

Reform of the Gender Recognition Act: Call for Evidence

Written evidence submitted by Andie Davidson, November 2020

Personal introduction

I am a mature, well-educated, economically secure transwoman, who completed transition with a GRC in 2014.

I am one of the 5,000 or so minority to request, purchase, and acquire a GRC.

I swallowed the cost. I swallowed the humiliation of psychological scrutiny for two years. I waited for appointments; and waited. And waited, while life fell apart. I raked over years of documents carefully filed, went through layers of bureaucracy, I did what I as a professional was capable of doing in terms of administration, project management and objectivity.

Many of these things are not true for probably the majority of trans people. They may not be well educated, they are frequently susceptible to insecure employment, and often to insecure housing. Often as a result of exclusion from family and social circles, rejection by friends and colleagues, the prospect of perhaps five years ahead, from securing a first appointment with a gender specialist, is not conducive to a steady and stable, mentally comfortable life. Life and clinical outcomes matter more than a certificate – until you need it, that is.

Summary

- ‘Gender recognition’ is about affirming self-identity. We do not go looking for trans people with a diagnostic test, to segregate them. They come to us from a position of disadvantage, wanting fully to belong.
- Transgender is not a decision; what to do about it, is. We can test the ‘what to do’ but we cannot test the ‘I am’. Imposing lengthy and costly bureaucratic requirements, to certify fellow humans, on our terms, as a condition to protect and affirm them, is not something we apply to other groups.
- Does that itself put ‘confusing’ people into spaces protected by the Equality Act? No. There always have been ‘confusing’ people, and trans people are not obliged to possess a GRC. The Act has worked well.
- What we must understand is that behaviours are at the centre of this. Teaching males about their privilege, about their attitudes, about equal lives, is paramount. If as much effort had gone into male education as has gone into GRA consultations over the years, if as much effort was put towards rebalancing a still-patriarchal society, trans would not be a problem to non-trans people.
- Trans people are being made an issue to debate and contest, as a social threat, undermining what’s ‘normal’. Having to go through the rigmarole of diagnosis pathologizes us, leaving us

exposed and unsupported for years, unprotected by much law, and perceived as potential predators. The truth is that we are the subject of hate, of overt opposition, living in fear of laws being rolled back, even being attacked physically simply for being so defined.

- Only a trans person can say what they are, and if this takes a legal statement and formal records, that should be enough.
- Proper clinical support for elective interventions are separate, and equally require far better provision, as they are currently clearly inadequate.

1 Why is the Gender Recognition Act as it stands, problematic?

Adequate support from the usual agencies can be hard to come by. GPs may not be trained to know the official WPATH procedures. You go from being transgender to a medical case almost instantly. Gender Dysphoria is a description of the place trans people find themselves, for want of better understanding and description. It is not a disease, nor a disorder. Neither is it a psychological trait, or a behaviour. It is what trans people are, not what they become, nor what they choose.

Most terms surrounding 'being trans' are problematic, because they mean different things and are invested with different contexts in different places. 'Gender' does not mean the same thing to all, neither does 'sex', and both terms are weaponised against trans people; similarly, 'biological', 'man/male' and 'woman/female'. Whether those who debate trans people are gender critical in thinking, or plain religious fundamentalist, any use of these terms is instantly problematic because trans people become objectified subjects of these philosophies and ideologies.

In most parts of the world we have come to accept sexuality as inherent. We still in the UK promote this, despite some vocal opponents, and protect LGB people as equal citizens. No lesbian, gay or bisexual person is regarded as having a psychological problem that is their sexuality, which must be scrutinised over the course of years, approved by multiple qualified psychologists, confirmed as 'for life' by a legal submission, and awarded, at some cost, a certificate of sexuality by an anonymous non-LGB panel of appointed experts. Are LGB people also to be considered a risk in single-sex spaces? Does the Equality Act need to address this? Of course not.

There is just one big underlying problem in the whole of this context: that the majority of sexually-predatory human beings are male. The male in society is invested in privilege, and often abuses this. What should we do about predatory males who would use a 'trans identity' to further their misdeeds?

2 What is the legislation for affirmation of trans lives meant to achieve?

If we are to accept that trans people are indeed what they say they are (and they have been doing this in a majority of cultures worldwide for millennia if not forever), then we need better to address the behaviours of those who would abuse a claim to being trans, like any other fraud or deception. For this reason, trans people can make binding legal statements in order to affirm their status. This does not protect any of them from criminal prosecution, any more than a person who employs disguise for criminal purpose or advantage.

Whilst proper clinical investigation is required for those wanting to pursue medical interventions, being trans is not a medical or psychological 'condition'. Nowadays the requirement for surgery or hormones is not an absolute requirement, but the diagnosis of gender dysphoria still is. Diagnosis of what, though? *Absence* of underlying psychological disorders of delusion, previous abuse, social pressures? It is a diagnosis of 'nothing else is the case'. It is simply a recognition and a legal requirement that the person is to be believed about themselves, and is therefore inevitably subjective.

Clearly the evidence of that self-belief is self-action, so the legal question is: what is sufficient? An unprotected, unsupported and uncertain two years? This seems arbitrary when separated from the pursuit of clinical interventions, and when requiring a legally-binding declaration.

We do need protections against insecure youth self-declaration – but not as regards identity and documents – only as regards clinical interventions, which require greater care. But this is not what GRA and Equality Act consultations have been all about.

3 Equality Act

We hear very little about trans men having to use facilities marked as for women, because it is problematic precisely for androgynous women. Again, the fundamental issue is social behaviour. The violence by frightened women against fellow women who don't look feminine enough is also problematic. Fear can come from real abuse, but also be whipped up deliberately. An emphasis on trans people and single sex spaces is really about the fears of abused women and male aggression. The Act makes provision for cases of perception of threat. It does not cover the perceived threat of trans men being *obliged* to use 'women's spaces' or of transwomen being endangered by being obliged to *avoid* 'women's spaces'.

Self-identification (making legal the personal affirmation of one's gender) is not a passport for predators. It is a protection for a very vulnerable minority.

4 Kindness, cost and clinics

4.1 What does it mean to be kind, in accepting a trans person in society? What does it mean to believe them, and to affirm them?

The current process can be either kind and supportive or incredibly cruel. Being trans isn't easy, because it's all about how freely you can live and how wholly you are accepted. Transition can be very easy for some on grounds of natural appearance alone. For them, simply living and going about life as they feel comfortable may be infinitely preferable to clinical scrutiny, until, that is, they have to 'show their papers'. In fact, most papers (name and title) can be changed in any case. But if you are not protected by GRA and Equality law, then you are in danger from 'discovery', and sudden and severe, or violent, discrimination. Why do we not support socially transitioned people?

Why do we have to diagnose trans men and trans women, pathologize them and certify them in order to make them more safe?

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If you don't fit perceptually, society tends to regard your innermost self-awareness as a pretence. A clinical path is maybe the only way to physically change to a point of acceptance. That might only mean hormones, or more. What it does mean is care and support over a long period. There is little or no help to fulfil a requirement to live for two years 'in role' prior to acceptance, when it absolutely is not a role, just your life. During this period the psychological evaluation has but one purpose – to prove that you are not suffering a psychological disorder that is causing you to experience 'gender dysphoria'. What it does do, in too many cases, is *create* psychological harm.

Trans people have to subject themselves for years to clinical scrutiny just to prove they are normal.

Everything clinical is elective. Usually, there is an inner pressure to feel more right, and an external pressure to look more right to others. So what is the scrutiny for? Is it only to see if a person is suitable for clinical interventions? Or is it to diagnose 'a condition' that someone has had all their lives? Is it so that we can believe a person? How can one person determine, truly, whether another is gay, lesbian, bisexual, or transgender?

Is a transgender person not allowed to be trans? Unless they are certified?

The kindness is to allow a trans person to be what they feel they are. They do need to, and want to, change their legal documents; they do need to establish that they are not seeking a fraud. But even if they do, none of these things would protect their illegal or their antisocial behaviour under any law.

You can do your best to follow the requirements, but if your life has been chaotic for a period, or if you were evicted by a spouse or a landlord, those two years' worth of paper records and poor access to IT can be hard to manage.

If you are not very IT-literate, or don't have organised file storage, if increasingly your documents are not in paper form, then putting the process online is not an answer to anything.

4.2 What is the role of financial cost in being trans?

Transition is a very costly process to the individual. Swapping out a life's wardrobe, adding the accessories of social gender, for trans women, permanent hair removal, voice coaching etc., may be the least, when homes, partnerships and livelihoods are lost. Add to this that clinics are rarely close by, and therefore incur significant travel costs, and it is clear that those who make it to the gender clinics are already pretty determined.

Deed poll certificates are not very expensive, nor is a statutory declaration. Not much in life is free, but where an individual is particularly hard-pressed, we by and large waive certain fees. Even if this was free to every trans person, the cost in supporting it would be tiny.

As regards the requirements for obtaining a GRC, the main cost is the submission. For many of us £140 isn't too much. For some it is. Panel scrutiny can and does fail. 'You haven't convinced us' is less likely than 'your papers are not in order', but this can mean additional cost.

For many it is an insult. Would you pay to be certified gay? By someone who is not? Is it payment for protection?

4.3 What about clinics?

Whilst the GRA does not *require* clinical interventions, you need some pretty good reasons for not being accessing this. The clinics are currently taking five years and more to see patients through. If you have come out as trans, waiting five years for society to affirm your innermost self-awareness can be too much to bear, even inhibiting to employment and housing.

There will be no three new clinics this year, and even if there were, the backlog is over 13,500. This has been accrued over a number of years. If the role of the clinics was just for suitability for surgical intervention, that might also help. Proper hormonal support and care at another level would ease the problem. Why not more local clinics, equipped with trained people, who can make interventions and provide clinical support, such as bridging hormones? Too many trans people self-supply from the Internet. They do it because the system as it is fails them.

Going online and reducing fees, plus three new clinics will not make transitioning either kinder or more straightforward. They will have little or no impact on trans peoples' lives.

5 'Acquired gender' and 'living in role'

Only non-trans people speak in these terms. Trans people are just alive. They want to be seen as how they feel themselves to be, and almost all will be able to trace their self-awareness, their discomfort in being treated as something they are not, deep into childhood, to their earliest years. Whilst it is perfectly reasonable to ask people to be sure before making a statutory declaration, there is no set period to determine this. We ask people to make all manner of legal declarations, and offer a cooling-off period in many cases.

Trans people are not trusted to say how they feel themselves to be. 'Do this for two years before we can believe you' is a strange thing. With waiting lists as they are, not a few trans people arrive at clinics having outstripped the requirement already. What they may not have dared to do is rename all their papers. You cannot change quite all of them, and a birth certificate and tax documents out of kilter with a driving licence, passport and credit cards, takes some explaining. It looks fraudulent. You are not legally protected in your identity in the workplace, until you have at least declared the intention to apply for a GRC. You are not 'legally trans'; you are legally as assigned at birth.

Gender is not acquired and it is not a role. You can socially transition whenever you like and risk being outed. In fact, this is the *requirement* – to socially transition, without support or status, for two years, whilst risking being outed and with no legal protections. And the definitions of how you should look whilst doing so are very weak. What if my name is not clearly gender-specific? What if I feel more like a butch lesbian than a pretty one? What if I don't make a convincing man, with my voice, no beard and my features? What if I appear androgynous?

How is being trans visible for diagnosis? What does it take to recognise a gender?

It is what the person consistently and persistently tells you. It does not take two years.

6 Statutory declaration

'I intend to live in this gender until death.' That's it. It may only cost £5, depending where you go for this. But it is a legal statement, a way of saying that I am not slipping into this gender for some convenience, legal or otherwise.

Why is this not sufficient? It doesn't take years, it doesn't require permission, and it is final.

7 Spousal consent

If two people cannot agree to stay in a marriage or partnership, on grounds of gender transition, then neither should be obliged to stay. The problem here is that transition, and preference not to live in such a relationship, is not currently grounds for divorce.

What needs reform is that currently a partner or spouse can hold the other bound to the partnership or marriage, unable to achieve a GRC, waiting for an uncontested divorce that may never come. Far too many trans people leave their marriages without agreement, forsaking everything that should be equally shared, simply in order to be themselves. The outcomes may be unfair, legally untenable, but a final desperate step to live authentic lives.

Divorce law caters otherwise reasonably well in this country, but it needs to embrace that gender transition is not unreasonable behaviour, whilst being legitimate grounds for such a decision.

No-one should be held to ransom in transition, simply because a spouse does not like it, or approve of it.

8 Age limits

It is uncontested that young people take years to come to terms with themselves. It is also true that every older transgender person was once a trans child, a trans adolescent, before being a trans adult. Puberty makes permanent changes, which is why puberty blockers alone are available to people under 16. But it makes a life-saving difference.

However, young people also need to be listened to without persuasion either way, and heard for what they say of themselves. Some of these are absolutely, genuinely trans or non-binary. Quite often they will change their names on school registers, and live with their new name. What they need most is assurance that moving into a supported trans adulthood is there for them. We must not make post-puberty surgery the solution to being trans, out of supposed care for their well-being 'in case they aren't really trans'. Similarly, waiting to 18 for *formal recognition*, can be unreasonable; it should be available at 16. Just watch the suicide ideation figures, just look at the outcomes.