

Women and Equalities Select Committee Inquiry – Reform of the Gender Recognition Act

Written evidence submitted by Mr Liam O'Dell

1. Introduction:

2. I am a writer and content creator who identifies as asexual (experiencing little to no sexual attraction), which sits within the LGBTQIA+ community. As such, I wish to express solidarity with trans and non-binary people in said community and respond to this inquiry by detailing changes to the Gender Recognition Act (GRA) which trans and non-binary people would like to see implemented.

3. Executive Summary:

- The Government's proposed changes to the GRA do not go far enough to make the process "kinder and more straightforward".
- Clarity must be given immediately as to what a "nominal amount" means in relation to the fee for obtaining a Gender Recognition Certificate (GRC).
- The requirement for a diagnosis of gender dysphoria, along with the spousal veto; the two year period of living in their gender identity; the statutory declaration should all be removed.
- The age limit for obtaining a GRC should be lowered to 16.
- The Equality Act 2010 offers legal protection for trans people against discrimination, and this legal right should not be removed. However, it should be amended to protect non-binary and gender-fluid people, and 'transgender' should appear within the Act's wording.
- The Scottish Government's bill's reduction in the two year period is a positive step, as is lowering the age limit to 16, however the rights of non-binary and gender-fluid people are not addressed.
- Greater legal rights must be given to non-binary and gender-fluid people.

4. **Question 1: Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?**

5. The UK Government's proposed changes, detailed [in a statement](#) from the Women and Equalities Minister, Liz Truss MP, in September, do not go far enough to make the process "kinder and more straightforward".
6. In said statement, the Minister said: "Thirty-eight per cent told us the process was too bureaucratic. So we will place the whole procedure online." However,

'bureaucracy' is more than the large amounts of paperwork which the use of the term in this instance seems to imply.

7. By definition, 'bureaucracy' means "excessively complicated administrative procedure". Simply moving the current process online does not address the procedural issues which lead to people describing it as 'bureaucratic' – such as the many requirements trans people need to meet in order to obtain a GRC.
8. On this point, the Minister said the £140 fee will be reduced to "a nominal amount", but did not detail how much this would be. Commentary on the GRC fee is continued in my response to Question 2.
9. The Minister's statement also goes on to add:
 - a. **"We have also come to understand that gender recognition reform [...] is not the top priority for transgender people. Perhaps their most important concern is the state of trans healthcare. Trans people tell us that waiting lists at NHS gender clinics are too long."**
10. On this point, proposals to introduce more gender clinics are a positive step to speed up the process for trans people, but it's also important to note that the initial response to the Government's GRA consultation was overwhelmingly in support of GRA reform, as the Minister notes.
11. Therefore, I believe it is incorrect to say that this is not a top priority for trans people. I also think that concern over the state of trans healthcare, as the Minister goes on to address, and GRA reform are intrinsically linked, and can co-exist – especially when the current procedure is incredibly medicalised, as further responses go on to explain.
- 12. Question 2: Should a fee for obtaining a Gender Recognition Certificate be removed or retained? Are there other financial burdens on applicants that could be removed or retained?**
13. As mentioned previously, the Government is yet to clarify what is meant by a 'nominal amount'. It's important that an exact figure is given as soon as possible, and that this figure should be as low as it possibly can be. I understand that there may inevitably be some administrative fees involved in obtaining a GRC, but the final fee should not present an economic barrier to trans people, as it does currently. This can strengthen the argument for the fee being removed altogether.
- 14. Question 3: Should the requirement for a diagnosis of gender dysphoria be removed?**
15. Yes. The requirement of a diagnosis of gender dysphoria frames identifying as trans as a medical issue, rather than someone understanding their true self and their own identity. As mentioned previously, the process is incredibly

medicalised, and this is demonstrated by the fact that to prove gender dysphoria, two medical practitioners must submit reports, with one of these individuals being someone who practices in the field of gender dysphoria, or a registered psychologist.

16. Furthermore, there remains a lack of understanding in the medical sector around the needs of trans people in health settings. As a [report](#) from Stonewall explains:
 - a. **“Two in five trans people (41 per cent) said that healthcare staff lacked understanding of specific trans health needs when accessing general healthcare services in the last year. This number increases to half of trans people (51 per cent) living in Wales.**
 - b. **“Seven per cent of trans people said they have been refused care because they are LGBT, while trying to access healthcare services in the last year.”**
17. Therefore, there may well be instances whereby the process of getting a diagnosis of gender dysphoria is not possible or delayed due to a lack of understanding by medical professionals. This can have a significant mental health impact on trans people. The solution is for the process of obtaining a GRC to be informed by trans people. It should focus more on understanding the needs of a trans person on a social level, rather than understanding them through alienating medical criteria. This will also go some way to making the procedure “kinder and more straightforward”, which is the UK Government’s aim.
18. **Question 4: Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?**
19. Yes. Expecting a trans person to live in their identity for long periods of time in order to ‘prove’ their gender identity can have a significant impact on their mental health. Add to that the fact that documents such as a passport; driving licence; payslips; bank statements etc. are amongst those required as evidence, and the process remains incredibly bureaucratic. This length of time should be as short as possible.
20. **Question 5: What is your view of the statutory declaration and should any changes have been made to it?**
21. The statutory declaration element of the GRA should be removed. Trans people may end up identifying differently in the future, which is totally valid, and they should not be ‘locked in’ to an expensive legal document which can restrict control of their own identity. At the same time, this statutory document can infer that a trans person is experiencing a ‘phase’ or may change their mind in the future, so they should make a legal commitment. As mentioned previously, a trans person may wish to change their gender identity once more and that is valid. Identifying as transgender, however, is not a ‘phase’,

and legal documentation which denies trans people full control of their gender identity should not be in place within the GRA.

22. Question 6: Does the spousal consent provision in the Act need reforming? If so, how? If it needs reforming or removal, is anything else needed to protect any rights of the spouse or civil partner?

23. The provision requires removal. As referenced above, trans people should have full control of their gender identity, and the outdated spousal consent and 'spousal veto' does not grant trans people that individual, personal right. Instead, it delegates part of that right to another person, and there is a potential for another person to 'veto' a trans person's right to identify how they want to identify. Civil partners and spouses should never be afforded this option.

24. Question 7: Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?

25. Yes, to include those at 16 and 17 years of age. At this age, they can obtain identification documents such as a passport and a driving licences, so they should be able to obtain a GRC which recognises their gender identity.

26. Question 8: What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?

27. Please see my response to Question 1. In short, I believe moving the application online does not go far enough to address the bureaucracy in the system, the economic barriers, or indeed the psychological impact applying for a GRC under the current procedure can have on trans people.

28. Question 9: What else should the Government have included in its proposals, if anything?

29. Please see the recommendations at the end of the document for the full list of policy changes and suggestions the Government should implement in this area.

30. Question 10: Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

31. The Scottish Government's proposals significantly reduces the time spent 'living in an acquired gender' from two years to three months, with an additional three months being a 'reflection period'. The reduction of time is a positive, as trans people should not have to spend long periods of time 'proving' their gender identity.

32. It also lowers the age for obtaining a GRC to 16. The benefits to this are detailed in Question 7, but under 16s are excluded. As well as this, the bill

does not address the rights of non-binary people, who are still unable to access legal gender recognition.

33. **Question 11: Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?**

34. According to the [National LGBT Survey](#) (2018), only 12% of trans respondents who had 'started or finished transitioning' had a GRC. I believe this is not only due to the 'bureaucratic' process, which the Government recognises in part, but due to the economic barrier of obtaining a GRC and psychological impact the process can have on trans people.

35. **Question 12: Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.**

36. No, the two do not intersect. One, the Equality Act, relates to discrimination against those undergoing gender reassignment, while the other, the GRA, concerns a trans person's right to have their gender identity recognised. In relation to the different language, my response to Question 14 details a possible change to the Equality Act on the matter of terminology.

37. **Question 13: Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?**

38. The legislation allows service providers to discriminate against a trans person if it can be proven to be a "proportionate means of achieving a legitimate aim". On this question, I align myself with the comments of the trans youth charity Mermaids when they [write](#):

- a. **"Trans people have been using toilets, trying on clothes in changing rooms, accessing domestic violence facilities, and generally getting on with their lives for as long as single-sex spaces have existed and there is absolutely no evidence we're aware of, from the police, local authorities, shops, refuges or anywhere else besides, that predators have used the provisions of the Equality Act 2010 to gain access to women's spaces. None.**
- b. **"Nobody here is making light of the need for women to be safe in such spaces. Anyone supporting trans people and women knows that security and a sense of security are paramount. Everyone deserves to feel protected from potential abuse, including trans and non-binary people.**
- c. **"We can simply step into Iceland, Portugal, Malta, Norway, Denmark or Belgium to see what happens when trans people are empowered to self-ID. In fact, we might simply hop over the Irish**

Sea to the Republic of Ireland, where a Gender Recognition Act allowing self-declaration was passed five years ago. None of these countries have reported a rise in attacks on women in single-sex spaces.”

39. Question 14: Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?

40. Yes, the legislation covers the protected characteristic of gender reassignment, and in its wording, does not require a trans person to be over 18 or have had a medical intervention to be covered by the Act. The Act should not be amended in this regard.

41. However, as I note in a later response, it should be changed to include protections for non-binary and gender-fluid people. I also believe that the Act could be amended to explicitly refer to transgender people, alongside transsexual people. As GLAAD [notes](#) in its definition of transsexual:

- a. **“An older term that originated in the medical and psychological communities. Still preferred by some people who have permanently changed - or seek to change - their bodies through medical interventions, including but not limited to hormones and/or surgeries. Unlike transgender, transsexual is not an umbrella term.**
- b. **“Many transgender people do not identify as transsexual and prefer the word transgender. It is best to ask which term a person prefers. If preferred, use as an adjective: transsexual woman or transsexual man.”**

42. Question 15: What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?

43. Alongside the Stonewall report mentioned about relating to the issues trans people face in healthcare, [another report](#) by the LGBTQ+ charity notes:

- a. **“What we’ve found is that, contrary to the panicked headlines, organisations across the sector have already been supporting trans women for some time. This support is vital because, in the past 12 months alone, one in six trans women have experienced domestic violence.**
- b. **“Many providers are taking proactive steps to ensure their services are trans-inclusive, and services are developing a growing body of best practice in this area. Some participants in this research recalled instances where challenges arose, and described how they managed these with sensitivity and common sense to ensure that every woman in their service felt welcome and safe.**

- c. **“Many organisations told us that reforming the GRA to simplify the process of getting a Gender Recognition Certificate would have no relevance to how they run their service. Participants overwhelmingly told us that services’ thorough risk assessment processes would continue to safeguard against an incident of a violent man attempting to access services, while ensuring that all women receive the support they need.”**

44. Question 16: Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

45. Yes. The GRA currently excludes non-binary and gender-fluid people from accessing legal gender recognition. Driving licences, passports and application forms all have only a ‘male’ or ‘female’ option, which is also exclusionary towards non-binary people.
46. I am aware that, in respect to passports, the Home Office won a legal case in March which allowed them not to provide gender-neutral passports – complete with an ‘X’ in the gender section – to UK citizens. However, as [a report by The Guardian](#) notes:
 - a. **“The court’s three senior judges said at the time that if international trends towards more widespread recognition of “non-binary” identity continued, at a future date this stance could breach human rights.**
 - b. **“Bangladesh, Denmark, India, the Netherlands and New Zealand also include non-binary gender options on passports, and 18 US states allow residents to mark their gender as ‘X’ on their driving licence.”**
47. As a result, the UK Government is clearly falling behind in this area, and I don’t support the view from the Home Office that simply adding an X mark – one single letter - to passports “could bring additional costs”. The judges noted that the Home Office’s current stance could soon breach human rights, and as such, it would be practical and a positive step to introduce this change as soon as possible.”
48. As Nancy Kelley, Chief Executive of Stonewall, said:
 - a. **“It’s vital that non-binary people are able to have their gender recognised on official documents, including passports. Travelling abroad can present many challenges for non-binary people, and trans communities more widely, who can face intrusive questions and difficulties at passport control.”**
49. Therefore, alongside providing comfort and support to non-binary people, it would also go a long way to adopting a “kinder and more straightforward approach” that the UK Government aims to do.

50. While [a recent court ruling](#) created precedent for non-binary people to be covered in the Equality Act 2010, there is no specific reference to them or gender-fluid people in the legislation.

51. Recommendations:

The UK Government must:

1. Provide clarity immediately as to what a “nominal amount” means in relation to the fee for obtaining a Gender Recognition Certificate (GRC).
2. Remove the requirement for a diagnosis of gender dysphoria, along with the spousal veto; the two-year period of living in their gender identity and the statutory declaration.
3. Address and remove the economic barriers to obtaining a GRC and lower the age limit to 16.
4. Review and update the GRA and Equality Act 2010 to allow non-binary and gender-fluid people access to legal gender recognition.
5. Urgently review its decision not to include an ‘X’ mark on passports, so it is in line with many other countries.

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