

Submission to the Women & Equalities
Select Committee Inquiry into
Reform of the Gender Recognition Act

Introduction

1. This submission to the Inquiry is from TransActual CIC¹, a community interest company registered in July 2020, but with 2 years history before that, which aims to empower trans and non-binary people as well as inform and educate others about the issues which trans and non-binary people face.
2. Although TransActual did not exist in 2015, at the time of the Select Committee's original inquiry into the issues that trans people face, our Chair of Directors, Helen Belcher, did give oral evidence to the inquiry² on behalf of Trans Media Watch.
3. We welcome the Committee's inquiry as an opportunity to explain what we see as the issues that trans and non-binary people continue to face in the area of legal gender recognition, and the impact on trans and non-binary communities of the Government's failure to carry forward any meaningful reform of the Gender Recognition Act 2004.

Government's Reports to the GRA Consultation

4. In its 2015 inquiry, the Select Committee received evidence from a number of trans people explaining the shortfalls and injustices they faced when applying for legal gender recognition under the Gender Recognition Act 2004.
5. These injustices include:
 - (a) submitting evidence to a panel who the applicant would never meet, but would have significant impact on their future;
 - (b) requiring written consent from a spouse who may be separated or incapable and therefore unwilling or incapable of giving such consent;
 - (c) having no effective right of appeal to the panel's decision;
 - (d) exclusion of those who are under 18;
 - (e) no effective recognition for those who are non-binary, namely those who do not consider themselves to be male or female.
6. Since the Select Committee's inquiry in 2015 **Government has done nothing to address any of these issues.**
7. A consultation was managed by the Government Equalities Office in the autumn of 2018 soliciting views and evidence on proposals to reform the Gender Recognition Act - proposals which were dropped by Rt Hon Liz Truss MP in September 2020 despite a large majority of respondents to the consultation agreeing with the proposals for reform³.
8. A Private Members Bill to remove the spousal consent provision (known as "spousal veto") by Baroness Barker in the House of Lords⁴ fell at the 2019 dissolution of parliament.

¹ <https://www.transactual.org.uk/>

² <https://old.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2015/evidence-session-transgender-inquiry-first-session-15-16/>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919890/Analysis_of_responses_Gender_Recognition_Act.pdf

⁴ <https://www.politicshome.com/thehouse/article/its-time-to-abolish-the-spousal-veto-over-gender-recognition-for-married-trans-people>

Cost of Application

9. The £140 fee currently charged is just one cost component for an application, whether successful or not, as this statement from one of our supporters makes clear: *“I spoke with the GR Board in the UK, I provided proof of surgery already taken place, I provided proof of Identity Documentation all from Australia. However, this was not acceptable to them. They instructed me to use 2 of their recommended UK doctors to obtain a report to prove that I suffer from Gender Dysphoria, to confirm surgery has been performed and exactly what procedures took place. These reports are to be done via Skype at a cost of £300 each. Then there is the cost of £140 for the certificate and also the cost of a new marriage certificate as my wife and I will be in a same sex marriage once the birth certificate is updated. So everything together will be close to £1000. I find myself stuck in No Man’s Land.”*
10. Changes in circumstances can suddenly make acquiring legal gender recognition important. Another of our supporters said: *“I had previously felt no need to apply for a Gender Recognition Certificate but now I need one to draw my private pension.”*

Proof of Transition

11. It should be noted that, at the time the Gender Recognition Act was passed, neither the Diagnostic Statistical Manual (DSM) nor the International Classification of Diseases (ICD) - the two publications which are used to determine if a diagnosis is generally recognised - contained a diagnosis of “gender dysphoria”:
 - (a) the ICD used “gender identity disorder”, and is moving to “gender incongruence” in 2022⁵;
 - (b) the DSM used “gender identity disorder”, moving to “gender dysphoria” in 2013⁶.
12. Therefore the **current Act required something that, at the time, was not a medically recognised diagnosis** and, even now, is only recognised by one of the two internationally recognised diagnostic manuals. This should not be used as an argument that those who gained gender recognition prior to 2013 gained it illegally, as the term was understood within the NHS, but rather should raise fundamental questions about specifying a medical requirement in statute for gender recognition - **terms change as knowledge increases**.
13. However, the Panel goes beyond the Act and requires their own list of approved medics⁷, rejecting reports from those who are not on their current list. It is not known how that list is compiled or maintained.
14. For those who transitioned some time ago, it is very possible that the medics who treated them have since retired and are not on the list⁸ or no longer registered so are no longer qualified to write a report containing the required language - requiring the applicant to get an appointment with a currently recognised specialist. One of our correspondents writes: *“Because I transitioned so long ago it’s actually much harder than someone who transitioned recently, as so much paperwork is no longer acceptable.”*
15. Currently **waiting times to see an NHS specialist are consistently over 2 years⁹**, (despite repeated pledges by the NHS to bring the service within their 18 week target¹⁰) and it costs applicants additional money to see one of the very few private practitioners still working in this field thereby avoiding significant delays and unnecessarily using rare and valuable NHS resources. This is a significant disadvantage and deterrent to applying.

⁵ <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11>

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6225591/>

⁷ <https://www.gov.uk/government/publications/gender-dysphoria-list-of-specialists-t493>

⁸ The list does contain details of practitioners who have died and retired, but only goes back to those who were practising at the time the Act was passed.

⁹ <https://www.bbc.co.uk/news/uk-england-51006264>

¹⁰ <https://www.england.nhs.uk/blog/will-huxter-11/>

16. We suspect the 3 new gender identity services announced by the Secretary of State will not have any real impact on the current waiting lists, given that all the existing services stopped seeing new service users in the first few months of the coronavirus pandemic.
17. The current requirement to provide medical reports is just one element of the “proof” that the Gender Recognition Panel appears to look for. One of our supporters writes: *“My application for a Gender Recognition Certificate was rejected because my psychiatrist had written the wrong information on a supporting letter and then retired.”* Another writes: *“My application for a Gender Recognition Certificate was rejected because the panel said I hadn’t provided enough evidence of ‘living in role’. I had just moved house and could prove the last 20 years except for the most recent two.”*
18. Other supporters submit statements such as *“I find it deeply insulting to have the validity of my gender identity judged real or fake by people who have never met me.”* and *“The current gender recognition process is inaccessible and excludes anyone who is poor, disabled, or who follows an unconventional transition path. I am neither and yet I struggle to afford the costs and make enough time all at once to apply despite having been out and actively transitioning for over 6 years. This system is broken and often prevents even those who are clearly eligible from applying for a GRC.”*
19. Another correspondent writes: *“The application process for a GRC contains a lot of hurdles where we’re continuously humiliated and made to prove to strangers that we are legitimate, even after all the hurdles the NHS makes you go through to medically transition.”*
20. A further supporter writes: *“I am a woman, I just wasn’t born as one. If I wanted to get judged on whether I am a woman or not, I could just go outside and get judgement from people for free.”*

Spousal Veto

21. The Government has repeatedly denied that there is any abuse of the spousal veto. Our supporters disagree, with stories such this: *“My wife was fully aware of my feminine side and the inner struggle I had faced with my gender identity from being a child. I asked her not to marry me unless she could embrace who I was. ... When my children had grown up, I told my partner I had to have Michelle back in my life. About a year later I said I needed to get professional help with my gender identity struggles. A few weeks later she commenced a very acrimonious divorce. ... **She used the spousal veto to stop me obtaining my gender recognition certificate** and as leverage against me in our divorce even though by this time I had gone overseas to complete my gender confirmation surgery.”*
22. Another correspondent says: *“At first, **my spouse refused to grant the permission needed for me to be granted a Gender Recognition Certificate.** Now the consultant who made the diagnosis has retired, so is no longer on the list of approved professionals. As a result, I am unable to supply the required reports so can’t apply for a GRC.”*
23. The spousal veto makes no difference between a marriage where the partnership is still functioning, those which have broken down irretrievably, and those where the spouse is no longer legally capable of giving consent. It is the only area in English or Scottish law where one person needs to consent before another can gain fundamental rights.
24. There are other areas of marriage law which also need amendment - specifically section 12(h) of the Matrimonial Causes Act 1973¹¹ and the corresponding section 50(e) of the Civil Partnerships Act 2004¹². These sections mean that any trans person can find their marriage or civil partnership annulled if they cannot prove they disclosed the existence of any gender recognition certificate before the marriage / civil partnership.

¹¹ <https://www.legislation.gov.uk/ukpga/1973/18>

¹² <https://www.legislation.gov.uk/ukpga/2004/33/section/50>

Recognition for Non-Binary People

25. The Government's LGBT Survey of 2018 revealed that there were about the same number of non-binary people as trans people who identified within the binary¹³. The Gender Recognition Act only recognises two genders – male and female – in line with the rest of English and Scottish law where gender is specified.
26. It is difficult to justify why there is a law giving recognition rights to about half of the wider trans population but not to the other half. The impact of being misgendered and forcing people to identify as a gender they are not is no less stressful for those who are non-binary. As one supporter wrote: *“Being able to identify as non-binary on legal documents would benefit me personally. I wouldn't have to worry about whether how I'm presenting matches my ID in daily life, when getting stopped by the police, or when flying.”*
27. Another correspondent noted: *“I never knew I was intersex till later on in life, and it explained my dysphoria and non-binary identity. It's hard to have a binary identity when your body ain't binary. Through all my research, I found out that we still aren't recognised. Our sex is only marked if binary. Our discrimination is ignored and shunted under 'disability' or 'gender reassignment' discrimination. We have zero protections, zero recognition, zero respect. It shouldn't be accepted and that's why I shout about it so much.”*
28. In terms of intersex people, while provision exists for people with a limited number of intersex conditions to change their birth certificates without recourse to the Gender Recognition Act process, a number of other conditions simply aren't recognised. This leaves those affected in limbo, as they do have a medical condition which is not gender dysphoria. The lack of the gender dysphoria diagnosis means they cannot get their birth certificates corrected or re-issued.

Summary of Current Issues

29. **None of these issues are new to the Committee** - they were all raised in evidence to the 2015 Inquiry¹⁴. Yet the only reform the Government seems to have conceded is a reduction in the £140 to an as-yet unspecified nominal amount - one which, in the general scheme of things, will have minimal overall effect.
30. Additionally, the Government is now looking at putting the application process online. We are unaware of any consultation with trans or non-binary people about how this should work. Given the constraints of the current process, we are concerned that the “digitisation” of the process will amount to not much more than scanning or photographing then uploading documents. This level of digitisation will automatically exclude some people due to poverty.
31. Such documents will all be either ones used to verify identity or contain intimate and personal medical information. Trans and non-binary peoples' trust in IT systems in general is very poor, because the inevitable systemisation of the process results in people being placed into simplistic categories. Government IT systems are not exempt from this criticism. Further, many trans and non-binary people report issues with confidentiality arising from such systems, and “system errors” which result in outing trans people, often many years later.
32. We believe there is scope for digitisation to marginally improve the service if the Panel is willing to admit that there are key words which they look for in medical reports, and also willing to widen the scope of which medics it will accept reports from.
33. We are concerned that **the already low level of uptake of legal gender recognition will reduce if the digitisation process does not take account of the requirements of those who will be using it - trans people and their clinicians - at all stages of development**, including the design stage.

¹³ <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report/national-lgbt-survey-summary-report> - “Thirteen percent of the respondents were transgender (or trans). Of the total sample, 6.9% of respondents were non-binary (i.e. they identified as having a gender that was neither exclusively that of a man nor a woman).”

¹⁴ <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

34. However, we believe that **the underlying case for de-medicalisation of the Gender Recognition Act is still sound and remains unanswered by the Government**. We note that an increasing number of overseas jurisdictions are moving to a self-declaration model for legal gender recognition with no substantive adverse issues arising as a result¹⁵. It's not as if the proposals were unprecedented elsewhere in the world, yet we understand the **UK Government is unique in rejecting them despite public opinion and evidence**¹⁶.

Wider Issues

Media Coverage

35. At the time that the Government made its commitments to reform the Gender Recognition Act, the media coverage of trans people was moderately benign. This had followed Trans Media Watch's evidence to the Leveson Inquiry into Press Standards and Ethics¹⁷, which outlined that press coverage tended to come under one of three categories - trans as fraud, trans as undeserving and trans as deviant and deserving of parody. In his report, Lord Justice Leveson added a fourth - "the outing of transgender people"¹⁸.
36. The press only stopped reporting in this way following the death of a trans primary school teacher who they had relentlessly hounded in 2013. In 2015 the press resumed reporting in terms of "supportive outings". More attention was being given to the issues trans people faced, although non-binary and intersex people remained almost completely invisible within mainstream media coverage. It was in this context that Helen Belcher made her comments to the Select Committee's inquiry in 2015.
37. As soon as the Government announced its plans for GRA reform, media coverage turned once again, this time presenting trans women as threats to other women, ridiculing the idea of non-binary people, and recasting the debate around reform into one about what it meant to be a "real woman". Media coverage repeatedly associated trans people with silencing, no platforming and crime. Individual anecdotes, some of spurious basis, were used to support the assertions of widespread or significant threat, while the debate reduced to a narrow, essentialist consideration of what constituted gender.
38. There was no coverage of the specific issues with the Gender Recognition Act that trans and non-binary people faced, as outlined above, and trans voices were only heard occasionally, although usually within a frame that required them to defend their existing rights.
39. Trans people became an issue that others talked about, including in General Election coverage. **And it was relentless across both the press and broadcasters**, including the BBC.
40. Complaints about misleading and incorrect coverage were rejected, including two concerning precedents from IPSO - that accuracy was no longer absolute¹⁹ and pieces could be published if they were accurate enough, and that quotes could be invented if it was considered that they might have been said²⁰. As a result, trans organisations stopped engaging with regulators - as any engagement only appeared to cause further damage to society at large.
41. The delay that the Government inflicted on both the commencement of the consultation and then the publication of the results created a media vacuum filled with remorseless and vitriolic coverage of trans people - with the effect that **trans and non-binary people now generally feel the media is more hostile to them than at any point over the past 30 or more years**. Such an environment has had severely detrimental effects on the mental health of trans and non-binary people²¹.

¹⁵ <https://www.nottingham.ac.uk/policy-and-engagement/documents/gender-recognition-act/briefing-gender-recognition-act.pdf>

¹⁶ <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2230.12507>

¹⁷ <https://webarchive.nationalarchives.gov.uk/20140122175053/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Trans-Media-Watch.pdf>

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270941/0780_ii.pdf - pages 666-668

¹⁹ <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01059-18>

²⁰ <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07454-18>

42. Since the statement in September 2020 by Rt Hon Liz Truss MP, the media coverage of trans people has seemed to mellow a bit, with more focus on the issues that some groups of trans people face, but it is still early days and there still seems to be an undercurrent that trans people, trans women in particular, are dangerous frauds and a threat to the values underpinning our society.

Equality Act

43. The opposition to reform was primarily centred on conflating the provisions within the Equality Act with those in the Gender Recognition Act - the idea that legal gender recognition alone conferred the right to enter single-sex spaces. We suspect that the Select Committee will receive a number of submissions repeating this conflation.
44. Such an idea is fallacious. Trans people have used single-sex spaces entirely legally for decades, and there is no evidence that trans people cause any more threat than others when using those single-sex spaces. Given the media hostility towards trans people over the past couple of years, it would be expected that due prominence would have been given to such evidence had it existed.
45. **The Equality Act starts from the idea that all discrimination is illegal**, and special provision is needed to exempt single-sex spaces from the charges of discrimination. The Equality Act also allows for discrimination based upon perception to be illegal, therefore trans women can experience sex-based discrimination and be protected from it in exactly the same manner as other women.
46. In response to a question from Baroness Barker in the House of Lords on 19 October 2020, the Minister, Baroness Berridge, stated that the Government does not collect information on the number of public authorities who have asked for clarification of the Equality Act with regards to trans people²².
47. Trans and non-binary people are concerned that any amendments of the Equality Act or guidance around it will be used to attempt to limit our existing rights, which would fundamentally affect our ability to function within society on a day-to-day basis. Access to public toilets, changing rooms in shops and leisure centres, domestic violence refuges and rape crisis centres are all vital to ensure inclusion of trans people within ordinary society. Our concern is based on the number of local authority policies now under judicial review from cases brought by groups who would restrict trans inclusion.
48. Evidence shows that trans people are at greater risk of violence than other members of society - disabled trans people, black trans people and trans people of colour even more so. A report into hate crime published by GALOP on 13 November 2020²³ highlighted that 80% of trans people were the victim of a transphobic hate crime, including crimes of violence and abuse, in the previous 12 months, that more than half of trans people had adjusted their daily routine as a result, and that the vast majority of such hate crimes still go unreported.
49. The current wording within the Equality Act references “gender reassignment” and defines this in terms of “process”. Retention of this wording is important, as it means that trans people cannot be discriminated against because of the medical interventions they may need.
50. In an ideal world where the concept underpinning the Equality Act could not be derailed, it would be beneficial to also include specific protection for “gender expression”, as not all trans and non-binary people will be able to undertake a medical process. The reality is that trans and non-binary people are often victims of hate crimes because of the way they express themselves.
51. It should be further noted that the terms “sex” and “gender” are used interchangeably throughout English and Scottish law, as is clearly demonstrated in section 9 of the Gender Recognition Act.

²¹ <https://www.independent.co.uk/independentpremium/long-reads/transgender-rights-uk-lgbt-hate-crime-transphobia-statistics-a9557216.html>

²² <https://hansard.parliament.uk/Lords/2020-10-19/debates/62AF3412-0E8B-41DE-9A89-132F5958651E/GenderRecognitionAct2004#contribution-A95F450E-4393-4047-A729-DA6B0B9EA650>

²³ <http://www.galop.org.uk/transphobic-hate-crime-report-2020/>

Any attempt to restrict the current wording of the Equality Act to a biologically reductionist definition of sex as defined at birth will

- (a) be questionable given what we know of human biology and the diversity of factors which affect it;
- (b) be impossible to police without some further form of identity card or intrusive checks which, by and large, will impact all women and girls; and
- (c) serve as significant deterrents to trans women who simply wish to get on with their lives and participate as full members of our society.

52. We are concerned that the provisions of section 9 of the Gender Recognition Act, that on receipt of a full gender recognition certificate, "*the person's gender becomes for all purposes the acquired gender*"²⁴, have been and continue to be watered down by successive legislation, such as the Equality Act. Trans people greatly fear any further tinkering with either the Equality Act or its guidance, as the direction of travel of those amendments have been detrimental in respect of section 9 of the Gender Recognition Act.

Summary

53. We feel that the Government has betrayed trans and non-binary people by holding out the promise of reform, doing little to stop the misleading and malicious media coverage, delaying both the consultation and the publication of its results, then finally rejecting the basic premise for reform with no evidence to support the rejection. In doing so, the Government has presided over the creation of an environment which most trans and non-binary people now perceive as actively hostile²⁵.

54. The Government has tried to misrepresent what it's doing as "kinder and more straightforward". As our colleagues at Gendered Intelligence write: "**reforming a piece of legislation which is fundamentally broken cannot mean slapping a discount sticker on it and expecting great results**". We applaud the Select Committee for looking to unearth further evidence on this issue.

55. At a time when the Government is looking to portray a forward-looking society in order to advance trade in a post-Brexit world, and also when the UK is due to host an international LGBT conference, such a betrayal has been noted overseas and is disadvantageous to UK citizens and businesses.

56. Additionally, the election of Joe Biden as President of the United States and his unequivocal support for reforming US law to accommodate trans and non-binary people indicates the global mood is about to move towards further inclusion of trans and non-binary people.

57. We think the following statement from one of our supporters expresses this sentiment well: "*The UK should be a symbol of progression & the rights of its citizens should be respected. Trans and non-binary people are not inherently ill and should not have to prove that they are 'trans enough'.*"

58. We conclude with a statement from another correspondent: "*We need a system that belongs in this century and works with trans people rather than against us.*"

November 2020

²⁴ <https://www.legislation.gov.uk/ukpga/2004/7/section/9>

²⁵ <https://twitter.com/WeAreFairCop/status/1329748991060357122> - "*Thanks, but no thanks. Hate is as legitimate an emotion as love or indifference and, like our thinking, our emotions are not a police matter. Of course, say we say No to criminal behaviour. But we #SayYesToHate.*" Published in response to a tweet by West Yorkshire Police commemorating Trans Day of Remembrance on 20 November 2020.