

Written evidence submitted by O’Sullivan (GRA0041)

I am a student at the University of Cambridge and a long-time LGBTQ+ rights activist. My reason for submitting evidence is simple; the government’s response is inadequate, and I will not stand idly by while the government tacitly approves discrimination against transgender people, in particular trans women.

Transgender Women

The issue at the heart of this debate is that the government has bowed to those who argue that transgender women are a danger to other women, that transgender women do not experience womanhood (in particular, are not affected by misogyny and sexism), and that therefore transgender people should not be treated as the gender they truly are. These premises are false and based on well-established false stereotypes (McKinnon, 2014). Transgender women do not pose any greater risk than non-transgender women; this has been borne out time and time again in the real world and there is no evidence that transgender women pose a higher risk to other women. Transgender women function within society as women like any other; trans women experience the same issues within patriarchal society as other women, such as being paid less than men for equal work, harassment in multiple settings, gender-based prejudice and discrimination (such as being dismissed as ‘emotional,’ having contributions in the workplace ignored, etc), and poorer access to healthcare (Arayasirikul & Wilson, 2019; Ciprikis et al., 2020; Factor & Rothblum, 2007; Grant et al., 2011; Schilt, 2010; Serano, 2016; Springer et al., 2012).

If responses to a consultation like this were talking about any other protected characteristic, there would be no arguing that these responses were legitimate. If there were hate groups advocating that Jewish people like myself should be excluded from services and spaces, the government would recognise that such calls are hateful. Those advocating for transgender women to be excluded from necessary services, public spaces, and civil life are equally bigoted.

There is no “legitimate concern” about the danger of transgender women to other women, just as there is no “legitimate concern” about the danger of Jewish women to other women. Once upon a time, many people believed there was a great deal of “legitimate concern” that Jewish people

were dangerous and untrustworthy, likewise there was once a great deal of “legitimate concern” that black people were dangerous and should not be around white people. Those who claim to be concerned about the safety of women are demonstrating bigotry and prejudice in exactly the same way; transgender women are not a danger to other women. Transgender women are not predatory men, they are women who have the misfortune of being born differently.

Evidence from places which have enacted ‘bathroom bills’ (legislation requiring that people use the bathroom corresponding to their sex recorded on their original birth certificate) shows that violence in single-sex spaces is not at all related to inclusion of transgender people (Hasenbush et al., 2019; Lopez, 2016). There has been no evidence of increased rates of violence or crime related to self-ID legislation in places where this has been passed - such as Iceland, Portugal, Denmark, Belgium, Mexico, Argentina, Bolivia, Chile, Colombia, Uruguay, Pakistan, Canada, Malta, and Ireland. There is no evidence that transgender women pose a danger to other women, and there is no evidence that self-identification poses a danger to women.

There is a wealth of evidence showing that exclusionary practices pose a danger to trans people. Access to correctly gendered housing has a significant relationship to suicidality among transgender people (Seelman, 2016). Access to emergency services such as domestic violence shelters and rape crisis centres is hotly debated among anti-trans campaigners, who argue for exclusion of transgender women - something which has been worryingly echoed by the government. Meanwhile, between a quarter and half of trans people in the UK have experienced domestic or sexual abuse (British Social Attitudes 34; Stonewall Trans Report 2018). Access to rape crisis centres, domestic abuse shelters, and other similar services is of critical importance to those who require them (Lyon et al., 2008; McFarlane et al., 2012; Rivas et al., 2019; Sullivan, 2018).

Equality Act 2010

The Equality Act as it currently stands explicitly states that transgender people can be denied access to these undoubtedly necessary services for simply being transgender, but only where this is a necessary and proportionate means of obtaining a legitimate aim. However, the guidance given is unclear, nonspecific, and would exclude transgender people where doing so is not a proportionate means of obtaining a legitimate aim.

There needs to be specific guidance for service providers which outlines a safety assessment procedure to assess whether any individual is to be included in such services - all demographics are capable of great good and great harm, and as providers have pointed out, they already must assess every service user:

We do the prior stuff, everything, all the procedures before someone gets in, because you could have a woman come along who is a lesbian and we could have her ex-partner in the refuge. Therefore, we have to be really careful about everybody who gets into a refuge. (Diana James, Cornwall Refuge Trust, 2019)

The simple fact that someone is transgender does not mean that they are any more or less likely to be a risk within a crisis service. It is of course understandable to not want men in spaces created for women's safety, and it is equally understandable that a woman who is transgender also may not feel safe around men - 'it is ironic indeed when feminist theory itself obscures the gendered dimensions of violence against women (Namaste, 2009)

The factors which must be considered are:

- whether the prospective service user poses any risk to existing service users
 - if yes; service cannot be provided, and the prospective service user must be referred elsewhere
- whether any existing service users pose any risk to the prospective service user
 - if yes; service cannot be provided, and the prospective service user must be referred to another service that can provide for them
- whether any person currently accessing the service would no longer feel comfortable doing so if the person being assessed were included; and if so, how this could be mitigated. For example, by housing the prospective service user in a different flat / block / building / etc to the existing service user
 - if this cannot be sufficiently mitigated, service cannot be provided, and the prospective service user must be referred to another service that can provide for them

These factors are universal and apply to all prospective service users. A person may pose a danger to others regardless of whether they are transgender or not, as in Diana James' example above. Similarly, a person fleeing abuse or violence may be uncomfortable with another person for a multitude of reasons; they may be uncomfortable with Christians if their abuse had a religious component, they may be uncomfortable with people with the same name as their abuser, they may be uncomfortable with people who greatly resemble their abuser, and so on and so forth. Where such a clash occurs, it is a case of competing access needs - both people require the service, but cannot simultaneously access it in an equal way - and must be considered individually, based on the abilities of the service provider to resolve the issue.

A worked example

For example, in provision of counselling services for female victims of sexual assault; the guidance states that excluding transgender women would be legal if the provider assumes that other women are unlikely to attend alongside a transgender woman. This is vastly oversimplified and gives any provider a carte blanche for exclusion regardless of the individual circumstances. The example as written makes multiple assumptions that must be made explicit. It assumes that there are already no transgender participants, that the provider can identify transgender people reliably on sight, that the other participants would know a person is transgender, that the other participants are all uncomfortable with transgender people and that that discomfort is always both extreme and unresolvable.

Primarily, these all rely on the assumption that trans women are all materially and noticeably different to other women, which is false and based on western, patriarchal expectations of what a woman must look like. Transgender people have as much variation as any other demographic and it is entirely possible to know and interact with trans people without realising it. While hate groups claim that it is always possible to tell that someone is transgender, other women are regularly mistaken for trans women and discriminated against (Borck, C. R., 2017; Schilt, K., & Westbrook, L., 2015). It is always possible (and in cases such as bathrooms, highly probable) that transgender people are already utilising a service in accordance with their gender. In this example, there may be trans women in the group already, the provider may not know a

newcomer is transgender at all, and other participants may not realise a fellow participant is transgender. If any one of these is the case, it is clearly not legitimate to exclude transgender women; their presence cannot make people uncomfortable if their presence as a transgender person is unnoticed.

Secondly, this example assumes that a transgender woman receiving support alongside other women is itself an issue, where she is known to be transgender. The GRA consultation itself shows that most women are perfectly happy to share single-sex spaces with transgender women, as does other broader research (British Social Attitudes 34), and it is also a fundamental premise of group services that users wish their fellows to access support. Solidarity among victims of violence and abuse is a well-known powerful force, and it does a disservice to survivors to assume that this solidarity would not be extended to transgender women. It is imaginable that a transgender woman would not be welcomed by other women, but this does not automatically arise, and the service provider has a responsibility to first try to resolve the issue as they would if any other woman were not welcomed. For instance, if a woman wanted to join the group who had previous history with an existing member, it would be expected that the provider discusses with both women whether a solution can be found, and if not refer the newcomer to another service. The same procedure should be followed if an existing member is uncomfortable with a transgender newcomer.

Exclusion from all single-sex spaces should be on the basis of individual assessment, not pre-made assumptions.

The Gender Recognition Process

The current GRA process is intimidating on multiple levels; it is costly, complex, and deeply dehumanising. I cannot see how the government's proposed changes make the process any kinder or any more straight forward; the government has said only that they will place the entire process exactly as it stands online, and reduce their fee. Trans people are still required to collect absurd amounts of documentation and go through a dehumanising and invasive medical enquiry (that they have to pay for; GPs can charge hundreds for supporting letters; solicitors are required and can charge hundreds or thousands). But now they can upload those papers online instead of posting them. The government's proposed changes make absolutely no material difference.

The fee should be removed absolutely, not reduced to “nominal” - it is not fair to charge trans people for simply being themselves. The requirements around evidence present huge financial burdens for trans people; in order to make sure their application isn't a wasted attempt, it's almost always required that a trans person hires a solicitor to help them and to certify their documents; this can cost hundreds. Further, the medical evidence must be obtained privately; the NHS gender identity clinic will provide one letter, if a trans person is being seen by them (not all trans people require medical intervention; not all trans people are able to obtain a referral; etc). However, obtaining the other is expensive - GPs can charge hundreds for such letters, and many, many, many people have reported that a letter from their GP was rejected by the panel and that the second letter must also be from a gender identity specialist, therefore requiring trans people to pay to see a private provider.

If the government is not prepared to move to a system of self-identification (and the evidence suggests that it is not), it must respond to the overwhelming consensus from the GRA consultation by materially changing the gender recognition process. Reducing the 2 year 'lived experience' stipulation to 6 months in line with Scottish proposals would allow trans people to obtain full legal recognition without a period of limbo, in which they are recognised by society at large but not by the government. Other improvements that would be welcomed by the transgender community include removal of the spousal consent clause and relaxation of the rules around medical confirmation. In particular, the requirement to obtain a second letter describing intimate medical details of a person's body is a humiliating and dehumanising stipulation, and serves no functional purpose. There is no requirement that trans people undertake specific medical procedures for gender recognition, therefore there is no reason to require a report of their medical transition, and moreover this requirement may contribute to bias from the panel against those who have or have not undertaken particular medical procedures.

Legal recognition of non-binary people is another domain in which the government is failing its transgender population. Non-binary people are forced to choose a binary option on all documentation, including a gender recognition certificate if they seek one, and the practical implications of this are wide ranging; from something as simple as not being able to have a passport that reflects who you are (or how you present), to being unable to marry. The

government must include recognition of a third gender category on identification, records, and certificates.

Conclusion

In sum; the government's response to the GRA consultation is woefully inadequate. The government, and Liz Truss in particular, have already demonstrated that they are not listening to trans people or their supporters - the overwhelming majority of respondents to the GRA consultation said the process should be changed, and the majority of those who disagreed were from known hate groups. Yet, the government chose to pander to the demands of hatred and bigotry rather than advance equality. The proposals are insufficient; the government's response does not provide any meaningful change to the GRA process despite the clear evidence that change is needed. Moreover, the government is blatantly demonstrating to the public that they care more about backlash from hate groups than about protecting minorities and delivering equality.

Appendix: people mistaken for trans women

“This Woman Shows ‘Bathroom Safety’ Isn’t Only a Trans Concern: A lesbian mistaken for a man was followed into a hospital restroom and thought to be a danger to other occupants.” 2016.

<http://www.takepart.com/article/2016/05/02/woman-shows-bathroom-safety-isnt-only-trans-concern>

Women are getting harassed in bathrooms because of anti-transgender hysteria. 2016

<https://www.vox.com/2016/5/18/11690234/women-bathrooms-harassment>

Savage Love Letter of the Day: Cis Woman Mistaken For Trans. 2017

<https://www.thestranger.com/slog/2017/08/21/25364977/savage-love-letter-of-the-day-cis-woman-mistaken-for-trans>

Lesbian couple kicked out of women's toilet at cinema because security thought they were MEN. 2015

https://www.mirror.co.uk/news/uk-news/lesbian-couple-kicked-out-womens-4977298.amp?_twitter_impression=true

Lesbian teen asked to prove gender, ejected from McDonald’s for using women’s toilet. 2016

<https://www.pinknews.co.uk/2016/04/10/lesbian-teen-asked-to-prove-gender-ejected-from-mcdonalds-for-using-womens-toilet/>

Lesbian kicked out of bowling alley because she used the women’s restroom. 2018

<https://www.gaystarnews.com/article/lesbian-kicked-out-of-bowling-alley-because-she-used-the-womens-restroom/>

Self-Appointed Bathroom Cop Catches Dallas Woman Using Women's Restroom. 2016

<https://www.dallasobserver.com/news/self-appointed-bathroom-cop-catches-dallas-woman-using-womens-restroom-8259104>

Cancer survivor hits out at 'bathroom bill' after she is mistaken for trans woman following mastectomy. 2016

<https://www.pinknews.co.uk/2016/06/06/cancer-survivor-hits-out-at-bathroom-bill-after-she-is-mistaken-for-trans-woman/>

SNP MP Mhairi Black: 'I've been challenged going into female toilets. I'm not leaving transgender people behind' 2019

<https://www.heraldscotland.com/news/17873346.snp-mp-mhairi-black-ive-challenged-going-female-toilets-not-leaving-transgender-people-behind/>

This lawmaker thought he was in the presence of a transgender woman. So he 'threatened to wave his penis' at her. 2016

<https://www.lgbtqnation.com/2016/03/this-lawmaker-thought-he-was-in-the-presence-of-a-transgender-woman-so-he-threatened-to-wave-his-penis-at-her/>

Woman Sues Restaurant That Ejected Her From Bathroom for Looking 'Like a Man' 2015

<https://www.advocate.com/business/2015/06/17/detroit-woman-kicked-out-restaurant-bathroom-looking-man-sues>

Woman mistaken for transgender harassed in Walmart bathroom. 2016

<https://www.newstimes.com/local/article/Woman-mistaken-for-transgender-harassed-in-7471666.php#photo-10075104>

"It gets me chucked out of toilets," she says, referring to the furore surrounding trans women's use of women's lavatories that has resulted in many butch lesbians being hounded out of public bathrooms, in the UK and the US. "It happens all the time." Especially, she says, when she's with her partner, Caroline.

<https://www.buzzfeed.com/patrickstrudwick/she-led-britains-largest-lgbt-charity-this-is-why-she-chose>

You may look at some of these photos of trans people, or trans people in your life, and think “yeah I can see it”. Whilst in some cases that might be true, there is also a common psychological effect at work here. The reality is that everyone has a mix of “masculine” and “feminine” characteristics, and if you are looking for them you can usually find one. Try it next time you’re watching TV; point at a random person and confidently announce that you know they’re trans and watch your friends say they can see it. A lot of how you perceive other people’s sex is dependant on your own internal view of them. It is actually very common for cis women celebrities to be accused of being a man for certain “masculine features”, as this Twitter thread documents.

<https://medium.com/@KatyMontgomerie/no-you-cant-always-tell-a5967cc55761>

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