

Women and Equalities Committee

Gender Recognition Act Reform Call For Evidence - submission

I'm writing to respond to the 'Reform of the Gender Recognition Act' Women and Equalities Committee call for evidence.

For context, I'm a non-binary trans woman, who went 'full time' in March 2014. I do not have a GRC although I would be eligible for one. I discuss my reasons for this in the answers to the questions below.

1. The Government's response to the GRA consultation

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

The proposed changes will marginally make the process 'kinder and more straightforward' but not enough. Reducing financial barriers and making the process online only address some of the issues; they do not address the wait times, the humiliation of having to 'prove' that one is one's gender, or the legal issues relating to the spousal veto. It would also not address many of my personal issues for not wanting to pursue a GRC.

A genuine effort to decrease wait times by opening more gender identity clinics would be kinder and more straightforward.

1.2. 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?

It should be removed. Even a more open GRC process would be a relatively small total cost, but the GRC application free is often prohibitive to an already economically marginalised group who are excluded from the workforce.

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

Yes. At present the 'standard route' for GRC application requires a diagnosis and report on the applicant's gender dysphoria from a gender specialist doctor (<https://www.gov.uk/apply-gender-recognition-certificate/documents-you-must-provide>). The listed medical practitioners work either in private practice or in the NHS GIC system. The requirement for a diagnosis of gender dysphoria either adds a discriminatory financial obstacle to applying for a GIC (one must be rich enough to afford private healthcare), or means that they are subject to a lengthy wait time to receive this - the London GIC has a wait time of 33-36 months (<https://gic.nhs.uk/appointments/waiting-times/>), which seems likely to rapidly increase, and is mirrored in other GICs across the country. 3 new gender

Written evidence submitted by Leah Owens [GRA1468]

clinics opening this year will reduce but not remove this obstacle to the 18 weeks the NHS usually mandates for an appointment.

Thus, the requirement for a diagnosis of gender dysphoria indirectly either represents hundreds of pounds of private healthcare expenditure, or struggling through waiting lists longer than the current GRA requires overall. It is clearly discriminatory and should be removed

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

Yes; they should be removed. Proving that a person has 'lived in their acquired gender' using documentary evidence is much more difficult than it sounds (documentary evidence is often more tricky to gather as more services move online; it can be lost; extensive amounts must be gathered because the GRC panel does not always find single documents convincing). Additionally, non-binary or gender-fluid people would have difficulty demonstrating that they have 'lived in their acquired gender' - what does this mean for them?

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

I find the statutory declaration - highlighting a serious and honest commitment to living in an acquired gender (subject to clarification what that means) - would be an ideal approach to legal gender recognition.

I note that many of my friends express confusion about exactly how a deed poll/statutory declaration for a name works - whether it needs a lawyer, a certain format, etc. - and so if this approach was taken a clear explanation of the process would be valuable.

1.6. 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?

It should be removed. The 'interim GRC' available without spousal consent is humiliating and pointless. In the event that a spouse or civil partner would not provide consent, this should be seen as grounds for them to divorce or annul the marriage, which has clearly broken down if a partner refuses to accept their partner for who they are.

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

Yes, to 16. At 16, a person can change their name, has medical competence, and can even marry. A young person in this situation is likely to have difficulty gathering the documentation and paperwork necessary for a GRC, however (especially if still living with their parents) meaning that onerous requirements for bank statements, payslips, etc. would have to be reformed too.

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

A 'positive outcome' of these proposed changes will have relatively little effect - these are, as discussed above, token watered-down changes - with the main benefit being the broader impact of the proposed 3 new GICs on access to trans healthcare and reducing waiting lists. My main reason for participating in this call for evidence is to offset voices calling for further restrictions on gender transition.

Overall, the GRA reform process has been a disaster for the wellbeing of trans people (including me personally). Despite calling for relatively minor reforms (in the 2018 Consultation and the 2020 Government proposals), the reforms have served as a nucleus for strikingly intense trans anti-trans speech, including media articles, anti trans NGOs, actions by political figures, which has spilled over into life. At my work and place of worship I have been confronted by people citing arguments from these movements, which, while not escalating to the level of harassment, has still reduced my quality of life. As such, one of the positive impacts of these proposed changes if implemented would be the closure of an upsetting and ongoing process that has allowed the mobilisation of much anti-trans sentiment, for relatively little gain.

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

The government should have included a clearer commitment to and plan for new gender identity clinics and reducing the waiting list. This is the main issue affecting many of my trans friends; as someone who transitioned when the waiting list was 'only' 14 months, seeing them struggling with an essentially impenetrable healthcare system is upsetting, and would have a far greater impact on the welfare of trans people than just GRC reform on its own. While it is heartening to see some movement on this issue, I am not convinced that the new GICs will be opened this year due to COVID-19 (or next year due to Brexit, etc.).

Ensuring that inclusive and supportive LGBT education remains on the curriculum, and opposing attempts to stop gender-questioning students from gaining access to support materials, would also be important in making sure people were better informed about the process of gender transition.

Finally, it is unclear how GRCs interact with prisons; the HoC library (<https://commonslibrary.parliament.uk/research-briefings/cbp-7420/>), this briefing from a (broadly critical of trans people) law firm (<https://murrayblackburnmackenzie.org/2020/01/17/the-placement-of-trans-prisoners/>) seem to be at odds with each other. Some clarification on how any reform would affect this would be valuable.

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

I believe it would be an acceptable compromise step - while effectively still requiring half a year of waiting, between the 'living in role' proof and the 'waiting period', it would be less onerous than the UK law.

2. Wider issues concerning transgender equality and current legislation

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

There are three reasons for this, all of which contribute to me being one of these people.

1. The GRC process is costly, difficult, and bureaucratic. The government's proposed reforms would reduce this, but not remove this as an issue, as discussed above.
2. On a day-to-day basis, a GRC would have little impact in receiving social recognition as my gender, workplace protections, or updating documentation. The Equality Act 2010 is much more relevant for me.
3. I have also heard concerns from trans friends (that I share to a limited extent) that the GRC system would create a readily accessible 'centralised database of trans people' - while all trans-related paperwork (passport applications, this consultation, etc.) would provide a similar 'paper trail', there is a general feeling that we do not want to be on such a list, especially with the sharp and dramatic intensification of anti-trans sentiment in mainstream politics and media since the 2018 consultation, in case this was used to facilitate anti-trans policies in future. While this is generally recognised to be an unlikely possibility, it is real enough to give many of us pause.

As such, a GRC provides few benefits and a surprising number of costs.

2.2. 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.

While there are some inconsistencies, I would be extremely nervous about tabling any proposed changes to the Equality Act 2010. The EA is not perfect but it does offer some protection, but as mentioned above the GRA reform process has since 2018 led to the emergence of an extremely aggressive anti-trans lobby that is already calling for Equality Act protections to be rolled back for trans people, under the guise of 'protecting women'. This is deeply alarming for me - it would directly worsen my life and those of trans brothers and sisters far more than GRA reform could improve it - and I would rather the current status quo, which is not ideal but not bad, should be maintained.

2.3. 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?

As noted above, I am deeply concerned by the possibility of Equality Act reform being used to restrict trans rights; I am, as such, reluctant to suggest reform of it.

My main suggestion would be relating to the discussion of when excluding trans women is a 'a proportionate means of achieving a legitimate aim'. This is often cited by anti-trans activists to

Written evidence submitted by Leah Owens [GRA1468]

justify a wide-ranging policy of trans exclusion, but seems at odds with the reality described by many respondents in previous consultations (<https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/39007.htm>), a recent report by Stonewall (https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf), and my own personal experience. Greater clarity on what circumstances it is 'acceptable' under the EA to exclude trans women, paying attention to this as an exceptional move only taken when 'proportionate' would be valuable.

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

As noted above, I am wary of opening up the EA for reform.

The EA does not adequately or solely protect trans people (in many cases, it is a broader social prejudice against trans people that is the issue, regardless of what the law says), and many issues affecting trans people are more material (e.g. access to healthcare) than solely legal protections. Greater mainstreaming and implementation of EA principles would help, though.

I also note that what the EA refers to as 'gender reassignment' is unclear, especially as it relates to non-binary individuals. The current definition (2.1.7) is broad, and effectively protects people going through 'conventional' binary transitions, but more clarity here could be useful.

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

At present, I have found few formal obstacles to accessing these services. My local support service - Oxfordshire Sexual Abuse and Rape Crisis Centre - support trans women as women, for example. A recent report by Stonewall (https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf) finds that many such services do indeed support trans women, and have been doing so effectively for some time (I do not have personal experience regarding trans men's access to such services, but get the impression from friends that this is the case).

The two main issues I find are as follows:

Firstly, I and other trans people have found that individual service providers and service users often mishandle the cases of trans people, or express hostility and contempt for them. Even if organisational policies are often supportive (where they have been updated), individuals still express transphobic remarks, ask unwarranted intrusive questions, harass or misgender service users, or make an issue out of the fact that people's documentation is in their old name or gender. These issues are often not properly addressed by responsible supervisors or line managers, who do not see their policies are properly implemented.

Secondly, I have encountered an intense degree of hostility from anti-trans campaigners - both from conservative/religious perspectives, and 'gender critical' feminist movements - to pressure trans supportive services to withdraw support for trans people, especially trans young people. This sometimes takes the form of prejudiced arguments that such inclusivity leads to trans women and girls preying on cis women and girls (I am not aware of evidence of this), or that trans supportive services 'groom' young people (especially young assigned female at birth people) into transition.

Written evidence submitted by Leah Owens [GRA1468]

My main concern is that these well-funded movements, with support from most mainstream media, are currently campaigning to strip trans people's access to these services. My issues are therefore related to concern for the future.

Finally, as mentioned above, I would also note the waiting lists for trans-related healthcare are unacceptably high; this is perhaps the biggest issue for many trans people that I know.

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

Yes. Many trans people are some degree of non-binary, with the restrictions of how legal gender is recorded, or the need to 'fit in' when accessing supportive healthcare and other circumstances, leading us to play down that part of our identities when interacting with state bureaucracies. I'm not sure exactly what reforms would help this - less binarism in data records might help, but most important would be a clarification that non-binary identity is protected under the EA 2010, and greater integration of options for non-binary support in the GIC system.

November 2020