time we are looking at the top end of this system and the delivery in hospitals of the acute. What about that pent up demand that we are not seeing via the GPs because they do not hold the knowledge with which to make the appropriate decisions? Are we designing a service that is flexible for this demand as everybody hopefully gets skilled up and better at it?

Jane Ellison: Again, if I can make a general comment and then ask Will to look at specifics, we ask a great deal of GPs and realistically we cannot expect every GP to be an expert on everything, particularly on things that they will statistically see far less often. We would expect them to have a good level of awareness, the right approach and attitude and, crucially, understanding of how they can refer people to the right support. For example, as we move forward with the NHS's new models of care and as, for example, you might see a federated group of GP practices come together under the new voluntary contract, I would expect within that you would have people who have more understanding and specialist knowledge. Would I expect every single GP to have the same level of specialist knowledge? No. I would expect them to have an awareness and a really good understanding of where they can refer people to get that specialist support. It is unrealistic to think across every single speciality. I get asked the same question about virtually every part of my portfolio, including some of the rare cancers etc. We cannot expect everyone to know everything, but we can expect them to have the right attitude and to know how to quickly signpost people to someone who can give them the appropriate support. Will can perhaps add something about the training that is going on already.

Will Huxter: Absolutely. One of the other things, as the Minister has suggested, is about making sure that GPs are aware of what those services are that can provide support and critically, as we have discussed already, that we reduce the waiting times so that people can be seen very quickly by those specialist services. It is a relatively infrequent thing. I have talked about the 4,500 new people per year presenting to services. Per GP practice, we are talking about very small numbers, but we need to make sure that people are given access to support and advice. Among the feedback we receive is that people are often keen to receive that from people who have been transgendered and who have been through the process of

services. Again, there are support groups and others that individuals can be referred to and put in touch with.

Q217 Jo Churchill: You have sort of, but not, answered the question. I am really interested in the demand element of this. As we treat people more appropriately and as people feel happier to come forward, chances are it will be more than 4,500. Are we building a flexible approach at the top end?

Will Huxter: I apologise for not answering that piece. Part of the point I was making earlier about looking at demand and capacity is not just looking at it now but making a projection about what we expect increased demand to be. Absolutely, we need to factor in, as members of the Committee have already mentioned, the really high level of increase in demand already. We expect that to continue, and that is part of our planning going forward.

Q218 Ben Howlett: I am very pleased about what you have just said there, Minister, in relation to this being a revolution. However, I am not as happy with the fact that this is going to take five to 10 years. With the evidence that we have heard on this Committee about the pretty serious suicide rates within this particular community, to be frank, five to 10 years is not good enough. What specific measures will you take to encourage this process—this revolution—to happen much quicker than that five to 10-year timeframe?

Jane Ellison: Forgive me if I was not particularly clear, but what I was saying was over the next 10 years you will see a great deal of change. That was not to say that was the period of time the NHS was planning specific additional capacity. I was just making the point that if we were sat here in 10 years' time, I think we would see a lot of change. It was not an official timetable, if you like; it was just to give you some sense of the fact that things are changing quite rapidly. Will has referred to the fact that, on assessing future demand, there is already a lot of work underway in terms of workforce planning. This is clearly something that, with all the other work underway through the clinical networks, through the transgender network, through all the other different things that have been set up just in the last two years since NHS England took this as a piece of specialised commissioning, I am confident that we will drive change faster in the next few years than it has been possible to drive it before.

Q219 Chair: Just before we move on, Mr Huxter, you talked about work that you are doing. When will the clinical reference group's guidance be published?

Will Huxter: There are two different pieces of work happening around this specification, which is probably the key element in this. We will shortly go out to consultation on the specification around the children and young people's service, on which we would really welcome comments. We have been out to consultation on the adult specification, but we would be able to take on board comments from the Committee. Separately from that, we are working with the GMC and others around some guidance that they will issue. In terms of the timetable for other organisations, I can try to provide that for you outside this meeting.

Jane Ellison: I have asked NHS England to give a commitment, which I think they were willing to give, that, for all the work currently underway, they will ensure that their timetable for consideration and for publishing will take into account the Committee's timetable for publishing your output of this inquiry, because it would clearly be incredibly frustrating if something was published one week and you reported a couple of weeks later. I have asked Will to make sure that, once we have a clear understanding of your timetable, the NHS is in a

position to incorporate the comments of the Committee through the inquiry report into all the work that they are doing. I would hope in the course of some of this work as it reports, some of these answers and some of the direction of travel will become clearer, but I am quite clear that we must take on board your recommendations.

Q220 Mims Davies: Just moving on to a different sphere and talking about young children and adults and the services that they receive from the NHS, Minister, how would you respond to those parents of gender variant children who say that the NHS is putting their children at risk of self-harm or, indeed, potential suicide through being very cautious when it comes to prescribing hormone blockers? These are for younger children, perhaps before puberty.

Jane Ellison: I am aware that some people have said that and I understand that position. As we have already spoken about, the expert clinical evidence group is currently reviewing the service specification and that includes the process of talking to people affected—“stakeholder engagement”, as the jargon goes. That is about making sure the views of people affected and their families are incorporated into that. That process will provide advice to NHS England to guide their commissioning early in the New Year. That is one of the pieces of work we are referring to that I would expect this inquiry to feed into as well to be considered. Beyond that, I cannot really speculate on what the outcome of that process will be, other than to give you the assurance that that mix of views and that dissatisfaction is being noted and taken into account. That challenge is accepted.

Q221 Mims Davies: We have heard from Mermaids, which is a group that represents parents of gender variant children and adolescents, and they told us as a Committee that there was significant risk of self-harm or suicide where that treatment was not given, which at that point is entirely reversible. There are many parents who are going through the process with their children alongside them. Do you feel comfortable with the process the NHS is conducting in tandem with these parents? It feels to them that they are very comfortable with what their children are doing but the NHS is unable to meet their needs as a family.

Jane Ellison: It is always very difficult if you are a non-clinician exactly to put yourself in the shoes of those who actually treat people facing these challenges and can speak from the evidence. As the service evolves, I would expect the clinicians, as they develop and particularly develop the new specification, to accept challenge. That is how you evolve a better service. Clearly, there is a view at the moment about what is the most appropriate treatment, but there are people who do not accept that. You will find there will be a mix of views, even in clinical circles; there is very rarely a monolithic view of these things. Particularly given it is including talking to people affected by the service and people who will be users of the service, I would expect that process to have challenge in it and for what comes out at the end of it in terms of the service specification to reflect that and to reflect the most up-to-date thinking about it.

These things do evolve. If you look at any service specification over time, you will see that it evolves with the best clinical evidence. The best processes are those that are the most open to challenge and prepared to challenge themselves. These are discussions we have had just in the course of preparing for this evidence session. I have been challenging Will—we have been discussing this over the last week or so—about how we are being open-minded to other points of view and making sure that the full range of professional opinion is represented. That is how you get to the best outcome. As a non-clinician, I

cannot second-guess that; all I can do is ask the questions to satisfy myself that the process is robust and challenging and not just taking a “doctor knows best” approach to things.

Q222 Mims Davies: Thank you, Minister. Moving on to the over 16s, there is a perception that the NHS is over-cautious in prescribing cross-sex hormones to the gender variant people approaching university age, which is leading to what they believe is avoidable harm and distress. In some cases it is causing suicides, with around one in three attempting suicide. In essence, is this delay and cautiousness once again potentially causing harm?

Jane Ellison: Just before I ask Will to comment on the detail, because he is closer to the process that is going on at the moment than I am, I have seen that evidence too and I have read that and it is certainly something that has been identified as a source of real concern. Again, I would expect that the process that is currently underway in terms of looking at the service specification reflects that, but perhaps Will can comment in more detail.

Will Huxter: It is extremely concerning to hear not just from the Committee but separately about the level of distress that individuals and their families experience, and I really regret that. We had a very good engagement session with individuals and families and their representative organisations earlier in the summer, where we looked at a number of issues in this field, including cross-sex hormones. It is a live issue that we are looking at as part of what we do around this policy. That is unquestionably one of the areas we will be looking at and that we will want to get formal views on as part of the consultation we will be doing.

Mims Davies: As a Committee—and certainly as a member of the Committee—we heard from individuals about the level of pain and suffering in the community where some hard listening and some learning could really make a difference. I am pleased to hear your reply.

Q223 Chair: Can I pick you up, though, Minister, on I have to say what sounds like a bit of a “doctor knows best” attitude here that the doctors are better placed than individuals to determine something as intimate and personal as an individual identity? Do you not challenge that?

Jane Ellison: I was saying that doctors are better placed than me to know the specifics about—

Q224 Chair: What about the individual?

Jane Ellison: I would not take a view on that. I cannot think of any service specification about something that is so personal that does not have the capacity to reflect the individuality of the people involved and to have a degree of flexibility about their personal circumstances. It is hard to envisage a service spec fit for purpose that did not have that sensitivity to individual circumstances.

Q225 Chair: Do you agree that at the moment it seems not to have that sensitivity?

Jane Ellison: There are people who have given evidence to the Committee who feel that is the case. I am not close enough to the clinical view of this to understand whether that is the case, but if people feel that is the case, in a way it does not really matter if it is true. If people feel that that is how they are treated, that is what is really important here. The service wants

to respond to people's individual needs, so if there are people who feel it is not responsive, clearly that needs to be addressed.

Q226 Chair: But you will give an undertaking to this Committee today that you do not want to see that continue—that you want to have the voice of trans people better heard by the NHS.

Jane Ellison: Absolutely. We have been really open about the fact that that voice has not been heard clearly over a long time but, if you look at the mechanisms put in place just in the last couple of years to bring clinicians and stakeholders together on a regular basis, this is now happening in a way it has not before. Is it all fine? Absolutely not. Has it got the potential to get better because we are now putting those mechanisms in place? Yes, I think it has. The NHS exists for its users and the NHS is there to serve everyone equally and that goes for trans people and people of all ages equally.

Q227 Ben Howlett: Following on from that comment, I am pleased to see there is a recognition, but this conversation is almost gendered in itself in that we are not looking at those people who are non-binary and identifying as non-binary. We have had a long conversation and all the questions have been focused on people who want to define as a woman or as a man. Do you think there is a specific problem with the Department of Health's guidance and attitude to doctors to understanding what it is like for a non-binary person to access medical services?

Chair: Or, indeed, a non-gendered person.

Ben Howlett: Or a non-gendered person as well.

Jane Ellison: Throughout our evidence we have indicated that we think there is a capacity to do a lot better. That is why all these different pieces of work are underway, including the work with Health Education England and with the BMA, etc. to make sure we can be better. I hope I am not giving you a sense that we think that we have got this entirely right. What we are saying is there are some very good services out there and there are some very good individuals out there providing brilliant service to people, but are we the best we can be? Not yet.

Q228 Ben Howlett: Following on from that point, is that one of the specific areas that you are going to be looking at in terms of new commissioning or extra spend? One of the things I found earlier in the answer to one of Jess's questions around needing to spend more money in this area was that there was not a real sense of where the money needs to be spent. Is non-binary and non-gendered a particular area that you would want to focus your attention on?

Will Huxter: Absolutely. The work that we have been describing, including the various network meetings we have had, has been very much on transgender and non-binary. We are trying to make sure that that perspective is heard and recognised within the NHS. I would envisage that that spend is predominantly going to be in terms of the support that we offer and how we make sure that the gender identity services we have are flexible and responsive to that full range of needs. Again, back to some of the things the Minister was saying earlier, we want to make sure that individualised support is available to people that responds to their particular needs rather than a binary view about gender.

Q229 Ruth Cadbury: Going back to the issue of young people who want to transition, we have heard evidence that the earlier they are able to go through that transition before the physical effects of adolescence really kick in, the better. What has the NHS learnt from countries that recognise the choice of those young people and allow that transition to start earlier and therefore they are able to use hormone blockers and then sex-change drugs at the right time rather than when it is often very late and with all the trauma that impacts on young people?

Will Huxter: This is absolutely part of what we want to look at in terms of the service we offer to children and young people. It is a key part of our looking at the service we commission and whether it needs to change. In terms of where we are at the moment, we are, as the Minister said, open to suggestions and views of how that should look, but the current policy is as you have heard reported to this Committee already.

Q230 Mims Davies: I want to make a comment on both age groups and the impact potentially in later life when it comes to suicide rates or the impact of suffering. You mentioned, Will, an individualised service and I think that is exactly what they are looking for. In both age groups, there seems to be what is perceived by people going through the system as a long period of assessment and very much an, “Are you sure?” until people really become distressed as either a family group with younger children or, indeed, as older people. That is something you can take on board. That was the predominant feedback on both ages of children involved there and young adults.

Will Huxter: Absolutely. We can take that point.

Chair: It is good to hear there is so much work going on. I would appreciate it if you can give us a little more detail, particularly in terms of the publication times of some of the work that you have talked about. It seems that you have quite an amount of work that is already in progress, which is good to hear; we just want to know when it is going to come into play. We are moving on now to talk about some of the other issues, perhaps involving the other Minister.

Q231 Angela Crawley: One of the things that was clear from the hearings as well is that there is an element of hate crime involved in transgender people’s experience. To quote the experience of an individual transgender person, Mr Hughes wrote to us and said he was “harassed, spat at, run over ... sexually assaulted, beaten”, had dog faeces and stones thrown at him and was head-butted. These experiences are quite commonplace for members of the transgender community. We are interested in what the Government are doing to tackle hate crimes.

Karen Bradley: The first thing I want to say is that that is unacceptable and this Government are determined to tackle hate crime. We had a cross-Government hate crime action plan in 2011. We have made good progress but there is undoubtedly more work that needs to be done. That is why I announced earlier this month that we will produce a new cross-Government hate crime action plan to really drill down into the issue. What we have seen since that action plan is an increase in overall reporting of hate crime. The statistics show a reduction in the estimates of hate crime overall but an increase in reporting, which is good news. What we need to do is drill down into those individual types of hate crime and understand exactly what is going on and the scale of the problem. The Committee’s work is

very helpful to us, as it happens, at this time. Also, we are working with trans stakeholders and groups to make sure that we are reflecting people's experiences.

It is probably worth my giving you the statistics. Last year there were 605 recorded cases of hate crime. That is a 9% increase on the year before. Roughly half of those are public order cases and about 35% involve violence against a person. When we look at the under-reporting of trans hate crime and why there is under-reporting—this is true of all hate crimes—victims do not feel they will be believed and do not feel they will be listened to. That is something we are working on with the police and other law enforcement to make sure that changes and people can feel confident. One of the other things that is raised is a worry about exposure in the press—that the press, when they report the crime, may do so in a way that is judgmental to the victim. Again, that is not acceptable and we will work on that as part of our hate crime action plan.

Q232 Angela Crawley: Just as a supplementary to that, I appreciate the points you have raised about the number of incidents reported, but within the police establishment how much training has been involved in ensuring that police officers are able to recognise transphobic or homophobic hate crime as an incident in its own right?

Karen Bradley: Significant training has been delivered, but we need to do more. There is no doubt about it. We need to do more. We need to make sure that there is that awareness at all levels, because it is about making sure victims feel confident enough to come forward. It is part of the work we are doing. We are working with the national policing lead on this issue and really getting that information and the research. There is a lack of research at the moment, and a lack of understanding of the scale of the problem and how to identify the problem. We need to make sure that that is addressed.

Q233 Ruth Cadbury: I would like to look at what we see as omissions in the Crime and Disorder Act and also the Public Order Act. First, why are there not transphobic aggravated offences like those that exist for racist and faith hate crime? Why are there not offences in relation to stirring up hatred against transgender people like those that exist in respect of race, religion or sexual orientation?

Karen Bradley: If you will forgive me, perhaps the question on sentencing could be addressed to the Ministry of Justice, because they would have responsibility for that. We are very interested in hearing what the Committee finds from your research and your inquiries about any legislative defects or any legislative gaps. This is part of the work on the action plan: to make sure that where there are gaps in the legislation we are aware of them and we look at how they might best be addressed.

Q234 Ruth Cadbury: What evidence do you have that there are gaps in the legislation?

Karen Bradley: As I say, we are working at this at the moment. We are looking across the legislation to check that there are not gaps. I look forward to the research and your inquiry because it will help us enormously in that point.

Q235 Chair: We are hearing that it is work in progress and you are looking actively at this area.

Karen Bradley: As part of the work on the action plan, yes.

Q236 Jess Phillips: You were saying that you were working with the police to get victims to come forward, etc. I just wanted to know exactly what that looked like. What exactly are you doing?

Karen Bradley: Part of it is the training. The College of Policing is looking at how best to train police officers across the whole range of hate crimes to make sure that there is that understanding and there is that knowledge. It is also about showing success—showing that where people do come forward they are taken seriously, they are listened to and we see justice delivered. It is incredibly important that we keep getting the reporting levels up, we keep getting more people who feel confident to come forward, we see a change in the way these crimes are reported—that is incredibly important to give people confidence—and the police have the right training. It is very similar to some of the domestic abuse work—the coercive control—we have been doing, where we have to change slightly the attitude that the police might have to believe victim from the moment that they arrive. I have seen good progress on that on domestic abuse; we need to make sure we are seeing that same progress.

Q237 Jess Phillips: Thank you very much for that. We would all welcome, in all the crimes that you have identified, but specifically in this area of hate crime, an increase in reporting and the Department definitely deserves praise for an increase in reporting. You say you need good examples of reporting, charging and then conviction to show that we do not tolerate this and that will change in the future. Can you tell me what the current conviction rate is of hate crime? We have had an increase in reporting.

Karen Bradley: Can I write to you about that point?

Jess Phillips: You can.

Q238 Chair: Just before we move on to our next topic, there are examples, particularly when it comes to reporting disability hate crime, of innovative work in reporting methods. What have you done in this area to try to look at innovative reporting methods rather than simply relying on the police?

Karen Bradley: It is a very good point. Disability hate crime is one of the most under-reported of the hate crimes. There is only 5% reporting on disability hate crime, which is shockingly low and really does need to be improved. You are absolutely right; there have been some very good innovations. It is about working with the community. It is not something we can tackle alone. Where we have seen good developments on other types of hate crime, for example disability, it has been that community partnership work and there is a lot we can learn from that in the trans issues.

Q239 Chair: That is something you will be actively looking at here as well.

Karen Bradley: Yes.

Q240 Jo Churchill: My question revolves around recording gender in passports. Since 2010, it should be possible to record it. However, we have had instances where people have said that they have been told that their passports are forgeries and so on and so forth. We have heard from members of the trans community, including people who are non-binary and people who have no gender in their identity. With that in mind, countries such as Australia, New Zealand and Bangladesh issue passports in which the holder's gender can be recorded as "X". It is quite a simple question: could we not have that provision too?

Karen Bradley: The first thing I would say about the passport is that it is a travel document. It enables the holder to travel. Changes need primary legislation, and the impact that that might have on other legislation would need to be considered. We are interested in hearing the evidence and we would like to know in particular what need there is for change. The evidence you have heard of people not being able to travel is very important in helping us to look at this.

The other thing I would say is that the Passport Office has been very forward thinking in accepting an individual's desire to change. The work that we have done in the UK has been followed across other countries that are looking at this. I do want to be clear that if somebody wishes to change their gender in their passport, the Passport Office will and can facilitate that.

Q241 Jo Churchill: That would not mean that they still require a declaration of name change and a doctor's letter confirming the change of gender, which is meant to be permanent?

Karen Bradley: No. We introduced a much simpler, much less intrusive process to allow people to choose their gender here in the UK.

Q242 Chair: We have had evidence that there is a need—that there are individuals who define themselves as non-binary or non-gendered but you are not able to accommodate that. What gives you the right to take that attitude?

Karen Bradley: As I say, we are very interested in looking at the evidence and the results of this inquiry to help us to develop our work in this area.

Q243 Ben Howlett: If you identify as non-binary or non-gendered at the moment, what is the Home Office's advice to someone who is not either male or female?

Karen Bradley: As I say, a passport is a travel document. It is a document to enable somebody to travel. It is not like a birth certificate or other forms of identity. We need to look very carefully at the evidence about that and we would like to hear about the individual examples.

Q244 Ben Howlett: At the moment they have no category, so in effect what they are having to do is lie on that documentation to say that they are either male or female when they are neither. That is what I am trying to press on here. What advice does the Home Office have currently? It is understandable if there is no current advice on this particular area, but if there is we would like to know about it.

Karen Bradley: As I say, the advice around passports is to enable somebody to travel. It is the information that is required so somebody can leave the UK and travel to another country. The gender identifiers are important in making sure that somebody can be identified, and they can assist with border and law enforcement matters, but we will look carefully at the evidence of the inquiry.

Ben Howlett: I think you probably know where we are going with this one, which is very difficult.

Q245 Jo Churchill: Yes. With the advent of electronic passports, iris identification and so on, it makes it a very much easier process for us to accommodate across the board.

Karen Bradley: The work this Committee is doing and other work is taking forward our knowledge and our understanding of the issues significantly. The Government and certainly the Home Office want to listen and understand the problems and how we might address them.

Q246 Chair: Minister, let us cut to the chase here. Other countries are doing this. Why are we not? Other countries like Australia are already doing this, so it is not an impossible situation. The advice that you give on the Government's website is very clear about all the information that you have to give in terms of gender change and you have no provision at all for non-binary or non-gendered individuals. I suppose it prompts the question: why on earth, in this day and age, do you need to have the gender on there at all? Why not just take it off? Are the Government not too obsessed with our genders? Why not just take it off?

Karen Bradley: Gender is very important in terms of identification, but we are looking very carefully at the examples of the other countries that have done this and we are open to listening.

Chair: Walking through passport control, we could dress very differently and perhaps it would be difficult to know which gender any of us were. I am not sure I buy that argument.

Q247 Angela Crawley: The point that has been made is we live in a society that creates gender markers and in most walks of life we insist that someone must tick one box or another. I appreciate the point you have made about the fact that it is a travel document. To that person, that document enables them to travel the world, but it is also part of their identity to be able to say that they choose to be neither male nor female. If you do not allow a third option on that passport, you are not allowing them to identify in their chosen gender and you are perhaps limiting their abilities to travel, which seems nonsensical.

Karen Bradley: I very much take the point and I am looking forward to seeing the evidence.

Q248 Ruth Cadbury: Can I go to a slightly different issue but still on passports? We have been covering the issue of the third box but I want to go to the issue where you said that people who have transitioned male to female or female to male are accommodated by the Passport Office. We have evidence that people have struggled to have their gender change recognised. I wonder what evidence you have to suggest that everything is hunky dory in that respect.

Karen Bradley: I have seen the evidence and we are taking note of it, taking stock of it and making sure we reflect it appropriately. The approach that we have used in the UK has been rolled out and adopted in other countries, including those that use the "X" in their passport as a gender option. We have taken great steps, but there is always more to do and there is always more we can learn.

Q249 Ben Howlett: This point has been made in some evidence that was given by Sue a couple of weeks ago here. She sought medical surgery overseas and then came back. Her passport would not come back in time for her recognition to be changed and shown on her passport. She has a different sex on her passport. What advice could you give to people like her who have to go overseas to get gender changes and then come back over here?

Karen Bradley: If you will forgive me, could I perhaps write to the Committee about that specific point? I would not wish to give incorrect evidence without having checked.

Q250 Chair: Talking about points of clarification, can I just take us back to the discussions around passports? We have just been scratching our heads here a little bit. Our understanding is that there is a requirement for there to be a letter from a doctor or a medical consultant confirming that a change of gender is likely to be permanent and evidence of a change of name, whereas you implied that that might not be the case. Can you clarify that? I am just looking at the Government website, which tends to suggest that you do need that letter from the doctor.

Karen Bradley: Again, would you allow me to check that point exactly and return to the Committee?

Q251 Chair: If you could—because what you said may run contrary to the advice that is on the website—we can clarify that.

Karen Bradley: I will check exactly.

Jane Ellison: Chairman, as I sense you might be moving towards the close of the session, Will is in a position, if it would help the Committee, to confirm the timetable for the service specification for children and young people and then we can write with a follow-up about the other pieces of work underway, both the one-off pieces of work and the rolling programmes of engagement like the transgender network. Perhaps if Will confirms for the record the timetable on the service spec for children and young people.

Q252 Chair: That would be very helpful. Thank you.

Will Huxter: We will be going out for testing with stakeholders on the service spec before the end of November. That then goes back to the paediatric clinical reference group, which oversees this particular area. We will then go out to formal consultation early in 2016. Hopefully that would fit well with the timetable of receiving the report from the Committee and our being able to reflect that in our considerations.

Chair: That is incredibly helpful. Thank you very much. On behalf of the Committee, I thank you all for coming along today. I think you sense the intensity of some of our discussions on this issue. We very much value having your input and we look forward to your follow-up correspondence as you have indicated. Again, thank you very much for taking the time to be with the Committee today.

Examination of Witnesses

Witnesses: **Rt Hon Nicky Morgan MP**, Secretary of State for Education and Minister for Women and Equalities, **Nick Boles MP**, Minister of State for Skills, Department for Business, Innovation and Skills and Department for Education, and **Caroline Dinenage MP**, Parliamentary Under-Secretary of State for Women, Equalities and Family Justice, Ministry of Justice and Department for Education, gave evidence.

Q253 Chair: Thank you very much for joining the Committee today and for taking the time out of what I know are very hectic diaries to come and give evidence to us as part of our trans inquiry. We are most grateful for that. For the record, could you just give your names and your positions, please?

Nicky Morgan: Right Hon. Nicky Morgan MP, Minister for Women and Equalities and Secretary of State for Education.

Caroline Dinenage: I am Caroline Dinenage MP and I am Minister for Family Justice in the Ministry of Justice and also Minister for Women and Equalities.

Q254 Chair: Minister Morgan, I think you wanted to make an opening statement, which the Committee would be very interested to hear.

Nicky Morgan: Thank you very much, madam Chairman. I am really delighted to be here today along with Caroline and Nick, who is going to join us. I know that you have already heard, because I have been sitting here for the past hour, fascinating evidence from Karen Bradley, Jane Ellison and the gentleman from NHS England. It is a pleasure to be here giving evidence in the first inquiry of the Women and Equalities Select Committee. I think you are going to shine a light on some issues that have been sometimes neglected and we are starting with one of those now.

It is very timely that we are all talking about transgender equality because it has powerfully entered public debate in the last few years. There was even news about it in today's broadcasts. More transgendered people are talking about their experiences and speaking out about discrimination, yet I am also aware that public policy and society more widely has been notably quiet on transgender equality. We have as a country come a long way in terms of lesbian, gay and bisexual equality, but we have further to go. We need now the same national determination to see equality for transgender people. We also ought to celebrate the fact that this is the most diverse Parliament; we have the most openly gay parliamentarians ever and, again, that is something to be celebrated.

As Minister for Women and Equalities, I am directly responsible for the Government Equalities Office, which has a vital role in bringing the voice of transgender people to Government policymaking and leading on key equalities legislation. You have already touched on some of those issues in the previous session. I am delighted to say that earlier this year the UK was for the fifth year in a row recognised as the leading country in Europe for LGB and T equality by ILGA-Europe's annual rainbow map, but that does not mean we can allow ourselves to become complacent.

I know that you have already heard much evidence about the challenges transgender people often face and I also know that engaging with the trans community is vital to improving our understanding of inequality. That is why a central role of the Government Equalities Office is to meet stakeholders and support organisations such as the Parliamentary Forum on Gender Identity, LGBT Consortium and Transgender Organisations Network regularly. I will not go into the specifics that GEO engaged in because we will come across that in evidence. I know also that you have already heard from other Departments, but is right to reflect that a range of Whitehall Departments, from some of which you have Ministers before you today, are involved in delivering specific policies for transgender people. Part of our role in the Government Equalities Office is to co-ordinate that work across Government, to champion an overarching vision for transgender equality, but to leave some issues rightly with Departments, where they will best be tackled.

There is much more that we should and must do to improve life for transgender people. I am currently finalising my transgender equality priorities for this Parliament and the report from this Committee will be of huge value in doing that. Trans people have a higher profile than ever before and your inquiry is contributing to greater public awareness of the issues they face and we all look forward to seeing your report.

Q255 Chair: Thank you very much, Minister. It is a very helpful outline of the work that you are doing. A number of us are going to ask questions. I was going to kick off the questioning session with something very general. It is something that was said by one of the people who came to give us evidence. In 2011, the previous Government published a transgender action plan and it was described by Christie, who came to give us evidence, as “all plan and no action”. Do you think that is a fair description?

Nicky Morgan: I do not think it is a fair description. There were 103 action plans set out in the two plans. 60 have been completed, 31 are ongoing—and many of them were meant to be ongoing—and 12 have either not been taken forward or action is not underway on them. Some of the major achievements include reforming Ofsted’s schools inspections. Perhaps we will come on to talk about education to tackle prejudice-based bullying and homophobic and transphobic bullying as well. We issued a new hate crime manual for all police officers. Sport England issued guidance on supporting trans people in sport. There was the Marriage (Same Sex Couples) Act. There was also external production of guidance for employers and service providers, which has been funded and drafted and is shortly to be published.

There are some things that have not yet been done. To be honest with you, as we heard in the previous session, these are issues that have not been widely discussed in society or in this place. I think it is fair to say that, just because there is an action plan, that does not mean there is change or cultural change or necessarily a dialogue. That is what we would very much like to see happening in this Parliament.

Q256 Chair: What do you see your role as in creating that momentum for a dialogue to start?

Nicky Morgan: Genuinely I think we all welcome the fact that the Committee has started off looking at this. That has given a huge profile already to some of these issues. I see my role as Minister for Women and Equalities as twofold. First, it is very much to come up with the priorities for the Government Equalities Office for this Parliament. I have already said,

shortly after the election when I was reappointed, that issues for transgender people would be a part of that. I am going to use the phrase “transgender”, but I take that the point that Ben has already raised earlier today that there is a wide variety of non-binary—all sorts of things. I also apologise in advance if I get something wrong, which I will probably inevitably do. Hopefully it shows that we are all willing to listen and to learn. Partly it is about having the priorities.

It is also about holding other Government Departments’ feet to the fire. You have already heard in the previous evidence session that Health has a huge part to play here, as does the Home Office in terms of hate crime and passports. Clearly the Ministry of Justice does, because they are responsible for gender recognition. Nick Boles is going to talk about workplace issues. There are other Departments as well: the Foreign Office and the Ministry of Defence. Again, it is about making sure that the Government Equalities Office’s expertise and that of those from outside is available to help other Government Departments develop the right policies.

Q257 Chair: Before I bring other colleagues in, you have just put your finger on it there, have you not? Six Ministers will be giving evidence to this Committee over today and next week. We have a lot of Ministers involved here. Is there a lack of progress in this area because of a lack of accountability?

Nicky Morgan: With the introduction of the Committee, that is one of the ways in which Ministers are held accountable to Parliament. It is very interesting that we have had women and equalities oral questions certainly since I have been here—they may very well have been in the previous Parliaments as well—but issues around transgender do not come up very much in those questions. That is often a sense of what Parliament is discussing and looking at, and that is another way in which Members of this House, often acting on behalf of constituents, can hold Ministers to account.

Q258 Mrs Flick Drummond: You have touched on this already. Looking at the Equality Act 2010, Section 7 is already outdated, unclear and misleading. It refers to “gender reassignment” and “transsexual persons”. Should this be replaced with just gender identity as protected characteristics, particularly as we have mentioned non-binary people who might not want to go through the whole procedure to change but would like to be seen as whatever they want to be?

Nicky Morgan: I understand there is a debate and I am sure the Committee has heard evidence on the interpretation of that section, both on what “gender reassignment” means in the context of that Act but also on whether others are protected under the Act because of the perceptions wording that is in the Equality Act too. The Act is only five years old and, as you captured, the world moves on very swiftly. I would want to take time to understand, to hear the Committee’s recommendations and to identify any gaps, if it is agreed that there are any, before opening up the whole Act again. The issues of non-binary certainly, as I understand it, were discussed when the Act was debated in both Houses of Parliament and Parliament decided to go with the wording that was put forward by the then Government. I also understand that some of that relates to the Equal Treatment Directive and its implementation. What is in the Act does reflect that, but, again, life clearly does move on apace.

Q259 Mrs Flick Drummond: The Ministry of Justice stated in its response to Ashley Reed’s petition on gender self-definition that the Government are “not aware” that being non-binary “results in any specific detriment”. Do you know on what evidence that statement is based?

Nicky Morgan: Caroline probably will want to come in, because the Gender Recognition Act falls particularly within MoJ.

Caroline Dinéage: Yes. This was probably a very regrettable example of MoJ officials trying to answer a petition factually and swiftly without really being necessarily as aware of things like understanding and tone as they should be. What they said was that they felt that there was no specific detriment experienced by people who identify as non-binary. What they meant to say was that there is no specific detriment experienced by people who identify as non-binary that is not already covered by existing legislation, in the sense that we have very extensive legislation in the Equality Act and other legislation to cover things like any form of discrimination on the basis of sexual orientation because somebody is proposing to undergo or is undergoing or has undergone a process or part of a process for the purposes of reassigning their sex.

People are also protected if they are incorrectly perceived to have one of the Act’s protected characteristics, even if they do not. For example, someone would be protected if they experienced discrimination because people incorrectly perceived them to be undergoing gender reassignment when they were not, or people incorrectly perceived them to be male or female when they were not. People are protected if there is any discrimination on the grounds that they do not comply with what society seems to think that men or women should be. They may also be protected by other forms of laws, such as employment legislation and hate crime and human rights laws.

Factually, the answer was technically correct but did not show the understanding of the fact that people who are anywhere in the trans community may indeed at any one time experience all manner of obstacles and challenges that society may throw at them.

Q260 Angela Crawley: Do you think it is fair to say that, despite the aims and ambitions of the Equality Act, in many ways the protected areas within the Equality Act perhaps are not disseminated to the community, in the sense that people do not know how to use the Equality Act for the purpose for which it perhaps exists? That is a common theme from some of the expert witnesses that we have heard.

Nicky Morgan: That is probably fair. We issue guidance across Government to several different organisations. Putting my Education hat on, schools are issued with guidance about how to follow the Equality Act. As you all know, just because you have guidance or because a law has been passed, that does not necessarily change what is happening on the ground or make people really think about how exactly, as Caroline says, you can be right technically, but, in terms of your attitudes and the conversations that you have, it takes more than that. I know there are also debates about the exceptions under the Equality Act and whether they are right and we might come on to that. We have talked about hate crime; you gave a terrible example earlier of the hate crime somebody had suffered. By and large I do not think people mean to get it wrong when I go into schools or businesses or other areas, but sometimes they might not realise what the legislative framework is they should be aware of.

Caroline Dinenage: I agree with Nicky and just add that I also think that people in the trans community may not necessarily be aware of the protections that are afforded to them, which are quite diverse and quite complicated in some ways.

Q261 Ben Howlett: Excuse me for my unparliamentary language here—do not take offence—but when we have been listening to some of the evidence it has been quite clear that from the Equality Act in 2010 if someone hurled abuse at you, “You are a tranny”, that would be categorised as against the legislation, but if they hurled abuse saying “freak” or “queer”, that would not be. It is quite clear that the response that came through from the Ministry of Justice really did not understand that. I appreciate what you have just said there, but it is right that the Equality Act is not fit for purpose based on a 21st century model and how things have changed. It really needs to continually evolve with the different ways that different members of the LGBTQ community are being discriminated against. I just wondered what your thoughts were on that.

Caroline Dinenage: Yes, completely. As Nicky said earlier, we have come such a long way in the last five years in terms of understanding, but we still have such a long way to go in terms of how we best protect people and best facilitate people to be able to live their lives without having to endure this really unreasonable and, frankly, appalling behaviour. The law by definition needs to evolve in order to reflect the society in which people live.

Chair: I am keen to get to the end of these questions by the time the bell rings at four, because we have a vote at four.

Q262 Jess Phillips: This is specifically to Caroline, because I asked this question about conviction rates earlier and you are from the Ministry of Justice, so it is your Department. Could tell me whether you think the Ministry of Justice is enabling conviction of hate crime, and specifically trans hate crime, to keep pace with the rate of reporting? Also, I just wonder, Caroline, if you could outline for us exactly what the Ministry of Justice is doing to move this on.

Caroline Dinenage: With regard to hate crime, there was a Law Commission report that looked at how we classify hate crime in the trans community and made certain recommendations. That is being looked at by the Ministry of Justice in partnership with the fact that we have this hate crime strategy that is going across Government. The MoJ wants to do that in partnership with those reforms. At the same time, it is very early days. What was the other bit of your question?

Q263 Jess Phillips: I suppose that answers what the MOJ is doing. Do you think that the Ministry of Justice is doing its bit in hate crime and is conviction keeping pace with reporting? The Home Office very much laid out to us that they were doing stuff and reporting was going up, so they must be doing something. Do you think that the Ministry of Justice is doing the same levels and that would then come out in conviction at court?

Caroline Dinenage: The role of the Ministry of Justice is to ensure that the legislation is in place for people to be able to bring prosecutions where the law has been broken and where people have been treated in an inappropriate way. In answer to the question about conviction rates, we know that the number of reported cases has gone up and in many cases that is a good thing, but potentially that could be seen as a bad thing as well, because it shows more people are victims. The conviction rate for hate crimes across the board at the moment is

84.7%, but at the moment we do not have that broken down into hate crimes that are directed at people from the trans community.

Q264 Jess Phillips: 84.7% of people who come forward with a hate crime will receive a conviction in court.

Caroline Dinenage: The figure I have written on my bit of paper in front of me is that the conviction rate for hate crimes that are taken to court is 84.7%.

Q265 Jess Phillips: I am almost certain that that does not mean 84.7% of the people who go forward with a hate crime will end up—

Chair: Maybe we can ask the Minister to write to us about that.

Caroline Dinenage: That might be people who go through the court process, but I am more than happy to write to you to elaborate on that.

Q266 Ruth Cadbury: My questions are for both your hats. First, in the light of the review you have just mentioned, is the MOJ reviewing the Crime and Disorder Act and the Public Order Act so that aggravated offences exist for transphobic crime and also stirring up hatred? Are they being considered? Secondly, in terms of the questions we were asking earlier about the Equality Act, wearing your Government Equalities Office hat, when will you be reviewing the Equality Act to address the omissions around transgender issues?

Caroline Dinenage: With regard to hate crime, as I said, there is a cross-Government hate crime action plan that is being taken forward at the moment and so a lot of changes in legislation would be considered as part of that. Also, the Ministry of Justice is really keen to hear the input of this Committee and this inquiry to see where you feel changes might be considered. We already have one of the strongest legal frameworks to combat hate crime, but the Government should never rest on their laurels and never think that they cannot improve the situation.

Nicky Morgan: On the Equality Act—I was just looking at it—first, it is one of the world's strongest legislative frameworks to protect and prevent discrimination, harassment and victimisation on the grounds of nine protected characteristics, including gender reassignment and sex. One of the reasons for having this discussion is to identify the gaps in policy. Exactly as we heard earlier, life moves on. One of the issues for Government is that if there were to be a review or a change, there are lots of other people who also think that there are grounds for protection. I do not think it would be a simple and straightforward review. The Sex Discrimination Act 1975 was either repealed or replaced by the Equality Act 2010. That is quite a gap. The other thing is that the Equality Act introduced the public sector equality duty and in the last Parliament the Government agreed to review that in 2016 and so that has been ongoing.

Q267 Mrs Drummond: The Act allows trans people to be excluded from single-sex services in some situations. How certain are you that those provisions are used proportionately, appropriately and fairly?

Nicky Morgan: I suspect overall they probably are. I am not sure that we have necessarily evidence. There are certainly examples. I have some here: group counselling sessions for

female victims of sexual assault; public changing rooms; bathing facilities and toilets, which I know is a huge area; and certain procedures in hospitals where it would be appropriate to have single and separate sex services. We should be very clear this is not a green light for discrimination. There is a line between discrimination and legitimately offering single-sex services. We are aware of only one case, which relates to a pub in Halifax, which was heard at Halifax Crown Court last year. That was in relation to the gender reassignment exception. That is the first case that we are aware of. Again, I would be very interested to see the evidence—I have heard some of the evidence that has been given to the Committee—and hear the Committee’s recommendations on that.

Q268 Ben Howlett: On that particular point, you mentioned one case. Based on the fact there is only one case—I am sure there should be many more cases out there—do you think it is easy enough for someone who is a member of the trans community to be able to uphold an issue of discrimination using the legislation?

Nicky Morgan: The Act was only introduced in 2010. With my former legal hat on, taking things to court can take a while. You also have to have somebody who is willing to step forward and to identify and go through the publicity associated with bringing a case. I suspect that acts as a bit of a barrier. Whether there are organisations that are preparing test cases we are not aware of, but you are right.

The broader point in all this is we can have all the legislation we want, but this is about changing things on the ground. In that particular case, it was about the use of a ladies’ toilet in a pub. Would it not be better if we had just avoided the case in the first place and had somebody who was running a public service who had thought more about what they would do when they were asked if somebody who was transgender could use that particular toilet? This goes back to the point about education and dialogue and discussion and understanding, which is where I hope we are beginning to get to.

Q269 Chair: Before we break, can I just ask a very general question of the Secretary of State? Do you think that Government policy should allow people to determine their own gender?

Nicky Morgan: Do you mean as they have done in Ireland, with the self-declaration? We are very interested to see how that develops. It is a big step. It is a different way of doing things. It reflects, perhaps, the point we were discussing earlier about where we have got to in the last few years, and the point you were exploring earlier on about passports. It happens as well in school exams. When and why do we need to know about people’s genders? That is a big debate to be had. Thinking about exam certificates and exam entrance, in one way, what does it matter what someone’s sex is? It is their paper, it gets marked and they get a grade. On the other hand, I would like to know which subjects girls are not doing and boys are not doing and which ones they are not doing well in. For research purposes and knowledge, I would like that information. That is just one tiny area of public debate on this, which is a big issue, but, again, I absolutely welcome the evidence given to the Committee and we will read the recommendations with huge interest.

Q270 Chair: I sense sympathy to a position the Committee feels a little strongly about, which is that people should be able to determine something like this, which is so personal, themselves.

Nicky Morgan: It is very personal. Jane used the words earlier that the NHS is “on a journey”. I have found this. Even my office, in preparing all this, has learnt a huge amount. I certainly have in reading all the papers for this hearing today. There are some debates and discussions to be had, but they are big steps. Caroline is absolutely right about societal changes. Sometimes in this place we have to think about whether we run ahead of society or whether we are reflecting society as it is and the debates that people are having. I cannot give you a definite answer, madam Chairman, because, to be honest with you, I would not say I am through my thinking on all of this, but I am absolutely open for a personal debate and discussion on it.

Q271 Angela Crawley: I simply want to probe the point you made about marking or deciding on how people advance in academia based on girls and boys. I appreciate why you might want to use gender as a marker. You have spoken at great length about this. If we were to remove the emphasis on male or female within the school setting, perhaps we could seek to address some of the concerns that we have just explored over the course of this Committee. While I appreciate your point, perhaps the Government’s emphasis on marking male or female is creating more of an issue than it is resolving.

Nicky Morgan: I think I have explained to the Committee why, on the one hand, I can understand why it should not matter what sex somebody is or whether they are not identifying with any sex when they are taking an exam. They are there, they are being tested and then they get the mark. As I say, for other purposes I am interested to know what boys and girls are doing and how they are doing. There may be other ways of finding out that information—other ways of declaring and gathering the information for research purposes.

Chair: I am now humbly apologising to Jo, because I have started to tread on your toes again with your next series of questions. I apologise. Shall we cautiously go on to the next set of questions, knowing that the Minister is on her feet and we are probably going to hear the bell ring very shortly?

Q272 Ben Howlett: I was just going to come on to one question on the back of what has just been said. Can I just get a general summation in relation to the Equality Act and the position of the Government? You do see that there is a need to update and add in things like non-binary as a protected characteristic and you are open to our suggestions of what other protected characteristics need to be added in to the mix there.

Nicky Morgan: I am absolutely open to suggestions. As I say, it would not be a straightforward review because, being open to one set of recommendations, I can see this opening up another whole area of debate and discussion. I do not know how long the Equality Act 2010 was in gestation, but I suspect it was for some time, so I do not think this is going to be a quick process, but I understand that life and society move on.

Q273 Jo Churchill: Taking that point, if we are looking at that one, how about looking at the Gender Recognition Act 2004 as well? There is some argument that that needs revision. It has been criticised as longwinded and a bit bureaucratic, because the fees are excessive with regard to the certificate, and for the requirements of medical diagnosis, the two-year rule and there being no provision for non-binary in it. We have just alluded to the change in Ireland and also Denmark and Malta. Their legislation is slightly further ahead. Could we use that to guide us as we go forward? Just recently, Ashley Reed wrote to the Ministry of Justice and got a reply, but the reply did not really indicate that there was going to be any

change. Specifically to Caroline, the process of applying for a gender recognition certificate has been described as protracted, bureaucratic, costly and humiliating. Do you agree?

Caroline Dinenage: I am going to unpick this. We have to start from the basis where we understand that the Gender Recognition Act, which went through draft form in 2004 and was introduced in 2005, was internationally ahead of the game. We were quite ground-breaking internationally in introducing this form of legislation. Because of that, we had very little international basis for comparison when drawing this up. I have listened with enormous interest to quite a lot of the evidence sessions this Committee has taken and have really taken on board quite a lot of that evidence, because it is fascinating and invaluable for the Ministry of Justice. I know that there are concerns around the two-year waiting time. I know that there are concerns around the medical nature of the evidence that needs to be produced to the panel. For very good reasons, these things were introduced at the beginning, because there was very little understanding of the transition process and what people needed. We have to recognise that for everybody it is a journey. It is a journey for those who are going through their transition, but it is a journey for Government and it is a journey for the Ministry of Justice. For everybody, that journey will be different. Some people will not really need a great deal of time to know exactly what they are doing, but other people may feel that they do need that time to adjust, to live their acquired gender and to make sure that they have some form of medical support, whether that is counselling or other types of medical intervention people feel that they want. These were seen as appropriate balances given the knowledge at the time.

Since then, we have seen other countries around the world—most recently Ireland—come up with legislation that differs from ours, in the sense that people can self-refer, people do not have to wait two years and there are also discussions around ages. These are all really important experiences for us to learn from, to see how that works in countries like Ireland, Malta and Argentina, where you have already identified that it is different. We are very much on a journey as well and trying to learn from the best practice around the world, from those who did not start off with this legislation as early as we did but have now done things slightly differently based on the learned information they now have and based on the fact that in the last five years we have moved on such a long way in understanding trans issues.

I would just say that the cost has never gone up since this was introduced 10 years ago. It is still £140 and there are remissions available for those who are unable to fund that. Effectively, people are applying for documentation and there is always a fee related to Government documentation, be that a passport or another birth certificate or whatever. I take on board that feedback, but the price has not gone up in the last 10 years.

Q274 Chair: I will bring in colleagues as well if they want to add anything else, but I listened very carefully to what you were saying and I am very pleased to hear an openness to review whether it is the legislation or processes or, with your colleagues beforehand, around the NHS. But I go back to the quote that we had from Dr John Dean, reported in the press today that “Not treating people”—talking about medical issues—“is not a neutral act. It will do harm.” Do you not agree that inaction in your area, whether it is legislative or in any other area, is not neutral? It does harm, because we have a situation where one in three trans people have reported attempting suicide at least once as an adult. Getting this right really matters and I sense a little complacency. I hope I am wrong.

Nicky Morgan: You are completely wrong, madam Chairman, if I might be so bold. I do not disagree with the comment. You cannot be neutral about these things. For every person who transitions there are people around them—family members often, whether you are talking about parents, a spouse or children—who also are very much tied up in this and often affected too. I do not think we can be neutral about change, but if we are going to change the law, we all know in this place that does not happen overnight. There will be reviews and consultations. Just think about how long it takes for a Committee like this to gather evidence, hold sessions and publish recommendations. We have to get it right, because if we are going to pass a new law, the Gender Recognition Act was 2004, so it will be 11 years on, and we are going to have to have an Act that will stand the test of time a little bit and be broad enough to deal, as we have just heard, with all the different issues that have come up, even just in five years since the Equality Act. I would push back on complacency. There is no complacency with any of the Ministers before this Committee on this issue at all.

Caroline Dinenage: Just to add to that—I am fully aware that we have a bell ringing—there is no greater illustration of how seriously the Government take this than that, for the first time ever, we have a Minister who straddles the Ministry of Justice and the Government Equalities Office. I was specifically put into the Ministry of Justice with a women and equalities background to further issues just such as this.

Chair: Can I suspend the sitting for 15 minutes? We will reconvene at 16.40.

Sitting suspended for a Division in the House.

On resuming—

Chair: Apologies for that light intermission to those sitting listening to us. Perhaps we could continue with our questioning. Mims Davies, you wanted to come in at this stage with some questions.

Q275 Mims Davies: Yes. Thank you, Chairman—Chair. I cannot say “Chairman” here, can I? Thank you, Chair. Sorry. I am going back to the Dark Ages. This is for Minister Dinenage. It has been reported to us that sometimes during court proceedings for cases regarding transgender people they have been inappropriately outed, which has caused immense trouble and harm to them. What is the Ministry doing to prevent this?

Caroline Dinenage: In terms of protection, there are measures currently in place to protect trans people’s privacy during any form of engagement. Section 22 of the Gender Recognition Act defines any information relating to a person’s application for a gender recognition certificate or to a successful applicant’s gender history as protected information and therefore a trans person’s gender history, regardless of whether they have a gender recognition certificate, can also constitute sensitive personal data as defined by the Data Protection Act 1998. There should be a massive onus on organisations, if requiring trans people to disclose their gender history in any way, to undertake measures to ensure that this information is protected, because there are fines of up to £5,000 for those who do not.

Q276 Mims Davies: In terms of the sensitive personal data, is it people during the proceedings not acknowledging this might be the case in these proceedings?

Caroline Dinenage: I would be really keen to look at the evidence that you are referring to, because the protected information should be disclosed only when an individual has given their direct consent for it to happen, when it is required explicitly for investigating a crime, if there are strong medical reasons for needing that information, or for religious purposes—if somebody wants to become a religious minister, in some cases. Other than that, there should be no reason for anyone’s private and personal information, particularly with regard to something sensitive like this, to be divulged.

Q277 Mims Davies: It is a potential sensitivity issue that is being missed, I guess. Just following on from that, Section 22 of the Gender Recognition Act 2004 is supposed to protect transgender people from this outing, but there has not been a single prosecution. Is the provision basically a dead letter? That is the perception.

Caroline Dinenage: I do not really have any evidence to suggest that the reason there have not been any successful prosecutions is because the legislation is not working, but, again, these are things that it is very difficult to get evidence on. If this Committee can produce anything like that, I would be very keen to have a look at it.

Chair: I know there is probably more that we could ask in that area, but in the interests of time could I ask Angela to move us on to our next area of questioning?

Q278 Angela Crawley: We have been told that the need for a spousal veto when a married transgender person wants to apply for gender recognition is a denial of their human rights. Why can the same approach not be taken as in Scotland, where the provision does not exist?

Caroline Dinenage: First, it is really important to recognise that when it comes to marriages we are entering into the realms of people’s personal lives, their most private lives, their most intimate relationships, and these are always going to be incredibly sensitive discussions. Often in this type of environment we hear very strongly the voice of the trans community, and rightly so, because there are many obstacles and challenges in their path, but sometimes it is very difficult to get the voice of their spouse as well. If we look at how this system works, nobody has the right to prevent their wife or husband from obtaining a legal gender change. When somebody goes for a gender recognition certificate, if their spouse has not signalled that they are content for the marriage to continue, there will be an interim certificate issued, which will enable them to take whatever action is appropriate, be that a divorce or further discussions with their spouse, to further that.

This is a really careful balancing act between making sure we understand that any marriage contract is a contract between two people and a spouse’s transition can fundamentally change their relationship. For some people, that will not make any difference. For some people, they married a person; they did not marry a man or a woman. This is the very individual nature of marriages. For others, that might make a difference, particularly because the law allows the new marriage certificate to show the name of the trans spouse, so it is important that they have given their indication that they are happy for that to go ahead. In Scotland, it is still the same to a certain extent, to the point that you still get an interim certificate, but then you can take that interim certificate to the Sheriff’s office and then that can turn into a full certificate.

Q279 Angela Crawley: The key point here is that a spouse can essentially veto their partner’s decision to transition, because the two often do not run concurrently. In Scotland,

for example, if you notify your partner, that is all that is required in the legislation and someone can then continue through the transition process without necessarily having to wait for their partner to decide whether they wish to remain in the marriage.

Caroline Dinenage: This does not prevent the trans person from going through all the other interventions or support that they might need. This is the gender recognition certificate in isolation. Nobody, as I said, can prevent somebody from getting that document at the end of the day. The spousal veto is a little bit misleading in the sense that it suggests that that is it, game over; you cannot get the certificate. You get an interim certificate until a decision is made between the two of you as to whether the marriage will continue and the spouse will go along with the new decision or, indeed, whether the marriage will end in divorce. It is very difficult. During the drafting of the gender recognition provisions in the Marriage (Same Sex Couples) Act, officials met trans stakeholders regularly and tried to ascertain the views of non-trans spouses for the proposed changes, but this proved really difficult as there was no real route to contact them. In Government, we have an obligation to protect the rights and the needs of everybody and it is a really strong balance in getting that right. You have identified that in Scotland things are different and I am not saying that we will not be listening to how things are done in Scotland and keeping that in mind.

Q280 Angela Crawley: I am just curious, because there are now over 10 countries in the EU that have same sex marriage, but only the UK has essentially what is termed a spousal veto. Why do the Government feel that is a necessary part of obtaining the gender recognition certificate?

Caroline Dinenage: As I say, I do not for one second dismiss people's concerns about this and this is an evolving process. When the same sex marriage legislation was drawn up, they tried to get as much evidence from the trans population as possible and I think that that evidence-gathering continues. I do not think, in any way, anyone's mind is closed off to learning from how things are done in other countries and always keeping a mind as to how, potentially, we could do things here.

Q281 Ben Howlett: Nick, I have a question for you, because you were Minister for implementation of gay marriage in the last Parliament. This issue came up in the last Parliament as well. I am just wondering if you would agree with what has just been said there or there is anything that you think potentially should be advanced from your time when you were the Minister looking at these areas.

Nick Boles: I was hugely privileged to have the chance to be able to slightly alter the way in which the process of converting a civil partnership into marriage was constructed. I was not directly involved in the rest of the same sex marriage Bill and I do not currently have any of these responsibilities, so I would not want to creep into territory where I am not particularly well informed. I would just underline the general comments that both Nicky and Caroline have made that we are always open to learning from how other people do things elsewhere in Europe, including just over the border in Scotland. While we have different legal systems and different histories of how we have got to where we are, we can always learn from each other. I would not want to pretend that I have any particular expertise, because I dealt with a very narrow thing, which was the conversion of civil partnerships that pre-existed same sex marriage into same sex marriage and where and how they could be affected. That was really the only extent of my involvement in that piece of legislation.

Q282 Ben Howlett: Well, I am sorry—

Nick Boles: No. I was delighted to get a chance to say something, Ben, even if it was only “I don’t know”.

Q283 Ben Howlett: That backfired, did it not? Moving on to prisons, at the moment, we know that there are around 100 trans prisoners in the Prison Service and, theoretically, in 2011, the National Offender Management Service issued guidance on transgender. For example, they issued guidance on ensuring transgender people would have a care plan. However, quite a lot of the evidence we have heard from people who have accessed that system or those who have been involved in the prison system simply shows it has not been working. You will be very aware of the fact that I have a constituent in Bath, Tara Hudson, who has been recognising herself as a woman since the age of five. She is now 26. She has gone through six years’ worth of surgery and hormone replacement, etc. but is still in an all-male prison and her family are very concerned. We have heard other evidence as well around this. I have a wider point, really, which is to ask you whether you will ensure that both prisons and transgender prisoners know about the rights that they are guaranteed in the Prison Service’s instruction. That is to you, Caroline.

Caroline Dinenage: It is really important that I say right from the outset that as much as I would love to talk about the individual nature of this case, I cannot go into the individual details of your constituent’s case, not least because I could be committing a criminal offence if I do so, but it might help if I talk more generally about decisions on locating trans prisoners. The first thing to say is the fundamental underlying concern is the safety of that individual prisoner and, indeed, the safety of the wider prison population. What happens when a decision is made as to what prison location someone is going to go into is that the legal gender will be determined by the birth certificate or a gender recognition certificate, if there is one. If there is not, an individual decision has to be taken on the basis of the location for that particular trans prisoner and that has to be done on a case-by-case basis, taking into consideration the individual needs of that particular prisoner. Once that decision has been made, it is not game over. That person’s case will be discussed virtually immediately upon arrival in prison in a case conference, where all the different stakeholders in their case will be brought together. That should be prioritised and, up until that point, that person will be protected from the mainstream prison estate. They will not just be left in the prison estate as a normal prisoner; they will be in a protected state until a full decision is made about their case.

We want to do more on this, which is why there is PSI guidance at the moment, but that is being updated to take into consideration everything we already know and everything we are learning about the trans population in our prisons. That new guidance is in draft form at the moment and will be issued, hopefully, before Christmas. In addition to that, there is a new equality information form that we hope to introduce very shortly, which will happen at the very earliest stages that somebody engages with the criminal justice system, where they can, if they want to, disclose that sort of information, which will very much help the judges when making decisions about where that person is going to go but will also help the prison governors and staff in that immediate area when they decide upon a location.

Q284 Ben Howlett: Following on from that and going a bit more in depth, you have said that there have been a number of areas within the NOMS guidance that have been identified as not working at the moment. What specific areas have been identified and thus what are the

potential recommendations? Without wishing for you to prejudge what the report is going to say, it would be nice to have some themes so that when we are presenting evidence through the report we can specifically highlight some of the key issues.

Caroline Dinenage: As I say, that guidance is still very much in draft form, so I cannot comment on the content of it at the moment, but rest assured that this Committee will be the first to know as soon as we have something that is in any way ready to be seen. The key message is that this guidance was originally released in 2011 and here we are nearly five years later and a lot has changed. We have had many more trans prisoners through the doors of our prisons—still a small number, around 80; we do not know exactly—but we are learning all the time. There are two key things with anybody who comes into the prison estate. One is that their protection and the protection of the prison estate is key. The second is that we need to treat everybody on a case-by-case basis. Everyone must be seen as an individual and, as far as possible, their individual needs must be met within this protection sphere.

Q285 Ben Howlett: That is good to know. I have one final point on this. The 2011 guidelines for NOMS apparently became out of date by March of this year. Can you give assurance that this particular guidance for the Offender Management Service is still usable until the next ones are introduced?

Caroline Dinenage: Yes. We have had assurances that the guidance is still valid and we are still able to use it until the new guidance comes through, which will be very soon.

Q286 Jess Phillips: On the offender issue, I just wanted to ask whether transgender issues were specifically included in the re-contracting of Transforming Rehabilitation. If they were, are there any specific services that have been commissioned as best practice in one of the package areas around, specifically, transgender people and their care in the community?

Caroline Dinenage: Yes. One of the key things about Transforming Rehabilitation is that there is huge emphasis on both the Probation Service and the community rehabilitation companies to set up a pathway and a programme that is geared towards every single individual person, and that is everybody. Previously, they had to have been in prison for more than a year; now it is everybody. In women's prisons, the vast majority of women have been in prison for less than a year. It is really good that we have a pathway that is for everybody that is supportive of that individual. There are very good examples, which I have written down and I am not sure if I can find them, of programmes that have been put in place by individual CRCs particularly with the trans community in mind.

Q287 Chair: Maybe you could just forward us some of those examples. That would be incredibly helpful.

Caroline Dinenage: I will happily do that.

Q288 Ruth Cadbury: This is to Nicky and/or to Nick. Transgender people continue to experience employment difficulties, particularly in relation to recruitment and also for those in work, as they change the definition of their own gender. What are you doing to monitor the nature and extent of these problems?

Nick Boles: To be clear, for all that we have heard that there may be areas in which the Equality Act could evolve positively, nevertheless it is very clear what the law states and

what the attitude of the law is to discrimination. Anybody who experiences discrimination either in the workplace or, as it were, on the way into the workplace, i.e. through a recruitment process, however early on in that process, is encouraged to get in touch with the Equality Advisory and Support Service at the Government Equalities Office, which can advise and assist them on what their rights are and how to enforce them.

In a sense, what we also need to be doing as much is helping employers avoid ever getting into a position where they are not treating somebody fairly. There are some people who have prejudices and who are willing to express them in ways that are illegal, but there are also an even larger number of cases of people who are ignorant and baffled and nervous and do not quite know how to deal with this because they have never had to encounter it before. I think that Nicky, before I was able to join you, referred to the new guidance being produced by the Government Equalities Office as the guidance for employers. I have a draft here and I can reassure you that on the subject of the recruitment and retention of transgender staff—and I think I might, given it is draft, suggest a change to the title a little bit—it has several pages on application process, application forms, security and vetting, interviews and everything else. Hopefully, we can spread this around employers so that they can avoid ever doing something, whether consciously or unconsciously, that is discriminatory. What I think it is fair to say is that, like many of these services, the excellent advice service that the Government Equalities Office has probably is not known enough by enough people who are finding themselves in this situation. That is so often the case and we must do more, perhaps through Citizens Advice and other locally distributed bodies, to ensure that they know that that expert source of advice is there. We must do better.

Q289 Ruth Cadbury: It is good to know that you are writing advice for employers. My question was about what you are doing to monitor the problems. My supplementary question is: in rolling out that no doubt excellent advice, what is the Government doing with employers' organisations and trade unions and others to address transgender equality?

Nicky Morgan: Can I just answer partly to fill in what you were just asking about, Ruth, and then Nick may have some specific other work on employer organisations? There is some general research that is happening, which will touch on employment and collate some numbers. The Government Equalities Office invited tenders for a contract to look at the evidence on the nature of discrimination because of sexual orientation and gender identity. The National Institute of Economic and Social Research got that contract and has done the work. They were looking particularly at inequality within LGB and T groups and LGB and T populations. There is also the Equality Advisory Support Service, which is a free advice service that was launched in October 2012. They have had 47,000 enquiries from individuals related to protected characteristics and, interestingly, 39% of their enquiries have been about employment, 40% about direct discrimination and then there will be others as well—harassment—relating to private sector and public sector. We will have collected quite a lot of information through that as well.

There are also websites, but also schools are employers and, again, they have guidance. I asked what the unions do in the education sector about issuing advice and guidance to schools. Interestingly, the NUT has produced a leaflet that is more about supporting transgender pupils, but staff as well. The NASUWT has a section in their guidance on prejudice-related bullying, trans bullying and supporting trans members. ASCL respond

to individual queries through their hotlines. I would strongly suspect that if you look at lots of different sectors there are employer organisations, unions and individual organisations themselves—schools, employers—who are, again, developing guidance and starting off conversations about all this. The guidance that Nick has just been talking about is, again, intentionally very practical things that an employer will want to think about generally, but also specifically should someone come to them needing advice and support.

Nick Boles: If I may add just one brief note, the organisation that a lot of both employees and employers go to first when they have an issue of employment, when there is either a potential dispute or they feel they do not quite know what the law is and what the position is, is ACAS, a superb organisation. They already have guidance on their website on gender reassignment discrimination and are planning to produce further advice on trans issues in 2016-17 as part of a whole set of advice in relation to all the protected characteristics in the Equality Act.

ACAS will be a place I think a lot of people will go, but the challenge that I am hearing in your question, and I think is a very reasonable one, is: it is all very well putting guidance up on websites and having, as it were, a response, but what is proactive? It is a very reasonable challenge and I would have no problem in making contact with the CBI and chambers of commerce and all these people and saying—

Q290 Ruth Cadbury: Can you say the words “trade unions”?

Nick Boles: I was going to get on to that, because I have another relationship with trade unions, as you may be aware. I would be very happy to get on to employers’ associations to encourage them to use this guidance and distribute it widely to their members. On trade unions, the Committee may be aware that, as the Minister responsible for the Trade Union Bill, I am having a lot of engagement with trade unions and I am sure they would agree with me that it would be quite nice to be talking about something on which we agree. Therefore, I am very happy to take it up with them too.

Q291 Chair: Minister, can I come in here? We touched earlier in our discussions on the very different issues faced by non-binary people versus trans people and, indeed, non-gendered individuals. I was very struck by a piece of research that has been done, which showed that one-fifth of non-binary people surveyed had experienced workplace harassment and 95% were worried about disclosing themselves as non-binary. In all the discussions so far this afternoon that you have been involved in, you have talked about trans people. Do you think there is room for additional work to recognise the very real challenges that non-binary and non-gender people experience in the workplace?

Nick Boles: It certainly, in a sense, is what I was implying when I said that I thought the title of this new guidance might use a little change, because it says currently in this draft “the recruitment and retention of transgender staff” and if we cannot get it right with a thing that is not yet published, to include those who are not yet or may never be in a position to define themselves in that way—we should be getting that right. We may not be able to change the Equality Act quickly, because it is a piece of legislation, but we can certainly change the guidance we are about to issue and have not yet issued. I am very happy to look into that and see if also, through the whole text, it is properly reflecting all of the different people who feel affected.

Q292 Ben Howlett: I do not know whether you are aware of this or not, but when you are going through the process of getting a gender identification certificate you have to live “in role” for two years. From the evidence we have heard, a number of people have said, “Look, I have ended up having to revert back to my previous sex in order to secure a job or even to hold on to a job”. I am wondering what work you will be doing, as Minister, in the workplace to ensure that this is identified as a problem and that workplace environments are providing the support necessary for people who are accessing a new job or trying to hold on to their job. To be frank, you are going to end up having a huge welfare payment bill in unemployment benefits if people are not ending up getting the recognition and the support they need.

Nick Boles: I entirely understand. I am not going to pretend I was familiar with the position. Now you have explained it so well, I can completely understand why you cannot, on the one hand, be living in a new role and, on the other hand, be coping with the fact that people may be used to working with you in your old role and they are not willing to work with you in that new role. I will certainly take that away and try to make sure that, if nothing else, this guidance properly addresses that issue and thereafter that we distribute it widely.

Q293 Jess Phillips: This is for Nick, just before he runs off. The National Union of Students told us that one in three trans students have reported being bullied or harassed on campus. I just want to know what your Department is doing to ensure that this stops.

Nick Boles: That, in a sense, is perhaps particularly shocking. Maybe this is naïve of me, but you would rather hope that a younger age group was more aware and more open-minded. We can excuse, perhaps, people who have grown up in a different age and with a different set of attitudes. That is very troubling. The higher education sector has a sector-led Equality Challenge Unit and it produces guidance. There is guidance called “Trans staff and students in higher education”, which was updated in 2010, which helps the institutions. There is a gender equality charter.

Even as I am saying all this, I sense that we all know that guidance is important and laws are even more important and charters and goals and concordats and all of the stuff of Government, but what we need is challenge to bad behaviour—a zero tolerance regime. Certainly I am very happy to take that away and have a discussion with the Universities Minister, Jo Johnson, about whether we can make sure that university vice chancellors, frankly, are taking this seriously and not just thinking, “Oh, well, I have my charter and I have my guidance”, but are doing something about it where these cases are reported.

Q294 Jess Phillips: The concern around universities not just in this field but in all sorts of hate crime, certainly sexual violence, domestic violence and all of those things, is that there is a real gap in where universities are addressing these issues. It is not like schools so much, where people have direct contact. Using this inquiry and this evidence that we have, we really need to look at how universities cope with the changing and difficult lives of people at a very difficult and transitioning age.

Nick Boles: The truth is, to some extent, it is not like it is new for them, because we would all probably feel universities have done a reasonably good job in recent years of challenging homophobia and racism—by no means perfect, but nevertheless great strides have been made. This is not so different. Ultimately, these are crimes and they should be rooted out.

Q295 Chair: Can I just gently suggest you also have a chat with the FE Minister as well?

Nick Boles: I am the FE Minister. That was the only reason why I was not going to, madam Chair, although I do talk to myself quite often.

Q296 Jess Phillips: Moving on to the Secretary of State, we heard some harrowing evidence from Susie Green of Mermaids, who told us of a child who had transitioned during the school holidays and then was barred from the school premises, which I am sure is an anecdotal case. We have also heard very good examples of where education facilities have been really good. I just wonder if you could tell us a little bit about what you are doing to make sure that schools are abiding by their responsibilities under the Equality Act.

Nicky Morgan: I am glad you highlighted some positive examples. There are positive examples as well. There are some schools that do this and have a very open, tolerant culture that allows for discussion. As I have said before in the House, one of the issues about dealing with things like bullying is you have to have a whole-school culture, in which everyone from the top down takes this very seriously. As I said before, schools are educators, they are employers and they have to deal with families, some of whom may involve trans parents, for example.

In terms of the Equality Act, we are looking at initial teacher training. At the moment, there is no curriculum as such, but Sir Andrew Carter has been doing a review for my Department on what we think should be in teacher training, without wishing to be too prescriptive, but there are areas where there is more that we could do about getting teachers to be more confident and to support pupils and other members of staff. The National Curriculum includes a section on inclusion and the equality duties that there are on teachers, so there is guidance that we have issued as a Department. I have just mentioned some of the unions as well and the valuable work they do. Schools have to have behaviour policies, and that relates to instances of bullying. Bullying applies, sadly, to both pupils and members of staff. We have introduced the fundamental British values. One of those values is tolerance as well as respect. Again, I want that to run right the way through schools. Ofsted holds schools to account on their bullying policies and that is one of the questions they will ask in relation to a school. Earlier this year, we announced a £2 million fund to tackle homophobic, biphobic and transphobic bullying. One of the eight organisations that got some of the money was Stonewall and they are working with Gendered Intelligence, who I think might have given evidence to the Committee.

Jess Phillips: Yes, they did; I am coming to them in a minute.

Nicky Morgan: We are working with them to pilot areas, which will be assessed to see what works throughout schools. Overall, there is some really good practice, but there are clearly some areas where there is a lot of improvement needed.

Q297 Chair: Before we move on to the next question, I know Minister Boles has a pressing engagement, which he told me about before. I am very happy if you want to slip away at the moment. I think we have finished our questions to you.

Nick Boles: Thank you. Apologies. I was late and now I am leaving early.

Chair: Please do not apologise. We were aware of your time constraints.

Q298 Jess Phillips: Moving on to the Gendered Intelligence evidence that we received—I am sure the Secretary of State never tires of hearing me raise this subject—they told us about how PHSE was a brilliant curriculum support to students around gender identity and many other things. It almost certainly is part of a whole-school approach in encouraging children to talk about these things. I wanted to ask specifically if she feels that transgender issues should be taught in schools as part of what should be mandatory PHSE.

Nicky Morgan: She and I debated this issue about mandatory or not and I know the Education Committee has also looked at it and published their report earlier this year. PHSE is hugely important. She and I will differ on the fact that I do not think just because you say something is statutory means it is going to be taught well.

Jess Phillips: That is definitely true.

Nicky Morgan: Trans issues are included in the non-statutory PHSE programme of study, which is produced by the PHSE Association, and that includes things like diversity, gender identity, recognising and challenging stereotypes, bullying, discrimination—all sorts of things. Sex and relationship education is mandatory in secondary schools and even those where it might not be part of what—they do tackle it, but there is more that we can do. Going back to the whole issue of British values, the respect and tolerance part of that is about gender identity, sexuality, relationships, consent, discrimination, bullying and all those sorts of issues that it is very important all schools explore. You are right; it goes back to the whole-school approach. They are not waiting to be asked to make it mandatory. Those schools that are doing it well find time on the curriculum and it runs right the way through, and they give teachers and staff the confidence to discuss these issues.

Chair: Thank you so much for your contributions today to our evidence base. We are really grateful to you and your colleagues for your time. I apologise for having overrun a few minutes. Please forgive us. The vote did not help us there. On behalf of the whole Committee, thank you so much for your time.