

## Reform of the Gender Recognition Act Inquiry: Evidence submission from Spirit Level Transgender Support Group

### 1. Introduction

This statement has been compiled by Spirit Level Transgender Support Group, a peer-to-peer group based in Liverpool, with members at many stages in their transition, and from many walks of life. The evidence provided below reflects the experiences and opinions expressed within our group.

### 2. The Government's response to the GRA consultation

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

We do not believe that the proposed process changes will make applying for a gender recognition certificate any kinder. The level of intrusion, and burden of proof which doesn't align well with many people's transition journey, remains the same.

The process will only be slightly more straightforward: assuming the quantity of evidence required remains the same, it's only slightly more effort to photocopy everything or print things out and posting them than it is to prepare the same documentation for online submission. Not having to send a passport or other documentation away for an undetermined length of time means that we can at least travel abroad while the process is in motion. Some of us work abroad at short notice and being without a passport could be a real issue.

#### 2.2. 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?

While we welcome the proposed reduction in cost for the application, in many cases, the certificate application itself is not the only cost incurred. For those in the process of getting their paperwork in order to apply, with the GIC waits of 30-45 months for a first appointment, let alone a diagnosis and suitable report, many are nowhere near obtaining a gender specialist's appointment with the NHS. This means either waiting, in most cases for years after otherwise being eligible to apply, or obtaining a report privately, at a typical cost of £300. Additionally, most GPs will charge for their suitable report to be written, a further cost of up to £50. A solicitor is required to witness the statutory declaration(s) required, and most people will have to pay for this. Adding any sort of cost on top of this is too much for a lot of our members.

A further improvement that could be made in this regard is a notification system similar to how death notifications work with banks. A Change of Name notice that informed major institutions public and private, then triggered automatic birth certificate and marriage certificate changes when a GRC was complete would be really helpful.

#### 2.3. Should the requirement for a diagnosis of gender dysphoria be removed?

The World Health Organisation [WHO] has recently removed the term "Gender Dysphoria" from its ICD-11 guidance:

*“This reflects evidence that trans-related and gender diverse identities are not conditions of mental ill health, and classifying them as such can cause enormous stigma.”* (World Health Organization, n.d.)

The World Professional Association for Transgender Health [WPATH], stated back in 2017:

*“WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents. These include requirements for diagnosis, counseling or therapy, puberty blockers, hormones, any form of surgery[...].”* (World Professional Association for Transgender Health, 2017)

Gender dysphoria is the distress many transgender people feel about their gender incongruence. Some people are incongruent without feeling distressed about it, and the fact that they aren't distressed, or 'dysphoric', should be no barrier to them being who they really are, and having that recognised in law, and we agree that no medical requirements should be necessary.

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

The two-year period is, in our opinion, too long. It should be borne in mind that most transgender people have known they were transgender for some considerable time before they are ready, or circumstances allowed, for them to live in their true gender. For instance, we have members in family carer positions who are reluctant to come out while that responsibility is theirs, as they do not want to distress their relative further. By the time they feel able to transition, they may have been planning social transition for many years, and a further 2-year delay would be disproportionately unfair to those people. Our consensus is that this period of living socially in a person's true gender could be reduced to a year, or even 6 months, without issue. People know when they are ready to apply, and some trust in the competence of transgender people to know their own minds and have responsibility for their own choices would be refreshingly welcome.

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

The single statutory declaration is a sensible, still-legally-binding document, and we have no issues with the wording or information required on it, except for the partner's declaration as described in 2.6.

We believe that the statutory declaration, rather than the medical diagnoses, should form the basis of applying for a Gender Recognition Certificate.

#### 2.6. 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?

Most people in the group have not applied for a Gender Recognition Certificate and have therefore never filled in a statutory declaration, but one member has recently filled in a statutory declaration relating to her Gender Recognition Certificate application. As she is married, her partner also needed to fill one in as well. Neither our member, nor her partner think that the partner's declaration should be necessary. A partner who doesn't wish for someone to transition can effectively prevent the transitioning partner from obtaining a gender recognition certificate. If the partnership is strained, this refusal can cause real upset to the transitioning partner.

We believe that the non-transitioning partner should be able to divorce on the basis of gender transition, but that the transitioning partner should have the right to be recognised as themselves within divorce proceedings.

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

A great amount of personal autonomy is granted to people at the age of 16, and we believe that the right to full gender recognition is in line with other rights and that responsibilities afforded to 16-year-olds at present.

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

The proposed changes, in our view, do not go nearly far enough to allow transgender people to be recognised for who they are. They do nothing to eliminate the unsuitable medical burden of proof, which relies on a relatively narrow definition of what it means to be transgender. The act is considered outdated when compared to other countries that have subsequently passed their own Gender Recognition Acts. It's out of alignment with both the current WHO guidance (as per section 2.3). What else should the Government have included in its proposals, if anything?

A significant omission from the current Gender Recognition Act is the provision of valid identity markers for non-binary people. There is also a wider discussion to be had about intersex people and how their gender is recorded at birth.

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

For the reasons already stated, and apart from not yet covering non-binary identities (although this is on the agenda for a future revision), we think that the Scottish proposals are far better aligned with transgender people's needs than the current act or the current proposals to change it.

## 3. Wider issues concerning transgender equality and current legislation

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

We think that the number is low because of a combination of factors: principally, the high burden of evidential proof and the costs (both direct and indirect as mentioned) required to obtain one, and the relatively low usefulness of the certificate once it has been received. If a transgender person is not married or in a civil partnership, and doesn't have any plans to marry, there is little benefit to having a Gender Recognition Certificate.

Every form of identity we use in our day-to-day lives can already be changed, and many of us have passports, driving licences, bank and utilities changed, records with HMRC and Universal Credit, even DBS checks and security clearances. One member has gone through the process of applying for parliamentary clearance as a subcontractor without needing one.

A GRC offers no protection from discrimination in the day-to-day world. Its only protections surround birth, marriage, and possibly dignity in death.

3.2. 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.

The language of both Acts is a little outdated, and both acts have their weaknesses relating to the inadequacy of the language used to describe transgender people, as it doesn't fit in a modern context of how transgender people refer to themselves. We don't believe there is much conflict between the acts themselves as long as you interpret the language within them in the context of the common terms in use at the time each was written.

3.3. 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?

Although there have been some legal cases since the Equality Act was passed into law which makes it less ambiguous, the phrase 'proportionate means to a legitimate aim' is open to a wide range of interpretation and misinterpretation. It would be very useful to have guidance on the sort of circumstances this clause would be used in, and more importantly, circumstances in which it should never be used. Currently, transgender people can, and do use toilets, changing rooms, medical facilities including hospitals, and domestic violence refuges in alignment with their gender. The burden of proof on the provider of the space should be explicit. It's important to close loopholes that some service providers may use to deny transgender people appropriate service or care.

We think it's important that non-segregated spaces are also available where this is practical to implement.

Transgender people are placed at much higher risk of harm when using the single spaces of their birth sex.

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

We believe the Equality Act adequately protects most binary transgender people adequately. There is separate work ongoing surrounding hate crime law, which will be helpful to us. The Act as it stands does not recognise non-binary people (although subsequent case law has offered some limited legal standing in this regard). People who have no intention to permanently transition but are gender variant, be they cross-dressers, gender-fluid or bi-gender people have little if any protection under the Act. While cross-dressers might not want to stay in hospital on an opposite-sex ward, when they are out in public, they may feel safer using toilets aligning with the gender they are currently presenting as. As the law stands, they are uncertain as to what rights, if any, they hold.

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

With trans-related health services, the many issues are well known and discussed within the transgender community. 3+-years-long waits for a first Gender Identity Clinic [GIC] appointment, for both adults and children are normal, and completely unacceptable.

The risk of anxiety and depression, and the associated health risks that come with those conditions, means that the NHS must treat those conditions as well, and these treatments could be avoided with timely, appropriate intervention. It's well known that the suicide risk for transgender people living without support, especially in early or pre-transition is extremely high.

## Written evidence submitted by Spirit Level Transgender Support Group (GRA0279)

More mental health support and counselling services are desperately needed at a much earlier stage: We're lucky to have such a transgender-specific support service in Liverpool (though other areas of Merseyside can't currently access it), and even the waiting list for this service has been over a year long for some time.

The pilot GIC schemes, when they are running, will provide relief in the areas they operate in, but the rest of the country is stuck waiting, or paying significant money to go private.

Additionally, a pilot scheme has been set up at a sexual health clinic in Liverpool to run trans-specific timeslots in the week, and to de-gender spaces and make it more accepting to transgender people where possible. It has been well received by the community, but this is far from a common practice at present, and would be welcomed in other such clinics. The experiences of trans men seen for gynaecology and maternity appointments are varied at best, and a similar inclusive approach would prove invaluable to them.

Some people have trouble getting referrals by their GP to GICs and other services, and being treated in accordance with GMC best practice. Some GPs are hostile to transgender patients. Many of our members have had to change GPs to get the service they need.

Many GPs are also unwilling to enter into shared-care arrangements with either private practice, or less commonly, even GICs, meaning patients who seek private treatment have to either still wait for the GIC if they have, or pay more for ongoing private treatment, and where GIC requests are denied, it can leave the patient without any treatment.

Other staff interactions in surgeries are equally varied: Some people can't get their name or title changed in the system, and others can: It seems to be entirely up to the staff. It's not just correspondence that this affects: we've had several 'Mr. Woman's Name', 'Miss Boy's Name' or 'Mr. Birth Name' messages flashed up on screens in various surgeries. Several members have also reported receptionist staff asking deeply inappropriate and personal questions in open waiting rooms.

Some of our members also report inappropriate questioning from medical staff both in GP practices and outpatient departments when attending for issues unrelated to being trans. Our members have been misgendered and belittled by various departments within the NHS. Trans men who require smear tests can find both the setting, and the staff's responses upsetting, and in some cases have had tests cancelled because administrative staff have assumed an appointment has been made in error.

GP and departmental training for transgender awareness and treatment is clearly highly inconsistent, and non-existent in many places. Some GPs are supportive, but have to research every step as it happens, or are informed of the steps to take by the patient, because of a lack of training.

When it comes to accessing support services, many are good, but some are still not. We've known people have deeply inappropriate questioning and gatekeeping when making enquiries about adoption, even after obtaining a GRC.

A large gateway into support services, particularly domestic and sexual violence services, is the police. As a group, we recognise that police awareness of transgender people's needs has increased over the last couple of years, but think that a lot more work can still be done in this regard, and many members of the community still remember their negative, dismissive interactions with the police clearly, and for this reason there still remains a trust issue in the community.

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

As mentioned in section 3.4, we believe that legal reforms are necessary to cement the rights of gender-fluid, non-binary, bi-gender people, as well as to establish the rights of cross-dressers to access spaces and services relevant to them.

## 4. References

World Health Organization. (n.d.). *WHO/Europe brief – transgender health in the context of ICD-11*. Retrieved from [www.euro.who.int: https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11](https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11)

World Professional Association for Transgender Health. (2017, November 15). *WPATH Identity Recognition Statement*. Retrieved from [wpath.org: https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf](https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf)

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