

Written evidence submitted by Smith [GRA1367]

I am a BBC employee and wish to submit evidence of the impact of moving to a system of self-identification of sex marker. My use of the words man, woman, male and female is predicated on the biological definitions as contained in the Equality Act 2010.

Regarding the question:

- Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.

The EA 2010 prohibits discrimination on the basis of 'sex'. The GRA 2004 uses the term 'acquired gender' (with a GRC) to mean 'sex': ie with a new 'acquired gender' the person acquires the rights of the opposite sex, including rights against discrimination on the basis of sex. There is no legal definition of the word 'gender', yet the words sex and gender here are conflated unnecessarily: it would be straightforward to replace 'acquired gender' with 'legal sex marker'. The confusion between these two terms is extremely significant for the fight against discrimination.

Take the right not to be discriminated against in employment and remuneration on the basis of sex. It is mandatory to report pay gap data, to help prevent women being paid less than men - known to be a continuing problem. The gender pay gap is intended and assumed to record the pay gap between the sexes, predicated on the historical problem of women being paid less than men because of our reproductive role.

The BBC currently reports a pay gap of 6.2%.

<http://downloads.bbc.co.uk/aboutthebbc/reports/reports/pay-gap-report-2020.pdf> However the BBC does not currently collate data based on sex. While the linked report refers to 'male and female', all internal and recruitment collation of data is based on 'gender' with the strongest evidence across internal communications that this is based on self-identification rather than sex. (Further evidence can be supplied.)

This survey found that 2.6% of BBC staff identify as trans, rising to 2.9% in senior bands. <http://downloads.bbc.co.uk/diversity/pdf/equality-information-report-2017.pdf>

The demographics around transgender identification show that the largest population cohorts are younger women transitioning to a male identity and older men transitioning to a female identity. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6626314/>

These are also respectively the lowest paid and highest paid cohorts. Self-ID entails an extremely high probability that a large proportion of the 2.9% of higher paid senior BBC staff who are transgender will be males identifying into a lower paid cohort (women) bringing their high pay statistic with them and raising that pay data. Similarly, a large proportion of the lower paid cohort will be women identifying into the 'male' cohort and lowering that pay data. This means that the 6.2% figure, on which the BBC congratulates itself, is inaccurate, to a degree that cannot be known.

At the BBC in fact, given the considerable pay disparity between senior and 'junior' staff, the impact on accurate pay gap data, and the work undergone to reduce it, could be marked and significant. There is no suggestion that seniority/pay disparities, nor other inequalities which have their basis in sex, disappear with gender identity transition or self-identification. For example: it would be illegal to raise or lower a person's pay based on a change in gender identity.

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The problems with Self-ID and data are only just emerging even without legalisation. Self-identification, implemented law, would reduce pay gap data to merely a rough estimate, and chronically limit the information on which efforts to tackle sex discrimination are based, and therefore the power to do so.

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