

Introduction

I am a UK Research and Innovation-funded doctoral researcher at Durham University; my PhD research (awaiting viva examination) explores young trans people's everyday lives in the UK. I expand on why it is imperative, and how it might be possible, to make visible their everyday realities in Britain. Engaging trans youth through collaborations with national community interest group Gendered Intelligence and an LGBTQIA+ charity in Scotland, throughout my doctoral research I worked collaboratively with young trans participants (aged 14-25) through participatory and interview-based research techniques to hear, collate, and share their stories of everyday life in the UK (totalling 97 participant engagements). A key aspect of this research involved examining how young trans people experience and are impacted by current government policy, including the Gender Recognition Act. During the research, participants talked of their acute awareness of how government policy and rhetoric impacts their everyday lives. For example, young people frequently expressed their experience of difficult periods of 'waiting' that slow, incremental changes to healthcare, equalities, and legal recognition legislation create. This submission thus works from the perspectives of young trans people.

In summary, the GRA, even with the proposed changes, remains pathologizing and intrusive and, problematically, does not allow trans people to self-determine gender, sets 'standards' of gender performance and behaviour by requiring a Gender Recognition Panel to assess 'gender identity disorder' diagnoses, and does not allow trans youth aged under 18 or non-binary and gender fluid folk to apply. Indeed, despite multiple and protracted consultation periods that exposed trans folk to discussion and 'debate' around their lives and existence, the only proposed changes to the GRA are to digitise the application and reduce the application fee. Successive governments' failures to update and reform the GRA represents a stagnation in trans people's legal rights in the UK. This stagnation has left trans people open to hostile, transphobic narratives and social discrimination, whilst discursive challenges to the right of trans people to exist as trans are increasing.

Part I

Q1 Will the government's proposed changes meet its aim of making the process "kinder and more straight forward"?

No; as my answers to these questions set out, these proposed changes achieve very little in making a GRC application 'kinder' and 'more straightforward'. It should be noted by the Committee that the unrelated roll-out of new healthcare services forms part of a pre-existing strategy that the Minister for Women and Equalities has slotted into the GRA proposals. The GRA consultation processes have been experienced by many trans people as periods of acute pain, exhaustion, and hostility. With full knowledge of what everyday life can look and feel like for young trans people in Britain, I call upon the Committee to advance change to trans rights, both within the GRA process and beyond, by drawing upon the existing wealth of information and *testimony from trans people and their communities* that both the Government and the Committee have elicited through multiple studies, consultations, and inquiries.

Q2 Should a fee for obtaining a Gender Recognition Certificate be removed?

Yes. Cisgender people are not subject to costs based upon the assignment of gender upon birth, whilst the costs of obtaining and evidencing legal recognition are a cost burden which many trans people – particularly trans youth – are unable to afford. The current cost of applying for a Gender Recognition Certificate is further burdened by additional costs for amending and accessing supporting documentation currently required. These additional costs should be removed through a move to a model of self-determination.

Trans people, as a marginalised group/set of communities, are more likely than cisgender LGB+ people to face financial precarity and exclusion. The Government's 2018 National LGBT+ Survey identified that 60% of trans respondents reported earnings of less than £20,000 annually. Only 63% had a paid job in the 12 months preceding the survey. Young trans people engaged in my research reported several financial burdens, many of which are mere life-saving measures. These include (but are not limited to): accessing and travelling to trans-friendly spaces and support groups, accessing and travelling to medical spaces and professionals and receiving prescriptions, purchasing life-saving materials including binders and other clothing, information materials, and so on. Young people have spoken about crowdfunding for important life-saving materials which enable them to live in their gender. Burdening young people with additional costs to simply have their legal gender recognised is unfair.

Q3 Should the requirement for a diagnosis of gender dysphoria be removed?

Yes. Young trans participants in my research frequently discussed the impact of the medicalisation of gender dysphoria in their lives. Many young people described occupying a constant position of defence of their gender, and evidenced the damaging, exhausting toll which this takes upon their mental and physical health and wellbeing. Demanding a diagnosis of gender dysphoria does not accurately reflect the experiences of trans people in the UK, deepens the medicalised focus on trans people, and is discriminatory in a system in which cisgender people are not required to 'prove' their gender through pathologizing and agency-limiting processes. Additionally, reliance upon this diagnosis is unfairly limited by the well-documented inadequacy of the current medical process, including protracted 'waiting' periods and hostility/misunderstanding that many trans people might experience in healthcare settings (see my response to Q5, Part II).

Q4 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 removed. The process of having ones' gender legally recognised should reflect that trans people (including young trans people), are best placed to self-determine their gender, without the need for intrusive documentary evidence. The process is exclusionary of non-binary and gender fluid people. Living in any particular way does not necessarily indicate or reflect a person's gender identity; there is no universal way of 'proving' a person's gender. Young trans participants in my research discuss the arbitrary and discriminatory processes they often undergo – and exhaustion they subsequently feel – when being asked to 'prove' or evidence their gender, particularly in medical/institutional spaces or sites overtly structured according to gender binary expectations.

Q5 What is your view of the statutory declaration and should any changes have been made to it?

The requirement for the applicant to live ‘permanently in the acquired gender until death’ is arbitrary and unnecessary, and unfairly discriminates against trans people when compared to cis people. For example, such limitations are not required for a legal name change. This requirement does not allow non-binary people to have their gender legally recognised, nor does it allow for gender fluidity, as you enter a binding legal commitment to live as one gender for the rest of your life. This commitment does not reflect many people’s gender realities. As Gendered Intelligence state, a ‘statutory declaration, worded in a right and fitting way so as to highlight the seriousness of the intention behind it, could be a useful way to streamline the process.’ This declaration, with removal of the ‘until death’ requirement, should crucially also provide for non-binary/gender fluid people and young people under 18 to achieve legal recognition through self-determination.

Q6 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?

Yes; it should be removed, having already been eliminated in Scotland. Indeed, the spousal consent provision is a dehumanising and agency-limiting provision. Trans people should be recognised as best placed to determine their own gender. Statistics regarding the spouses of trans people are alarming. Galop (2016: <http://www.galop.org.uk/wp-content/uploads/2016/01/Galopsubmission-Trans-Inquiry.pdf>) noted that spouses of trans people may exert coercion in this process. Additionally, 28% of respondents to research carried out by Stonewall (<https://www.stonewall.org.uk/sites/default/files/lgbt-in-britain-trans.pdf>) indicated that they had been victims of domestic abuse over the previous year. Allowing trans people to be subject to the decisions of their spouse denies trans people autonomy and agency and implies that others are able to better understand a person’s gender identity than the person concerned.

Q7 Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?

Yes; as a minimum it should be reduced to age 16. Legal recognition of gender is, for many young trans people, a potentially life-saving measure. Excluding trans youth from such potentially life-affirming legal leaves them vulnerable to questions around their existence, right to self-determine their gender, and ability to experience everyday life without being continually questioned.

Throughout my research, the young people I have engaged have demonstrated vast knowledge around their gender, the complexities and fluidity of gender more broadly, and a huge knowledge about healthcare settings and the inadequacy of medical and legal settings which for many seem to arbitrarily erode young trans people’s agency and dignity. This knowledge has been accumulated in part because of the constant fight to defend their existence, to defend and advocate for their self-determined gender, and because of the resistance and hostility many meet in their everyday lives.

When it comes to the testimonies of young trans people, it is clear that they are best placed to self-determine and self-identify, and to decide upon their legal and medical transitions. The current system puts under-18s at risk of discrimination and harassment in education and work because they do not have the option of their birth certificate reflecting their gender. In

practice, allowing 16 and 17-year-olds to have their gender recognised on their birth certificate through self-determination would not only allow them to hold further documentation which aligns with their gender, but could contribute to their general wellbeing as they are affirmed through a governmental and legal process. Young people can already change their gender marker on other forms of ID including passports and education/NHS records without age-based restrictions.

Young people under 16 should also be granted a system of legal gender recognition. This provision must also, however, incorporate those who do not have parental support from their parents, or who are not entirely 'out' to their parents. Those who cannot get the support of their parents should not be excluded from the process of legal recognition. The government should work with trans communities and their leaders and organisations to determine a fair and robust system.

Q8 What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?

These proposed changes will have little positive impact on trans people and appear tokenistic, despite the energy and time trans people have invested in responding to multiple GRA consultations and the periods of increased societal hostility and 'debate' that many have experienced as a result. Amongst other significant issues, these proposed changes will not impact young trans people aged under 18 nor provide any avenue for non-binary people to obtain a GRC. The lack of proposed meaningful change will further damage trust that trans people hold in the government to uphold and materially improve their rights and life conditions in Britain.

Q9 What else should the Government have included in its proposals, if anything?

The following should have been included in the proposals as a minimum:

- Self-identification as the sole requirement for gender recognition;
- A process for obtaining recognition for under 18s and for non-binary and gender fluid people;
- Removal of the fee to apply for a GRC;
- Abolishment of the requirements for (i) spousal consent, (ii) diagnosis of gender dysphoria, (ii) the 'lived as your acquired gender' and 'until death' obligations.

Q10 Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

There are more positive aspects to the Scottish Government's proposed Bill but their proposals do not go far enough to address the concerns and needs of trans people. The requirement for trans people to 'live in their acquired gender' should be removed entirely, rather than merely reduced in length. Scotland's proposed model does not also allow for self-identification, nor does it provide any legal provision for gender recognition to those aged under 16. The proposals are also exclusionary of non-binary people as they do not make provision for immediate moves to legal recognition of non-binary folk.

Part II

Q1 Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

Of trans respondents to the Government's National LGBT Survey, 51.7% were non-binary, yet non-binary individuals are not included in gender recognition legislation, or in the legislation of most other social, legal and medical settings. Cost and the currently overly-intrusive process may be inhibitors for some. Trans people may also feel wariness or distrust around government processes, particularly as a result of historical hostilities and contemporary governmental rhetoric around trans people's lives.

Q2 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 Equality Act offers trans people legal shelter from discrimination only through reference to the 'protected characteristics' of 'gender reassignment' and 'transsexual people'. However, as this protection has been tied to medical gender confirmation (or to plans for such treatment), some young people, non-binary folk, and those not seeking medical interventions, are often falsely seen as excluded. However, trans individuals and communities are likely to be wary about proposing change to the Equality Act, particularly if exposed to further protracted periods of consultation, societal hostility, and 'debate'. As Gendered Intelligence note, 'opening up the Equality Act for possible dissection would be very unwise in the current environment [...] at this juncture fear of negative amendments outweigh the possibility of any positive reform that could be made.' This perspective again reflects the mistrust and wariness that many trans people, including young trans people, feel toward government processes and the real fears many have about potential removal of existing rights and protections.

Q3 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?

Guidance is not always clear and useable despite being enshrined in law. The government should make it unequivocal and explicit that (i) anyone and all trans people should be able to use the facilities they feel most comfortable using, and that (ii) it is unlawful to police which facilities one uses or to discriminate against or exclude trans and non-binary people.

Q4 Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?

See response to Q2 in Part II.

Q5 What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?

Here, I discuss my young trans research participants' experiences of trans health services. Reflecting the inadequacy of British trans healthcare, 20.5% of the National LGBT Survey's trans respondents reported their needs being ignored or not taken into account in public healthcare spaces, whilst 17.3% reported avoiding treatment or accessing healthcare 'for fear of discrimination or intolerant reactions' and/or 'inappropriate curiosity'. For many young trans people, healthcare spaces are sites of restriction, fear, exhaustion, and emotional strain.

My participants' immersion in trans community knowledge and discourses around health services, and their own past experiences, led to their low expectations of medical spaces and clinical experiences. In a particularly cruel paradox, throughout the research, participants described feeling that a burden is placed on them and trans people more widely to constantly educate those who misgender them, ironically including those responsible for their care and wellbeing. Indeed, several participants described that misgendering was common, even pervasive, in healthcare settings. Throughout the research, trans youth described often being asked to constantly advocate for and defend themselves even to those who hold power over their bodies, lives, and their ability to be their authentic selves. This involves, as one participant described, both continually 'educating people in general life' and constantly informing educating those such as 'clinicians who have power over' their everyday life experiences.

Several participants also described that when accessing health services, embodying particular gendered subjectivities or engaging in particular everyday life activities seen as incongruous with particular (binary) gendered expectations resulted in the denial of particular healthcare treatments.

Conditions and experiences within trans healthcare sites experienced by several participants – particularly non-binary youth – left many feeling that misgendering themselves would optimise their chances of accessing treatment or avoiding extended periods of intrusive questioning. For example, a number of participants described themselves as trans men or transmasculine rather than as non-binary to access treatments faster (reinforcing the relative privilege which binary trans youth might occupy relative to some non-binary young people and the lack of understanding or knowledge around non-binary transitions). Throughout the research, young trans people displayed and discussed understanding that their clinicians typically struggled to grasp that being non-binary is not necessarily tied to particular medical transitions/confirmations, and that their needs may be indistinguishable from certain trans men or women.

Several participants' genders and status as trans were used in healthcare settings to justify inappropriate, intrusive questioning. Several participants described clinicians [in a participants' phrasing:] 'looking for evidence that [they are] wrong' about their gender, self-determination, and other aspects of identity and selfhood.

One participant described being systematically broken down within medical spaces that displayed a lack of care toward trans folk. In an experience paradigmatic of others' experiences, this participant experienced repeated misgendering despite multiple calls for recognition and affirmation leading to a loss of agency and significant mental health concerns.

Q6 Are legal reforms needed to better support the rights of gender-fluid and nonbinary people? If so, how?

Again, a majority of trans people are non-binary. Non-binary and gender-fluid people should have the legal right to have their gender recorded as something other than 'male' or 'female' on all documents. Non-binary people are a particularly marginalised group in the UK; my young non-binary participants frequently cited their frustration and exhaustion associated

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with repeated misgendering and other forms of overt exclusion and discrimination they constantly experienced. Reforms are needed across the board to improve and support non-binary and gender fluid people. Regarding the GRA, reform should be made so that people can change their legally recognised gender more than once. Again, a model of self-determination should be used, and the ‘acquired gender’ and ‘until death’ requirements abolished. Reform should be made around the requirement for public spaces to have gender-neutral facilities.

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