

Reform of the Gender Recognition Act

1. Executive summary

<p>Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?</p>	<p>No. A key criticism of the existing process for acquiring a Gender Recognition Certificate (GRC) is that it is too bureaucratic and time consuming.</p>
<p>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?</p>	<p>The fee for obtaining a GRC should be removed entirely - this provides an unnecessary financial burden on a population that disproportionately experiences income inequality.</p> <p>A medical report from an "approved medical professional" will carry an unnecessary financial burden of approximately £50-£200. A private diagnosis of gender dysphoria can carry further costs.</p> <p>The fees associated with updating documentation such as passports and driving licences create an additional financial burden, as these are required as evidence under the current GRA legislation.</p>
<p>Should the requirement for a diagnosis of gender dysphoria be removed?</p>	<p>Yes. This is a gross violation of trans people's human rights. This aspect of the GRA has been extensively opposed by LGBT, mental health, and feminist organisations, as well as professional organisations such as the British Medical Association and the World Professional Association for Transgender Health (WPATH).</p>
<p>Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?</p>	<p>Applicants should not be penalised for lacking extensive documentary proof of their gendered history. In practice, it can take prospective GRC applicants several years to change their name and/or sex/gender marker on all relevant documents, as this can be a difficult bureaucratic process. Moreover, groups such as younger trans people may have trouble acquiring the relevant documentation if they are living with family.</p>
<p>What is your view of the statutory declaration and should any changes have been made to it?</p>	<p>There should be no requirement for a person to obtain a statutory declaration to change the sex marker on their birth certificate, as this presents applicants with an unnecessary red tape.</p>

Written evidence submitted by Trans Learning Partnership [GRA1009]

<p>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?</p>	<p>The spousal consent provision should be removed. Spouses should not have control over the legal recognition of their partner. Granting trans people's spouses or civil partners the ability to block their application for a GRC has the potential to enable coercive or controlling behaviour. Trans people are already disproportionately affected by domestic abuse and intimate partner violence, and the spousal consent provision creates a specific type of domestic abuse that can only be wielded against trans people.</p>
<p>Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?</p>	<p>Yes. Trans minors have as much right to legal recognition as those above the age of majority. Lowering the age limit for a GRC would bring UK law in line with the UN Convention on the Rights of the Child.</p>
<p>What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?</p>	<p>They offer few practical benefits either for people applying for a GRC, or trans people more generally.</p>
<p>What else should the Government have included in its proposals, if anything?</p>	<ul style="list-style-type: none"> - A simple administrative procedure on the basis of self-declaration. - A commitment to scrapping the Gender Recognition Register. - An alternative option to self-declaration of sex/gender: that of decertification.
<p>Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?</p>	<p>Yes, although it still does not fully reflect the needs and interests of trans people.</p>
<p>Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?</p>	<p>It is bureaucratic, expensive, and demeaning. It fails to offer recognition a substantial proportion of the trans population. The sex marker on a person's birth certificate is a relatively low personal priority for many, being relevant only to a small number of social institutions, such as birth registration and marriage.</p>

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<p>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.</p>	<p>Yes. There has been a lot of confusion over the interactions between the GRA and Equality Act, especially since 2017. Consequently, many people who campaigned against GRA reform have wrongly argued that GRA reform will affect the Equality Act.</p>
<p>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?</p>	<p>Current guidance does not make clear enough that the Public Sector Equality Duty means that trans people must feel and be able to access public services without experiencing direct or indirect discrimination.</p>
<p>Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?</p>	<p>The protected characteristic in the Act is 'gender reassignment': although the wording allows for a wide interpretation, this does not allow for clarity in terms of provision for genderfluid and non-binary people.</p>
<p>What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?</p>	<p>Trans people are limited in their accessing of these services by the lack of service provision; lack of knowledge and training around trans issues, by service staff-members' reluctance to initiate delivery of trans-specific services; and by service staff-members' discriminatory assumptions and prejudices as evidenced during delivery of services.</p>
<p>Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?</p>	<p>Gender-fluid and non-binary people are not currently protected within the binary conception of sex and gender. Nor are they protected within the 'permanence' assumptions underpinning the GRA 2004. The Equality Act 2010 should explicitly protect trans, gender-fluid, and non-binary people.</p>

2. The Trans Learning Partnership (TLP)

- 2.1. **Overview.** The TLP is a collaborative partnership that brings together expertise from voluntary sector organisations, their service users, and academic researchers.
- 2.2. **Purpose.** The TLP aims to develop a robust service and advocacy-oriented evidence base to meet the needs of organisations that provide services to trans people, and their service users. This includes supporting, undertaking, and disseminating reviews of existing academic literature, plus original empirical research and data analysis.
- 2.3. **Membership.** The Trans Learning Partnership (TLP) submission comprises three organisations which provide health and/or wellbeing services to trans people and their families (Spectra, Gendered Intelligence, LGBT Foundation), plus four community representatives and two academics (Professor Jon Arcelus, University of Nottingham, and Dr Anna Carlile, Goldsmiths). The Partnership's data platform and portfolio of studies are overseen by Research Coordinator Dr Ruth Pearce.
- 2.4. **Trans** is used here to encompass a range of diverse social identities and experiences among people whose sex and/or gender differs from that they were assigned at birth. This includes (but is not limited to) trans women and men, non-binary, genderqueer, genderfluid, agender, bigender, and non-gendered individuals.

3. Inquiry response: The Government's response to the GRA consultation

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

No. A key criticism of the existing process for acquiring a Gender Recognition Certificate (GRC) is that it is too bureaucratic and time consuming. While moving the system online will ensure somewhat easier access to some, exclusive access through the Internet will be a barrier to many low income applicants. This is especially concerning as trans people disproportionately experience income inequality.¹ TLP organisations have especially noted the commonality of poor or unreliable Internet access among trans service users during the Covid-19 pandemic.

Moreover, responses to the UK GRA reform consultation from trans people who had successfully applied for a GRC emphasised significant difficulties associated with obtaining evidence that the Government will continue to require. For example, providing medical evidence of transition can be difficult for those who have not recently transitioned, and evidence of living for two years prior in the acquired gender can be difficult for young trans people who are still living with their family and therefore do not have household bills in their name.²

¹ Government Equalities Office (2018) *National LGBT Survey: Research Report*. London: Government Equalities Office.

² King D, Paechter C, and Ridgway M (2020) *Reform of the Gender Recognition Act: Analysis of Consultation Responses*. London: Government Equalities Office.

3.2. 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?

The fee for obtaining a GRC should be removed entirely as this provides an unnecessary financial burden on a population that disproportionately experiences income inequality.³

Similarly, the continued requirement for a medical report from an “approved medical professional”⁴ will carry an unnecessary financial burden, with BMA guidance indicating that this may cost applicants approximately £50-£200.⁵

The continued requirement of a medical diagnosis of gender dysphoria from an approved medical practitioner is also an undue financial burden. Most trans people are unable to access NHS Gender Dysphoria Clinics (GDCs) within a reasonable time frame. Average reported waiting times for a first appointment with a specialist practitioner at an NHS adult GDC range from 32-44 months in England,⁶ from 27-34 months in Scotland,⁷ are 30 months in Wales,⁸ and are unknown in Northern Ireland as the country’s only clinic has not accepted new patients since 2018 due to limited resources.⁹ Patients are required to receive two medical reports as evidence of diagnosis, a process which typically takes an additional 3-6 months at least.¹⁰

GRC applicants may therefore seek a private diagnosis of gender dysphoria, if they can afford it. A typical private fee for two assessments and report is £500.¹¹

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

Yes. A requirement of medical diagnosis as a condition for legal recognition represents a gross violation of trans people’s human rights. This aspect of the GRA has been extensively opposed by LGBT, mental health, and feminist organisations,¹² as well as

³ Government Equalities Office (2018) *National LGBT Survey: Research Report*. London: Government Equalities Office.

⁴ Government Equalities Office (2020) *Government responds to Gender Recognition Act consultation*. <https://www.gov.uk/government/news/government-responds-to-gender-recognition-act-consultation>.

⁵ BMA (no date) *Fees: Guidance for medical practitioners about common fees, including what and where to charge*. <https://www.bma.org.uk/pay-and-contracts/fees>.

⁶ Gender Identity Clinic (2020) <https://gic.nhs.uk/appointments/waiting-times/>; Parsons V (2020) Trans patients are being forced to wait up to 193 weeks for vital healthcare, *Pink News*. <https://www.pinknews.co.uk/2020/08/13/nhs-trans-patients-laurels-gender-identity-clinic-south-west-waiting-list-yeovil-pride/>.

⁷ Lothian Sexual Health (2020) <https://www.lothiansexualhealth.scot/gender-identity-clinic/gic-waiting-times/>; NHS Greater Glasgow and Clyde (2020) <https://www.sandyford.scot/sexual-health-services/gender-identity-service/>.

⁸ XIST (2020) <https://gender.wales/>.

⁹ Kelly L (2020) Northern Ireland transgender clinic unable to cope with demand, *Belfast Telegraph*. <https://www.belfasttelegraph.co.uk/news/northern-ireland/northern-ireland-transgender-clinic-unable-to-cope-with-demand-38904770.html>.

¹⁰ Pearce R (2018) *Understanding Trans Health*. Bristol: Policy Press.

¹¹ GenderCare (2020) <https://gendercare.co.uk/fees.shtml>.

professional organisations such as the British Medical Association¹³ and the World Professional Association for Transgender Health (WPATH).¹⁴

In practice, the requirement for a diagnosis of gender dysphoria also represents a severe barrier to access. In our response to the previous question, we noted the extensive waiting lists for NHS Gender Dysphoria Clinics, and costly fees for private assessments. While average waiting times have only increased during the Covid-19 pandemic, 2-4 year average waits have been a feature of NHS GDCs for over a decade; they are a feature of the current system for diagnosis.¹⁵ GRC applicants should not be required to navigate these waiting lists or pay for an expensive private assessment to access a form of legal recognition. The new trans health services commissioned by NHS England in Greater Manchester, London, and Merseyside will only initially have capacity for a few hundred patients of the thousands currently waiting for a first appointment.

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

Yes. There is no such arbitrary requirement in ‘gold standard’ legislation such as Argentina’s 2012 Gender Identity Law, which has seen over 13,000 people change their legal gender with no reported instances of fraud.¹⁶

Applicants should not be penalised for lacking extensive documentary proof of their gendered history. In practice, it can take prospective GRC applicants several years to change their name and/or sex/gender marker on all relevant documents, as this can be a difficult bureaucratic process. Moreover, groups such as younger trans people may have trouble acquiring the relevant documentation if they are living with family, as described in section 4.1.

The introduction of this requirement in 2004 reflects now-outdated medical practice. Patients were expected to demonstrate ‘at least two years of continuous interest in removing their sexual anatomy and transforming their bodies and social roles’ prior to a diagnosis of *Transsexualism*, and to undertake at least two years of *Real Life Experience* (living full-time in their new gender role) prior to surgery.¹⁷ These requirements have since been removed from the WPATH *Standards of Care*¹⁸ and the WHO *International Classification of Diseases*.¹⁹

¹² King D, Paechter C, and Ridgway M (2020) *Reform of the Gender Recognition Act: Analysis of Consultation Responses*. London: Government Equalities Office.

¹³ BMA (2020) *Leading doctors affirm trans and non-binary rights in healthcare*, <https://www.bma.org.uk/bma-media-centre/leading-doctors-affirm-trans-and-non-binary-rights-in-healthcare>.

¹⁴ WPATH (2017) *WPATH Identity Recognition Statement*, <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>.

¹⁵ Pearce R (2018) *Understanding Trans Health*. Bristol: Policy Press.

¹⁶ Ryan, RJ (2018) Gender Identity Laws: The Legal Status of Global Sex/Gender Identity Recognition, *LGBTQ Policy Journal*, 8(1): 3-15.

¹⁷ Levine SB, Brown GR, Coleman E, et al. (1998) *The Standards of Care for gender identity disorders: Fifth edition*. Düsseldorf, HR: Symposion Publishing.

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

There should be no requirement for a person to obtain a statutory declaration to change the sex marker on their birth certificate, as this presents applicants with an unnecessary red tape.

At present, anybody in the UK can change their name on the basis of self-declaration. Similarly, a person can change the sex/gender markers on a range of records (including with the NHS, HMRC, major banks, employers, and education institutions) simply through requesting this change. It is also possible to change the sex marker on a UK passport without making a statutory declaration; the only evidence currently required for this is a letter of support from a medical doctor (however, we would prefer a non-medical process in this instance).

The process for changing the sex marker on a person's birth certificate and acquiring a GRC should be similarly straightforward.

3.6. 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?

The spousal consent provision should be removed. Spouses should not have control over the legal recognition of their partner. Granting trans people's spouses or civil partners the ability to block their application for a GRC has the potential to enable coercive or controlling behaviour; this is of particular concern as trans people experience exceptionally high rates of domestic abuse and are less likely to seek support for this experience.²⁰ For example, in a 2017 survey conducted by YouGov, 28% of trans respondents who were in a relationship reported experiencing domestic abuse within the past year.²¹

No additional changes are required to protect the rights of spouses or civil partners. With both same-sex and opposite-sex marriage and civil partnership now legally recognised in the UK, legislation should instead be updated to ensure the continuation of a couple's status regardless of whether or not one partner has changed the sex/gender marker on their birth certificate. This can best be through removing the

¹⁸ Coleman E, Bockting W, Botzer M, et al. (2012) Standards of care for the health of transsexual, transgender, and gender-nonconforming people, version 7, *International Journal of Transgenderism*, 13, 165-232.

¹⁹ Rodríguez MF, Granda MM, and González V (2018) Gender Incongruence is No Longer a Mental Disorder, *Journal of Mental Health and Clinical Psychology*, 2, 6-8.

²⁰ Stonewall and nfpSynergy (2018) *Supporting trans women in domestic and sexual violence services: Interviews with professionals in the sector*. London: Stonewall. Available at: https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf.

²¹ Bachmann CL and Gooch B (2018) *LGBT In Britain: Trans Report*. London: Stonewall. Available at: https://www.stonewall.org.uk/system/files/lgbt_in_britain_-_trans_report_final.pdf.

remaining legal distinctions between same-sex and opposite-sex marriage and civil partnerships in England, Wales, and Northern Ireland.

The spousal veto was removed from the GRA in Scotland with the introduction of equal marriage legislation.²²

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

Yes. People are increasingly coming out and transitioning at younger ages as information about being trans becomes more publicly available. Trans minors have as much right to legal recognition as those above the age of majority. Lowering the age limit for a GRC would bring UK law in line with the UN Convention on the Rights of the Child, in which the international human right to recognition before the law is applicable to minors as well as adults. We propose that no age limit be applied to applications for a GRC, in line with international best practice in countries such as Malta and Luxembourg.²³

From the age of 16, a person can change their name on the basis of self-declaration, plus work, pay taxes, join the armed forces, and obtain a provisional driving license in the UK. We propose that a young person should therefore be able to apply for a GRC on the basis of self-determination from 16 without parental consent; this would bring UK law in line with legislation in other European countries such as Ireland and Belgium.²⁴ A procedure should be available for those below this age, ensuring that a GRC is available to minors who wish to apply for legal recognition but do not have the support of a parent or guardian. Any such procedure should be free and accessible so as to not become an insurmountable hurdle for a young person with limited support.

3.8. 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 will have few practical benefits either for people applying for a GRC, or trans people more generally. As noted in Section 3.1. of this Response, moving the application online will make the process easier for some applicants, but not all.

The Minister for Women and Equalities has stated that the Government will be 'ensuring cost is not a barrier to anyone' in applying for a GRC.²⁵ It is not entirely clear

²² Scottish Trans Alliance (2014) *Our successful Spousal Veto removal – amendments 68, 70 & 72*. Available at: <https://www.scottishtrans.org/our-work/completed-work/equal-marriage/spousal-veto-amendment/>.

²³ Köhler R (2018) *TGEU Policy Paper: Legal Gender Recognition and the Best Interest of the Child*. Malmö: TGEU. Available at: <https://tgeu.org/wp-content/uploads/2019/04/D32-Policy-Brief-Legal-Gender-Recognition-for-Children.pdf>.

²⁴ Ibid.

²⁵ Government Equalities Office (2020) *Government responds to Gender Recognition Act consultation*. Available at: <https://www.gov.uk/government/news/government-responds-to-gender-recognition-act->

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what the Minister means by this, but presumably the current £140 application fee will be reduced. However, as noted in Sections 3.2. and 3.3., the continued requirement for a medical diagnosis means that most applicants will face a choice between a costly private diagnosis, or a wait of several years for diagnosis through the NHS.

It is difficult to see how trans people who do not wish to change the sex marker on their birth certificate will benefit from minor reforms to the GRA. Rather, the limited scope of reform is perceived as a victory for explicitly transphobic campaign groups by many within trans communities.

The Government's poor management of the GRA consultation process since proposed reforms were first announced in 2017 has resulted in the propagation of an enormous amount of misinformation and prejudice on social media, within the popular press, and among the UK's major political parties.²⁶ Service users with TLP organisations have described a growing atmosphere of anxiety and fear within trans communities in response to this moral panic. Transphobic hate crime reports increased by 81% in England, Scotland, and Wales following the announcement of GRA reform.²⁷ In a recent GALOP survey, 4 of 5 trans respondents had experienced a transphobic hate crime within the previous 12 months.²⁸ This is the ultimate legacy of the Government's proposals.

3.9. What else should the Government have included in its proposals, if anything?

In 2015-16 the House of Commons Women and Equalities Committee undertook an extensive inquiry into trans equality issues. The Committee made a number of clear recommendations regarding GRA reform.²⁹ These included:

- 1) The Government must update the Act, in line with the principle of self-declaration (p.3).

[consultation](#).

²⁶ Armitage L (2020) Explaining backlash to trans and non-binary genders in the context of UK Gender Recognition Act reform, *INSEP – Journal of the International Network for Sexual Ethics & Politics*, 8(1): 11-35; Miles L (2018) Updating the Gender Recognition Act: trans oppression, moral panics and implications for social work, *Critical and Radical Social Work*, 6(1): 93–10.

²⁷ BBC News, 27 June 2019, *Transgender hate crimes reported by police go up 81%*, <https://www.bbc.co.uk/news/uk-48756370>. 1944 transphobic hate crimes were reported by 36 forces in 2018-19, compared to 1073 in 2016-17. Stonewall note that a majority of anti-LGBT hate crimes go unreported due to lack of trust in the police (https://www.stonewall.org.uk/system/files/lgbt_in_britain_hate_crime.pdf).

²⁸ Bradley C (2020) *Transphobic Hate Crime Report 2020: The scale and impact of transphobic violence, abuse and prejudice*. London: GALOP. Available at: <http://www.galop.org.uk/transphobic-hate-crime-report-2020/>.

²⁹ Women and Equalities Committee (2016) *Transgender Equality: First Report of Session 2015-16*. London: House of Commons.

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- 2) An administrative procedure must be developed, centred on the wishes of the individual applicant, rather than on intensive analysis by doctors and lawyers (p.14).
- 3) The Government must look into the need to create a legal category for those people with a gender identity outside the female/male binary (p.11).

These recommendations reflected the reported views and desires of trans community respondents in 2015 and continue to do so today. We therefore believe that Government proposals for GRA reform should have included a simple administrative procedure on the basis of self-declaration, similar to that required for changing a person's name under UK law. This would include provisions for the formal recognition of people who are not female or male, including genderfluid and non-binary people.

The government's proposals should also have included a commitment to scrapping the Gender Recognition Register. At present, every successive GRC applicant is listed on the Register. This represents a deeply unnecessary invasion of trans people's privacy, which fundamentally undermines the protections built into other aspects of the GRA.

Additionally, we believe that Government proposals could have considered an alternative option to self-declaration of sex/gender: that of decertification. Decertification is a process in which 'the state withdraws from registering, assigning, or guaranteeing a person's sex or gender': i.e. through removing sex/gender markers altogether from legal documents such as birth certificates and passports.³⁰ This would have wider implications for laws related to, for example, parental leave and housing, through ensuring that men as well as women have access to extensive parental leave and the relevant allocation of public housing.³¹ However, it need not affect pro-woman policy choices or gender-specific language where appropriate, for the same reason that race equality laws (for example) can operate without recording a person's perceived race at birth.³² In addition to providing an alternative route to both trans and intersex inclusion in law, therefore, decertification could enable greater sex/gender equality through supporting provisions for men to take on a fair share of labour in arenas such as child-rearing.

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

Yes. The Scottish Government's proposed Bill is considerably more suitable than that proposed by the UK Government. However, it still does not fully reflect the needs and interests of trans people; if adopted, Scotland would continue to lag behind countries such as Ireland and Denmark in terms of ensuring appropriate legal recognition.

³⁰ Cooper D and Emerton R (2020) Pulling the thread of decertification: What challenges are raised by the proposal to reform legal gender status? *feminists@law: an open access journal of feminist legal scholarship*, 10(2). Available at: <https://doi.org/10.22024/UniKent/03/fal.938>.

³¹ Ibid.

³² Xanthaki H (2020) Gender inclusive legislative drafting in English: A drafter's response to Emily Grabham, *feminists@law: an open access journal of feminist legal scholarship*, 10(2). Available at: <https://doi.org/10.22024/UniKent/03/fal.952>.

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The proposed Scottish Bill benefits lowering the age at which a person can acquire a GRC to 16, reducing the time required for a person to prove that they have been living in their 'acquired gender', and would rely on a system of statutory declaration rather than medical diagnosis. There is no provision for the formal recognition of non-binary people. This is preferable to the existing GRA provisions. However, as described in Sections 3.7. and 3.9. of this Response, the TLP position is that it would be best for GRA reform to utilise a simple procedure similar to that required for changing a person's name to obtain a GRC, in a manner that is inclusive of under-16s and non-binary people, or alternatively for Parliament to consider the option of decertification.

4. Inquiry response: Wider issues concerning transgender equality and current legislation:

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

There are three main reasons that the number of GRC applicants is low compared to the wider trans population.

Firstly, the current GRC application process is bureaucratic, expensive, and demeaning. Many trans people find it difficult to complete the application process, be it for financial reasons, emotional reasons, or because they have to wait such a long time to acquire the relevant evidence. Many trans people are in precarious living situations, and are more likely than others to be street homeless and so have no documentation whatsoever. For example, a 2017 survey for YouGov found that a quarter of trans people had experienced homelessness in their lives.³³ They are also often excluded from paid work.³⁴

Secondly, the GRA fails to offer recognition to a substantial proportion of the trans population. 51.7% of trans respondents in the Government Equality Office *National LGBT Survey* identified as non-binary.³⁵

Thirdly, the sex marker on a person's birth certificate is a relatively low personal priority for many, being relevant only to a small number of social institutions, such as birth registration and marriage. As described in Section 3.5 of this response, trans people can change their sex marker on most of their personal and legal documents either through a process of self-declaration or with the support of a simple doctor's letter.

Therefore, while appropriate reform of the GRA would be welcome, it is not the most pressing matter for most trans people. As Gendered Intelligence noted in their response to the Government's proposed changes to the GRA in September 2020: 'Our priorities

³³ Bachmann CL and Gooch B (2018) *LGBT In Britain: Trans Report*. London: Stonewall. Available at: https://www.stonewall.org.uk/system/files/lgbt_in_britain_-_trans_report_final.pdf.

³⁴ Government Equalities Office (2018) *National LGBT Survey: Research Report*. London: Government Equalities Office.

³⁵ Government Equality Office (2018) *National LGBT Survey Annex 3: Characteristics*. Sheet Q2. With 14,320 respondents, this was the largest ever quantitative sample of the UK trans population by a factor of 10.

as trans communities in the UK remain improving our basic healthcare, tackling discrimination and hate, and improving our position within society'.³⁶

4.2. 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.

Yes. There has been a lot of confusion over the interactions between the GRA and Equality Act, especially since 2017. Consequently, many people who campaigned against GRA reform have wrongly argued that GRA reform will affect the Equality Act.³⁷

Much of this confusion is a consequence of the misinformation spread by the numerous anti-trans campaign groups created after GRA reform was announced: for example, the commonly repeated claim that the Equality Act protects 'sex, not gender', and that the GRA is concerned only with the latter. However, these challenges are also a consequence of how the laws differ.

The Equality Act 2010 names two protected characteristics which are particularly important for tackling anti-trans discrimination: 'gender reassignment', and 'sex'. A person has the protected characteristic of gender reassignment if they are 'proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex'.³⁸ A person has the protected characteristic of sex if they are 'a man or a woman'; references to people with shared characteristics in the Act are relevant to 'persons of the same sex'. Therefore, any trans person who has proposed to undergo, is undergoing, or has undergone a social and/or medical transition is protected according to their 'gender reassignment', and with regards to sex/gender discrimination they are also protected according to their 'sex'. Trans people can make a claim of discrimination relying on one or both of these protected characteristics.³⁹

The Gender Recognition Act 2004 enables people to obtain a Gender Recognition Certificate and change the sex marker on their birth certificate. It also affords people who may qualify for a GRC a number of privacy protections regardless of whether or not they have undertaken formal 'gender recognition'.

Many of the challenges regarding the Equality Act and GRA arise from confusion around these three categories: 1) people with the protected characteristics of 'gender reassignment'; 2) people with the protected characteristics of 'sex'; and 3) people with a GRC. Most, if not all, trans people arguably belong in the first category; this is yet to

³⁶ Gendered Intelligence (2020) 'Small changes, new direction' following Government's GRA response, <https://genderedintelligence.wordpress.com/2020/09/22/small-changes-new-direction-following-governments-gra-response/>.

³⁷ King D, Paechter C, and Ridgway M (2020) *Reform of the Gender Recognition Act: Analysis of Consultation Responses*. London: Government Equalities Office.

³⁸ Equality Act 2010, Part 2, Chapter 1, 7(1).

³⁹ Cowan S, Giles HJ, Hewer R, et al. (2020) Sex and Gender Equality Law and Policy: a response to Murray, Hunter Blackburn and Mackenzie, *Scottish Affairs*. Pre-print: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3730090.

be fully tested in case law, although in 2017 an Employment Tribunal ruled unanimously that the protected characteristic of ‘gender reassignment’ extends to people who are genderfluid and non-binary.⁴⁰ Relatively few trans people belong in the third category, due to the limited number of people who have applied for a GRC. However, it is common for service providers and employers to wrongly assume that a person requires a GRC in order to be protected on the grounds of gender reassignment.⁴¹

All trans people belong to the second category: the question under contestation is which non-trans people a given trans person *shares* the protected characteristic of sex with. For example, a number of individuals and organisations have argued that trans women are (or should be) excluded from ‘women’s sex-based rights’. That is, that trans women do not (or should not) share a protected characteristic with cis women on the grounds of sex, regardless of whether or not they have obtained a GRC. Others, meanwhile, believe that trans women only share the protected characteristic of sex with non-trans women if they have obtained a GRC, and thereby changed the legal sex marker on their birth certificate.

The TLP ascribes to a third position: we contend that trans women should (and do) share the protected characteristic of sex with cis women if they have undergone a transition, i.e. changed ‘physiological or other aspects of sex’. We hold that this is true regardless of whether or not trans women without a GRC are held to be female under law, as the Equality Act protects against ‘discrimination by perception’. That is, if a person is discriminated against because they are perceived to be a woman, they will be protected by the law. This is similarly the case for a person discriminated against due to perceived gender reassignment.⁴² Additionally, the exceptions to Equality Act protections that apply to people with the protected characteristic of gender reassignment do so regardless of whether or not a person has a GRC.

There is also no clear distinction between ‘sex’ and ‘gender’ within either the Equality Act, GRA, or within relevant case law.⁴³ The TLP position is that this is a positive aspect of the law, given that sex discrimination is usually a consequence of social gender norms and stereotypes, and gender discrimination arises from a person’s perceived sex. We contend that confusion around this aspect of the law has arisen only because of post-2017 campaigns to isolate ‘sex’ from ‘gender’ in UK law and political discourse.⁴⁴

⁴⁰ Ms R Taylor v Jaguar Land Rover Ltd: Case no. 1304471/2018. <https://www.gov.uk/employment-tribunal-decisions/ms-r-taylor-v-jaguar-land-rover-ltd-1304471-2018>.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/484857/Providing_services_for_transgender_customers-a_guide.pdf

⁴² Government Equalities Office (2010) *Equality Act 2010: What do I need to know? Quick start guide to discrimination by association and perception for voluntary and community organisations*. London: Government Equalities Office.

⁴³ Cowan S, Giles HJ, Hewer R, et al. (2020) Sex and Gender Equality Law and Policy: a response to Murray, Hunter Blackburn and Mackenzie, *Scottish Affairs*. Pre-print: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3730090.

⁴⁴ For more on these campaigns, see: Hines (2020) Sex wars and (trans) gender panics: Identity and body politics in contemporary UK feminism, *The Sociological Review*, 68(4) 699-717.

4.3. 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?

Current guidance does not make clear enough that the Public Sector Equality Duty means that trans people must feel and be able to access public services without experiencing direct or indirect discrimination.

The Equality Act states that services are exempt from liability for unlawful discrimination against people with the protected characteristic of gender reassignment, providing it is a 'proportionate means of achieving a legitimate aim'. This applies regardless to whether or not a person has a GRC. However, it should be made clear that instances in which excluding people constitutes a 'proportionate means of achieving a legitimate aim' are incredibly rare.

Guidance should clarify that under current legislation, rather than services assuming in the first instance that they should exclude trans people, services must first seek to be inclusive and only change this practice if and when there is a legitimate and demonstrable evidence-based reason to exclude an individual on a case-by-case basis.

Further reform to the Equality Act would provide an opportunity to explicitly protect non-binary people from discrimination, and reconsider the need for exemptions from discrimination protections for people with the protected characteristic of gender reassignment. In research undertaken in 2018 with representatives of national umbrella bodies and local domestic and sexual violence services across Britain, nfpSynergy found that none of the surveyed providers had invoked the gender reassignment exemption to deny services to a trans survivor. There was also a clear consensus that services' existing risk assessment procedures are sufficient to prevent violent men from posing as women to access services, regardless of any reform to the GRA and/or Equality Act.⁴⁵

Whilst future reform is necessary, we are deeply concerned that opportunities might be taken to water down the protections of the Equality Act 2010, should it be reformed. In June 2020, *The Sunday Times* reported that the Government was considering 'new protections' to 'safeguard female-only spaces'. In response, many women's organisations and campaigners as well as trans and LGBT, party political and human groups expressed concern. For example, representatives from LGBT groups in the Conservative, Labour, Liberal Democrat, Green, Scottish National, Plaid Cymru and Alliance parties issued a joint statement opposing the proposals.⁴⁶ The CEO of Nottingham Women's Centre wrote to the Prime Minister to report that her organisation has 'been a functioning trans-inclusive women's space for over 22 years without any issues', adding that: 'Far from a protective measure, a move to further police women's gender identity and presentation is a threat to all women, both cis and transgender'.⁴⁷

⁴⁵ Stonewall and nfpSynergy (2018) *Supporting trans women in domestic and sexual violence services: Interviews with professionals in the sector*. London: Stonewall. Available at: https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf.

⁴⁶ <https://www.thetimes.co.uk/article/boris-johnson-scraps-plan-to-make-gender-change-easier-zs6lqfls0>.
<https://www.independent.co.uk/news/uk/politics/trans-rights-lgbt-gender-recognition-act-boris-johnson-liz-truss-a9575256.html>.

⁴⁷ <http://nottinghamwomenscentre.com/wp-content/uploads/2020/06/Letter-to-the-PM-GRA.pdf>

Finally, the existence and needs of intersex people are not taken into account at all in Equality Act provisions for single-sex and separate-sex services and facilities. We urge that the Women and Equalities committee consult with intersex rights groups on any need for further reform or guidance on this matter.

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

The protected characteristic in the Act is ‘gender reassignment’, as discussed in Section 4.2. of this Response. While the wording allows for a wide interpretation, this does not allow for clarity in terms of provision for genderfluid and non-binary people. Additionally, existing exemptions to protections against discrimination should be reconsidered, as explained in Section 4.3.

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

The Women and Equalities Committee 2015-16 Transgender Inquiry revealed that trans people encounter significant barriers in accessing health and social care services.⁴⁸ This situation has not substantially changed: rather, it has worsened during the Covid-19 pandemic, as discussed for example with regards to GDCs in Section 3.3. of this response. Trans people’s access to services is limited by a lack of service provision in many areas, especially in Northern Ireland; by service staff-members’ reluctance to initiate delivery of trans-specific services; and by service staff-members’ discriminatory assumptions and prejudices as evidenced during delivery of services.⁴⁹

For example, young trans people face a wait of at least two years to access specialist services with the Gender Identity Development Clinic.⁵⁰ Young people accessing TLP services report that if they live outside London, Leeds, or one of the other cities in which satellite clinics are situated, it is difficult and expensive for them to attend appointments. If they are prescribed medication, many find it difficult to persuade their GPs to administer it, or to provide prescriptions and follow-up blood tests. Once under the care of a GP, trans people can find themselves being called to the reception desk by their older name, or have letters sent to them addressed to the old name and using the wrong gender pronouns⁵¹.

We are not aware of any UK research that has specifically focused on trans people’s experiences of accessing domestic violence and sexual violence services. UK research on help-seeking among LGBT victims/survivors of domestic violence more widely indicates that survivors/victims often minimise the severity of their experiences, or fear they will not be taken seriously by service providers due to normative assumptions around what

⁴⁸ Women and Equalities Committee (2016) *Transgender Equality: First Report of Session 2015-16*. London: House of Commons.

⁴⁹ Pearce R (2019) *Understanding Trans Health*. Bristol: Policy Press.

⁵⁰ <https://gids.nhs.uk/how-long-wait-first-appointment-gids>.

⁵¹ Carlile A (2019) The experiences of transgender and non-binary children and young people and their parents in healthcare settings in England, UK: Interviews with members of a family support group, *International Journal of Transgenderism*, DOI: 10.1080/15532739.2019.1693472

abusers and survivors/victims look like (e.g. heterosexual, masculine male abusers and heterosexual, feminine female victims/survivors).⁵² Anecdotally, we can report many trans people do not access these services out of fear they will be discriminated against, especially as it can be possible to legally deny trans people access to single-sex services on a case-by-case basis. This is highly concerning given that the best available evidence suggests that trans people of all genders experience higher rates of domestic violence and sexual violence than non-trans populations, including non-trans women,⁵³ and that trans people can face specific forms of identity-based abuse, e.g. involving sustained misgendering and pathologisation.⁵⁴

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

Genderfluid and non-binary people are not currently either recognised or clearly protected within the binary legal conception of sex/gender. Nor are they protected within the 'permanence' assumptions underpinning the GRA 2004. For example, the GRA 2004 requires trans people to affirm that they will remain in the gender identified in their GRA certificate 'until death', which does not take into account the possibility of genderfluidity. The Equality Act 2010 should explicitly protect all trans people, including those who are genderfluid and non-binary.

5. Comments on the context of the Inquiry

5.1. While we welcome continued interest in questions of trans equality from the House of Commons Women and Equalities Committee, the timing and implementation of this Inquiry has been exceptionally poor.

5.2. As noted by the creators of the *What The Trans* podcast, where the 2015 Inquiry 'was met with optimism and cynicism in equal measure from the community', this 2020 Inquiry has been 'met with fear'.⁵⁵ This is perhaps best illustrated by the majority of responses to the Committee's announcement of the Inquiry on Twitter.⁵⁶ Typical responses from trans people among the 196 comments and 443 quote tweets include comments such as 'Is this some sort of sick joke? We've done this already', 'We've done this already. You have your answers. We don't want more of this, it's hurting us,' 'leave us alone', and 'See my response to your 2016 enquiry. Everything's either exactly the

⁵² Donovan C and Barnes R (2019) Help-seeking among lesbian, gay, bisexual and/or transgender victims/survivors of domestic violence and abuse: The impacts of cisgendered heteronormativity and invisibility, *Journal of Sociology*. Pre-print available at: <https://doi.org/10.1177/1440783319882088>; Harvey S, Mitchell M, Keeble J et al. (2014) *Barriers faced by Lesbian, Gay, Bisexual and Transgender People in Accessing Domestic Abuse, Stalking, Harassment and Sexual Violence Services*. Cardiff: Welsh Government.

⁵³ Stonewall and nfpSynergy (2018) *Supporting trans women in domestic and sexual violence services: Interviews with professionals in the sector*. London: Stonewall. Available at: https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf.

⁵⁴ Rogers M (2020) Exploring the domestic abuse narratives of trans and non-binary people and the role of cisgenderism in identity abuse, misgendering and pathologizing, *Violence Against Women*. Pre-print available at: <http://eprints.whiterose.ac.uk/161424/>.

⁵⁵ <https://twitter.com/WhatTheTrans/status/1321781447850627075>.

⁵⁶ <https://twitter.com/Commonswomequ/status/1321392870075568128>.

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same as then, or got worse'. Much of the negative response to this Inquiry from trans communities reflects confusion between the function of the Women and Equalities Committee and that of the Government. However, it must also be understood as an outcome of the wider context of discussions around trans equality in the UK since 2015.

- 5.3. Since 2017, a moral panic over trans existence has been perpetuated by mainstream media outlets and politicians from across the political spectrum, plus a growing array of anti-trans campaign groups.⁵⁷ Many of these groups will be responding to this Inquiry by calling for further restrictions to trans people's access to healthcare services and single-sex spaces.
- 5.4. Since 2015, trans people in the UK have also experienced a bewildering array of national consultations and inquiries. These include (but are not limited to): the Women and Equalities Committee *Transgender Equality* Inquiry (2015), an NHS England consultation on *Specialist Gender Identity Services for Adults* (2015), NHS England and NHS Scotland consultations on *Specialised Gender Identity Services for Adults* (2017), two consultations on *Gender Recognition Reform* in Scotland (2017-18 and 2019-20), a consultation on *Reform of the Gender Recognition Act 2004* across the UK (2018), a Scottish Parliament inquiry into transgender healthcare provisions (2019), and an NHS England independent review of *gender identity services for children and young people* (2020). Additionally, over the summer of 2020 trans organisations scrambled to respond to a report in *The Sunday Times* that the Government intended to introduce new restrictions on trans people's access to single-sex spaces (see Section 4.3. of this Response). Very few tangible benefits from these various consultations and inquiries are yet to materialise for the majority of trans people.
- 5.5. As described in Section 5.2. trans community members are exhausted and fearful of what the future might bring. This Inquiry was announced unexpectedly, with a relatively short submission period for responses. In the context of the anti-trans moral panic, there is likely to be a diminished level of trust among trans respondents in the Women and Equalities Committee and their response to this consultation. In the context of the wide array of recent consultations and inquiries, there are further likely to be less responses from trans individuals community groups than might otherwise be expected. We urge the committee to take this into consideration when examining responses to their call for evidence for this Inquiry.

November 2020

⁵⁷ Pearce R, Erikainen S, and Vincent B (2020) TERF Wars: An Introduction, *The Sociological Review*, 68(4): 677-698.