

**Written evidence submitted by The Proud Trust, 14/11/20**

*Who we are:* The Proud Trust is a life saving and life enhancing organisation that helps LGBT+ young people empower themselves, to make a positive change for themselves, and their communities. We do this through youth groups, coordinating national and regional LGBT+ youth work networks, managing the LGBT+ Centre for Manchester, delivering training, running events and campaigns, undertaking research and creating resources.

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

It is difficult to see how these proposed changes come anywhere close to meeting the aim of making the process 'kinder and more straightforward', given that the fundamental elements of the process remain the same: the gender recognition panel, the requirements for extensive evidence, etc. Nearly two-thirds of respondents to the Government's initial consultation said the requirement of a diagnosis of Gender Dysphoria should be removed, and an overwhelming majority agreed no medical report should be required, yet both these requirements were maintained<sup>1</sup>.

These were the elements described as 'unkind', not the method of application itself (i.e. online as opposed to a paper form). The proposed changes are akin to applying a sticking plaster to a shattered leg, and doesn't go anywhere near as far as it should.

**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?**

While we understand that there are fees for various types of official or identity document, such as a passport or a driving license, we would point out that requiring a fee to obtain *correct* documentation is an undue burden on an already marginalised community and that the cost of doing so for a GRC is notably more expensive than either of the two earlier examples. Additionally, the act of obtaining the 'evidence' which the Gender Recognition Panel requests can itself incur a significant cost. The fee is prohibitively expensive for many trans people; our trans service users have reported they are overall more likely to be employed below their level of experience, and have a more limited spending ability.

**Should the requirement for a diagnosis of gender dysphoria be removed?**

Following a comprehensive inquiry in 2016, the Women and Equalities Committee recommended that the process of obtaining a Gender Recognition Certificate (GRC) be

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<sup>1</sup> Gender Recognition Act: analysis of consultation results

demedicalised. It found that “The medicalised approach regarding mental-health diagnosis pathologises trans identities; as such, it runs contrary to the dignity and personal autonomy of applicants.”<sup>2</sup>. As an alternative, it proposed a system of self-declaration, as exists in other jurisdictions such as the Republic of Ireland. It is disappointing that the government has failed to act on this recommendation.

There are a number of reasons why a trans person might want to apply for a GRC. Having a birth certificate that does not match the rest of your documentation can create administrative difficulties. This problem is exasperated by widespread transphobia. For example, a trans person without a GRC would be forced to “out” themselves as trans every time they are required to use their birth certificate creating potential safety issues and adding anxiety to the process for the trans person. Furthermore, having your gender officially recognised by the state, or having the correct gender designation on a marriage certificate, can in itself be meaningful. For these reasons, the European Court of Human Rights has ruled that it is a violation of Article 8 of the European Convention on Human Rights to deny trans people legal recognition of their gender.

A Gender Dysphoria diagnosis requirement is problematic for two reasons. Firstly, the NHS is failing in its provision for trans healthcare, creating a major roadblock for trans people wanting to obtain legal recognition of their gender. The current average waiting time for a first appointment at a Gender Identity Clinic is an astonishing 33-36 months. In the 2016 inquiry it was found that the NHS treats trans people as second-class citizens, failing to meet its requirements under the Equality Act.

Under the current system, trans people wishing to obtain a GRC must undergo a long, burdensome, and demeaning process of medical assessment. It is unacceptable that trans people should be required to traverse such difficulties in order to gain legal recognition of their gender.

Secondly, and more fundamentally, the medical requirement in the GRA pathologises trans identities. By not stipulating that a trans person undergo surgical intervention, the GRA was progressive for its time. However, by requiring a diagnosis of ‘Gender Dysphoria’, it places judgments about a person’s identity in the hands of medical professionals. Doctors are, in effect, given the role of deciding whether a trans person really is who they say they are. Being trans is not an illness, but a matter of personal identity. While trans people often seek medical care, doing so should not be a prerequisite for having their identity recognised. This is accepted as true in almost every other instance. No medical diagnosis is required to change your name or your passport, or to have your identity recognised at work or in any other aspect of public life. To require a medical diagnosis is to deny many trans people the recognition, legally, that they already have in every other area of their life, unless they undergo a lengthy, intrusive, and pathologising process.

As a solution, we support a process of self-declaration, as was proposed by the original inquiry, and is quickly becoming the new gold standard for gender recognition law. This is a position shared by the [British Medical Association](#).

**Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?**

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<sup>2</sup> Transgender Equality, United Kingdom, Women and Equalities Committee, 2016, p.14

The requirement to 'live in [an] acquired gender' means that judgement must be made by a panel on what this *means*, which raises the issue of who gets to decide what constitutes 'living' as a man, woman, or non-binary person.

In practice, this often looks at whether the person has changed their names and titles, but fails to acknowledge the roadblocks in place to doing this (i.e. institutional reluctance to change people's details, including refusal to change titles without a GRC [!]). It also places undue burdens on younger trans people, who may have been living as their true gender for many years, but due to unsupportive family were unable to make any changes to their documentation until they become adults.

**What is your view of the statutory declaration and should any changes have been made to it?**

There are a number of problematic elements to the current declaration. Many of these are addressed elsewhere in this document (for example, the exclusion of non-binary people). If these issues were addressed there would be nothing wrong with using a declaration as part of the process of application for legal gender recognition. The problems with the declaration process as it stands stem from these additional requirements. Furthermore, wording such as "live in that gender" seems ambiguous and unnecessary. A reformed statutory declaration should require only that a person truthfully declares their gender. Such a declaration should be sufficient, without excessive amounts of accompanying "proof", as is currently required.

**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?**

While we understand that the intention of the spousal consent provision in the act is to protect the rights of any partner to a trans person, it must be said that in practise this provision can function as a kind of 'Spousal Veto'. Through the actions of the spouse/partner, a trans person can be actively prevented from seeking appropriate medical treatment or documentation. Unless the spouse gives their consent for the marriage to continue, the trans person can then be blocked from having their identity recognised; a trans person then has six months to end the marriage, but the spouse still has the power to refuse to do this by annulment, which could lead to costly and difficult divorce proceedings.

To be blunt, we feel this is a human rights violation. It is quite easy to see how a spouse may use - or abuse - these provisions in the act as a method of control over their partner. Given that since the introduction of the Act, the law surrounding marriage itself have been updated to allow same-sex couples to wed, we would ask why, in light of the harm it can undoubtedly cause, the spousal consent provision is still considered necessary.

### **Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?**

At 16, people in the UK may leave home, change their name by deed poll, and apply for a passport without requiring parental consent; they may also marry or join the Army with parental consent. This shows that 16 is generally the age at which changes to status and documentation can be made.

Younger people are also less likely to have multiple forms of identification, and may need to use their birth certificate to identify themselves, often leading to them being “outed” as trans inappropriately. For these reasons, we feel that 16 is a more appropriate age limit, with provisions for under-16s to apply for a GRC with parental consent.

### **What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?**

The Government’s proposed changes are likely to have very little impact on those people applying for a GRC. As noted above, the proposed changes are simply to reduce the fee and put the process online. It is not in any way addressing the process itself of gathering evidence and submitting it to a Gender Recognition Panel whom the applicant does not meet. If this element of the process still exists then we feel it is unlikely that any applicant would consider the process ‘kinder’ simply because it is now online.

More generally, given that the Government has noted that that very few certificates are issued when compared to the likely number of trans or gender-variant people in the UK, these surface-level changes to a process widely considered to be dehumanizing and invasive are unlikely to encourage more people to apply for the certificate if those problematic elements of the process remain unchanged.

### **What else should the Government have included in its proposals, if anything?**

The government’s proposals fail to deal with many of the issues identified in the initial inquiry. While a reduction in cost is welcome, and greater capacity in healthcare provision is vital, many fundamental issues remain.

The 2016 report concluded that:

“The Gender Recognition Act 2004 was pioneering but is now dated. Its medicalised approach pathologises trans identities and runs contrary to the dignity and personal autonomy of applicants.”

This is still true, and the government has proposed nothing to solve this issue.

Furthermore, the government must act to address the needs of non-binary people, who currently have no means of legal gender recognition in the United Kingdom.

**Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?**

The Scottish Government's proposals tackle one of the major problems with the current act: demedicalising the process and making it easier for trans people to correct the gender on their birth certificate would be a huge step forward for trans equality. Not having the correct documents subjects trans people to additional burdens that they would not otherwise face, and opens the door for discrimination. By removing obstacles such as requiring a medical diagnosis, the Scottish bill would reduce the burden placed on trans people, providing them a much simpler and less intrusive way of correcting their documents. It is, however, disappointing that the Scottish Government's proposal does not intend to provide legal recognition to non-binary people.

**Wider issues concerning transgender equality and current legislation:**

**Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?**

As noted above, the GRC process is widely seen in the trans community as problematic, outdated, expensive and ultimately of limited benefit. The trans community has always shared information about healthcare, employment and so on. An aspect of this is that 'word gets around' and many trans people are aware of the vagaries of the GRC system well before they are at the point of applying for one.

A GRC is not required to change either a passport or driving license; these are fundamental documents, which are used far more on a day-to-day basis than an updated birth certificate. Trans people are much more likely to assign a higher priority to obtaining photo ID documents than an updated birth certificate, especially if it's widely seen that the process to do so is easier and less intrusive than a GRC.

**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.**

There is an argument to be made that updating the language of the Equality Act from 'gender reassignment' to something similar to 'gender identity' or 'gender presentation' would be beneficial. The current phrasing of 'gender reassignment' could leave the impression that only

those pursuing medical interventions are protected by the Equality Act, when this is not the case. The Equality Act does and should protect all trans and gender variant people regardless of their medical status or whether they have a GRC.

However if the government does elect to update this language it should do only so with the extensive involvement of those specifically affected by it: trans people.

**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?**

The legal protection of trans people under the Equality Act was a great step forward. It is absolutely essential that any review of the Equality Act is done extremely carefully, so as not to inadvertently remove protections for trans people that were previously afforded to them; for example, in the use of “single-sex spaces”.

At the heart of any discussion about trans equality must lie the principle that trans people are who they say they are. Trans people must continue to have access to gendered facilities such as toilets, changing rooms and women’s/men’s refuges, regardless of whether they possess a GRC. It should go without saying that to prevent trans people from accessing such spaces would cause great harm and hinder them in their everyday lives to an egregious extent.

**Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?**

The Equality Act provides protection for trans people to the extent that it is correctly interpreted. For example, though the act contains an exemption clause, the ‘Services, Public functions and Associations Statutory Code of Practice’ makes it clear that “any exception to the prohibition of discrimination must be applied as restrictively as possible and the denial of a service to a transsexual [sic] person should only occur in exceptional circumstances”.

At a time when transphobic hate crimes have quadrupled over the past five years, it is imperative that trans people can be confident that the Equality Act offers them reliable legal protection. It is therefore worth reiterating that transphobic discrimination is always wrong, and that exemption clauses in the equality act must not be used as loopholes by those intent on discrimination.

**What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?**

In the experiences of our service users, trans people often face a choice between accessing support services while being misgendered, mistreated, and discriminated against, and not accessing vital support services at all. Care is often ineffective or inappropriately withheld for no

reason other than a person's trans status, often because of the care provider's lack of knowledge around trans identities; better training of all support services is needed to ensure trans people do not fall through these 'knowledge gaps'

This is especially urgent when it comes to domestic and sexual violence, as trans people "experience a dramatically higher prevalence of IPV [intimate partner violence] victimization compared with cisgender individuals, regardless of sex assigned at birth"<sup>3</sup>. Trans people must be able to access these services without fearing that they will do more harm than good, and without their trans status being inappropriately centred.

### **Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?**

Given that the current legal landscape does not recognise the existence of nonbinary and genderfluid people in any way, we would argue that reforms are needed urgently to allow nonbinary people to have legal recognition as such. There is no provision in the Gender Recognition Act for non-binary recognition; it simply allows a change of female to male or vice versa. The UK currently does not have gender-neutral markers on passports (such as 'X' markers) as several other countries have done, notably Germany and Canada.

There is a larger question surrounding the data held on identifying documents and if it is genuinely necessary to include a person's gender as part of this. However, to better support the rights of non-binary and genderfluid people, we would suggest at minimum the following: non-binary recognition enshrined in the law and the Gender Recognition Act be updated or replaced to reflect this; an update to the UK passport system to allow people to define as nonbinary (such as the aforementioned 'X' gender marker); wide-ranging updates to healthcare protocols both in trans-specific healthcare and wider primary or GP care; and demedicalising the process of gender recognition for all trans and nonbinary people.

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<sup>3</sup> Sarah M. Peitzmeier, Mannat Malik, Shanna K. Kattari, Elliot Marrow, Rob Stephenson, Madina Agénor, and Sari L. Reisner, 2020: Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates, *American Journal of Public Health* 110, e1\_e14, <https://doi.org/10.2105/AJPH.2020.305774>