

## **Public and Commercial Services Union (PCS) Broad Left Network submission to GRA consultation**

We are a network of members in the PCS which represents civil servants, public sector workers and associated privatised areas and deliver services to the public as well as having a diverse membership of workers in these services.

Here is the response that we are submitting to the questions.

**The Government's response to the GRA consultation:**

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

The proposed changes are very limited in comparison to the scope of the consultation in 2018 and there needs to be much more done to improve equality and support for trans people. As well as fully improving the GRA process the context in society also needs to be addressed. Action needs to be taken to stop cuts to services, stop job losses and address low pay in society which combined with continuing discrimination can impact detrimentally even further on trans and non-binary people.

The government has been stating that they are committed to providing an extra 3 clinics for a long time which have not come to fruition. Is this promise of 3 extra clinics a repeat of the same commitment or a further expansion of services?

The process remains extremely medicalised and a major barrier to the acquisition of a GRC is the cost of all the psychological and surgical reports. The proposed changes do nothing to address this.

- **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?**

The fee should be removed completely.

As well as fully removing the fee for obtaining the GRC the whole process needs to be reformed including removing the medicalised aspects of the process. Individuals incur huge costs to pay for the psychological and medical reports to provide evidence for the process. A straightforward self-identification process would remove these additional costs too.

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

Yes – gender identity should not be subject to medical diagnosis. It should be done as a result of an individual's sense of gender identity. Medicalising the whole

process violates the individual's human rights. It delays the process and makes it more difficult, dehumanising, and bureaucratic. Amnesty International has highlighted that the medicalisation of what is gender identity is a violation of human rights and is handled in an intrusive and unhelpful way that is traumatic for many trans people. The medical profession should be there to assist and support people who need them not be put in place as an obstacle to establishing gender identity which puts many people off. This is nothing but gatekeeping.

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

Yes – it should be up to the individual rather than a requirement. Some individuals find it useful to get to see what living and facing discrimination is like and that they can withstand the transphobia in society as a first step.

It would be better to have a simple administrative process based on self-determination of gender identity without any medicalisation of the process or having to prove that you are trans enough to deserve the gender recognition. It is important to have the services in place and properly resourced to tackle discrimination and support trans people.

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

The statutory declaration can remain as long as there is the ability to detransition if that should become necessary. Other countries which have adopted self-declaration have successfully done so through statutory declarations, that are for life, but can be reversed. A system along these lines should be adopted in the UK

- **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?**

Spousal consent provision should be removed from the GRA. Gender identity is an individual's decision and they should have the right to make this decision without the need for spousal permission. No-one is the property of their spouse and withholding permission could be a means to continue domestic abuse and control over a partner. There should be provision for whatever partnership has been entered into prior to change of gender identity to continue after the change – so for the marriage or the civil partnership to continue to remain valid.

This is the only instance in English and Welsh law that someone's legal rights are handed over to someone else.

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

Yes. There should be no lower limit. Once a person under 16 can understand the consequences and are Gillick competent they should be able to apply for a GRC if

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they know themselves to be trans. This should be coupled with fully resourced support being available for children to explore their gender identity.

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

Very little.

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

Remove the invasive and lengthy process of acquiring medical evidence to support a change in legal identity.

Simplify and streamline the whole process – if this is to be an online process there also needs alternative channels to apply for those for whom online is a barrier.

Change the process so that it is centred around self-identification and stop the medicalisation of the process.

Remove the 2-year living in the acquired gender requirement. This is often accompanied with the pressure to conform to a discriminatory, rigid gender stereotyping of what men or women are supposed to be, rather than the reality of how people are.

Remove spousal consent.

Legal recognition for non-binary and gender fluid people

What is vital to back reforms of the GRA is also fully resourcing public services that are needed in our communities so that trans people can access the services they need as part of a comprehensive funding of public services to meet everyone's needs including all those fleeing violence and all equality groups. There must be no pitting of different equality groups competing against each other trying to get vital public services delivered in our communities.

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

The Draft Scottish Bill is an improvement but we would want all the issues outlined above to be addressed in the reform of the Gender Recognition Act 2004.

**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?**

The consultation begun in 2018 was supposed to be about making the gender recognition process more straightforward and less onerous but the proposed changes do extremely little. It is not surprising that so many trans people baulk at the

hurdles in the act. It is imperative that the process to obtain gender recognition certificate is vastly improved and simplified so that the numbers reflect the numbers of people who identify as transgender in society.

Additionally, there is no scope for non-binary or gender fluid people to be recognised in the GRA. Such individuals form a large section of the trans community and are individuals who may want to change their birth certificate but the binary gender definition in the GRA does not help them. This means they don't apply as the whole process is irrelevant to their gender identity.

- **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.**

We would not want to see any improvements to trans rights in the GRA being used to undermine the current provision in the Equality Act. A great deal of misinformation has been spread about the GRA proposed improvements introducing a raft of changes when on paper the rights and protections already exist from when the Equality Act was introduced in 2010. It introduced improved transgender rights and made it clear that discrimination applies from the point at which the person proposes to undergo the process to reassign their sexual characteristics. So, for example, women specific services should be offered from the point that the trans woman decides to live as her affirmed gender. Women's Aid in Scotland and most other organisations already have inclusive services open to all women fleeing violence – this includes trans women who self-identify. Improvements to the GRA will not affect this. There are robust screening processes in place in refuges to ensure that perpetrators of violence are not able to enter refuges or find out information about the women residents, whether they are male or female. The screening process also assesses risk to ensure the safety of all, so women who may be a risk to others or themselves may be referred to separate support services.

- **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?**

Improvements to the GRA and accessing the gender recognition process should not be used as a way of undermining the trans rights in the Equality Act. The provisions of the Equality Act should remain and there already cannot be a blanket ban on excluding trans women from women only services. It is good practice to make clear that the women specific services are provided on an inclusive basis and open to all women. There should only be very exceptional circumstances where anyone is excluded from services. For example, any woman for whom shared refuge accommodation is not suitable as they could be a danger to themselves or to others should still have access to support and alternative provision to suit their needs. This should be true whether they are a trans or cis woman. Where there are exceptional circumstances this should only be on clear detriment to others and even then, the provider of the services would need to demonstrate that they could not adjust their

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services to avoid discrimination. Measures could include increasing the level of privacy in changing facilities for example which would be beneficial to all women using these services.

We would not accept that disabled women should be excluded from services and would expect service providers to make adjustments. Similarly, adjustments should be made to avoid any discrimination under the Equality Act for all women which includes trans women.

It is only in very restricted circumstances that the Equality Act allows for treating someone differently due to gender reassignment. Apart from these very exceptional circumstances which are covered in the Equality Act trans women should be able to apply for jobs in women only services. The improvements we want to see to the GRA should not affect this.

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

We would not want to see changes to the Equality Act that undermine the clear rights for trans people. We are concerned that the consultation about the reform of the GRA and making the process more straightforward and easier for trans people is being distorted into threatening the rights for trans people that already exist.

The Equality Act does need to be improved to include non-binary and gender-fluid as protected characteristics. But this must not be done at the expense of reducing rights for trans people overall.

As well as improving equality rights the real issue is the lack of resources for our services, which increases the tendency for competing priorities rather than addressing all the needs in our communities. Fully funding our services to meet the needs of all in our communities should be prioritised so that equality rights can actually be implemented.

All equality legislation also needs to be backed up with inclusive awareness raising and improving understanding. The toxicity of the debate raised by those opposed to reforms to the GRA has brought this into sharp focus and undermined progress that has been made on trans rights. As well as the points made above this has also included denying the rights of trans men to exist and reducing the debate to one of sexuality rather than reality that these rights are about gender identity.

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

See foregoing answers. In addition:

Progressive legal changes are not enough. Sufficient resources are also vital. Huge cuts in public services are impacting on the ability of everyone to access the services

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that they need – this is especially the case for groups with protected characteristics to access the info and support that they need.

Clearly in a society rife with discrimination against trans people then accessing public services, going to court, applying for jobs and benefits can be full of potential to exacerbate the discrimination. Whilst this discrimination exists then we need to make sure that the protection from discrimination for trans people remains robust and keeps up to date with the changes in services

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

We should support the right for people to identify as non-binary and gender-fluid. In a society that is so dominated by gender stereotyping then it is understandable that individuals reject this way that people are judged and pigeon-holed according to these simplistic male and female stereotypes. Legal reforms are needed to address the rigid binary categorisation of gender identity. There should be supportive approach for non-binary individuals to access services especially if they have suffered gender-based violence. Specifically the EA2010 needs reforming to explicitly include non-binary identities; passport gender markers need removing altogether or provision needs to be made for a non-binary option; a similar change needs to be made for driving licenses and all other legal documentations which carry a gender marker or title ; and a provision for a non-binary change to a birth certificate needs to be included in reform of the GRA.

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