

## About the BMA

The BMA (British Medical Association) is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

### 1. Summary

1.1 The BMA welcomes the Women and Equalities Committee's timely inquiry into the Reform of the Gender Recognition Act (GRA). The lack of legislative recognition of transgender and nonbinary identities is a major contributing factor to the marginalisation of transgender and nonbinary people and it is an urgent health and human rights issue.

1.2 Whilst we welcome the Government's recognition that the GRA process needs to be modernised and waiting times reduced, we do not believe the Government's proposals for reform go far enough in addressing the feedback of transgender and nonbinary people that the process is overly onerous and dehumanising.

1.3 At the BMA's Annual Representative Meeting in September 2020, members passed [policy](#) affirming the rights of transgender and nonbinary individuals to access healthcare and live their lives with dignity, including having their identity respected. This reflects the BMA's belief that all people are entitled to medical treatment on the basis of need which also respects their fundamental human dignity and rights. People should be able to access treatment based on their physical and mental needs, including their physiological characteristics.

1.4 As such, the BMA does not believe that obtaining a GRC should be a medicalised process, but that transgender individuals should be able to obtain a certificate by witnessed, sworn statement. Transgender individuals have reported that providing information on treatment received can be intrusive and distressing and that the current situation makes them dependent on medical professionals to get the necessary diagnosis to gain legal recognition of the gender they identify as.

1.5 There are already existing 'non-assessment based' models used in other countries (detailed further below), which include a witnessed statutory declaration and remove the medical requirement for a diagnosis of gender dysphoria and the provision of medical details of treatment received.

1.5 We urge the Government to seek this substantive reform to the GRA so that it allows transgender and nonbinary individuals to gain legal recognition of their gender by witnessed, sworn statement. The proposals also need to have clearer reference to nonbinary and gender fluid identities.

### 2. The Government's response to the GRA consultation

2.1 The Government's response to the GRA consultation proposes that the current requirements to legally change gender should remain the same, but that the process be modernised by significantly reducing the application fee, digitalising the process and opening new gender assessment clinics.

2.2 As such, under the proposals, individuals will still need a medical diagnosis of gender dysphoria from an approved medical practitioner and a medical report from an approved medical professional providing details of any treatment they have had.

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2.3 The BMA urges the Government to seek to reform the GRA so that it allows transgender and nonbinary individuals to gain legal recognition of their gender by witnessed, sworn statement. There is already precedent for the use of such models in other countries – including Ireland, Malta, Argentina and Norway – and many trans people feel that the requirement for a medical diagnosis is demeaning, patronising and plays into antiquated notions of transgender people being mentally ill.<sup>1</sup>

2.4 At the very least, the BMA calls on the Government to take further steps to make the process more straightforward, for example by removing the requirement for a person to have lived in their acquired gender for two-years.

2.5 Throughout its reforms the government should be mindful of the responses of transgender and nonbinary people to the original consultation, which clearly show that the majority feel the current process to be overly onerous and actively dehumanising.<sup>2</sup>

### **3. 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?**

3.1 The Government has proposed reducing the fee for obtaining a GRC from £140 to a “nominal fee”. The BMA supports the removal of any financial deterrent for people to get a GRC. This requirement places an unnecessary and unfair financial burden on transgender people who have the right to live their lives with dignity and have their identity respected.

### **4. Should the requirement for a diagnosis of gender dysphoria be removed?**

4.1 The BMA believes that the requirement for a diagnosis of gender dysphoria should be removed. Our position, determined at our ARM in September, reflects that this should not be a medicalised process and the existing process should be replaced by signing a witnessed, sworn statement instead.

4.2 This is in line with the nearly two-thirds (64.1%) of respondents to the Government consultation said that there should not be a requirement for a diagnosis of gender dysphoria in the future, with many highlighting that gender dysphoria, or being trans, is neither a medical nor a mental health issue.<sup>3</sup>

4.3 Trans individuals have reported that providing information on treatment received can be intrusive and distressing and that the current situation makes them dependent on medical professionals to get the necessary diagnosis to gain legal recognition of the gender they identify as. This can be particularly problematic as many individuals seeking to change their legally recognised gender do not meet the clinical requirements to be diagnosed with ‘gender dysphoria’.

4.4 There are existing ‘non-assessment based’ models used in other countries which include a witnessed statutory declaration and remove the medical requirement for a diagnosis of gender dysphoria and the provision of medical details of treatment received. This model has already been

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<sup>1</sup>Government Equalities Office (July 2018) LGBT Survey Report. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722314/GEO-LGBT-Survey-Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722314/GEO-LGBT-Survey-Report.pdf)

<sup>2</sup>Government Equalities Office (September 2020) Analysis of responses to Government consultation on the Gender Recognition Act, available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919890/Analysis\\_of\\_responses\\_Gender\\_Recognition\\_Act.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919890/Analysis_of_responses_Gender_Recognition_Act.pdf)

<sup>3</sup> Ibid.

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implemented successfully in the Republic of Ireland, Malta, Denmark, British Columbia and elsewhere.

4.5 Transgender and nonbinary respondents to the Government consultation highlighted that there were often lengthy waiting times to obtain medical evidence. Already stretched General Practices are currently facing immense workload pressures, coping with the impact of the COVID-19 pandemic and regular winter pressures, including demand for the flu vaccine and readying themselves for delivering a COVID-19 vaccine. Requiring a lengthy process of achieving a diagnosis of gender dysphoria is therefore neither in the interests of patients nor GPs at the best of times, but particularly in the midst of a global pandemic. Furthermore, it is vital that adequate specialist services are commissioned by the NHS to ensure that transgender patients receive timely and appropriate support.

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

5.1 The BMA supports changes to the requirement for individuals to have lived in their acquired gender for at least two years before they are able to obtain a GRC. Two years is an arbitrary requirement, with no clear justification for this timescale. It is likely to delay access to support, particularly for younger people, who may find it additionally difficult to gather evidence of having lived in their acquired identity for two years. The argument that this requirement guards against ‘frivolous’ applications does not recognise the lived experiences of trans and nonbinary people, who already suffer long waits to access support. It is also unclear what it means to have “lived in an acquired gender” and how effective evidence can be provided for this. Furthermore, the requirement is inherently predicated on gender as a binary state and does not take into account fluidity of genders or nonbinary identities.

5.2 As previously highlighted, there are already examples of countries adopting a process where GRC’s are obtained by a witnessed, sworn statement, or that have opted for much shorter periods. For example, Scotland’s proposed Gender Recognition Reform (Scotland) Bill would legislate for a requirement that individuals have lived in their acquired gender for a period of three months prior to registration.

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

6.1 The current [statutory declaration form](#) includes, at section 2, a requirement and direction to state that you have lived as either male or female for a period of X years. In line with broader reforms needed to recognise the legitimacy of nonbinary gender identities, the BMA suggests that this section is reworded to allow for declaration of gender identities other than male or female.

### **7. What else should the Government have included in its proposals, if anything?**

7.1 The BMA believes the Government should have included in its proposals an allowance for witnessed, sworn statements rather than requiring individuals to undergo a medical process to determine a diagnosis of gender dysphoria. The proposals also need to have clearer reference to nonbinary and gender fluid identities.

### **8. Does the Scottish Government’s proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?**

8.1 The Scottish Government's proposed Bill is a step in the right direction, in that it removes requirement for medical diagnosis and the two-year waiting requirement. However, our position remains that the best option is witnessed, sworn statement.

### Wider issues concerning transgender equality and current legislation

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

9.1 Transgender is wide umbrella term that encompasses many different identities and individuals, including non-binary and gender fluid identities. However, the application process for GRCs is much narrower in its focus (i.e. on individuals who want to change their birth certificate from one binary gender to another) and the options it provides in terms of registering your gender.

9.2 In addition, evidence from the Government consultation shows that the process for applying and obtaining a GRC is onerous, which could deter people from going through the process. Respondents overwhelmingly reported that the current GRA process was too bureaucratic, time consuming and expensive, whilst some respondents thought a GRC would be of no benefit to them.<sup>4</sup>

#### **10. 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.**

10.1 There are a number of challenges in the way the GRA and the Equality Act 2010 interact. Standardising the language should help provide clarity in how the two pieces of legislation are intended to interact and address any existing areas of conflict. However, both acts would benefit from a review of language and terminology, recognising that this has moved on since the original legislation was drafted. For example, the terminology of both Acts lack recognition of nonbinary and gender fluid identifies.

10.3 Consideration also needs to be given to how to future proof the language with a focus on the intended outcome to remove lack of clarity for those interpreting the legislation.

#### **11. 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?**

11.1 The BMA does not believe the provisions within the Equality Act for the provision of single-sex and separate sex spaces and facilities are clear enough. This has led to unhelpful debate due to a poor understanding of how the rights of transgender and nonbinary people, and the provision of single sex/separate sex spaces when proportionately justified, can and should co-exist.

11.2 Patients receiving healthcare are often in a vulnerable position and every reasonable effort should be made to ensure they are as comfortable as possible. This includes trans people and cis people. Some cis people have argued that in certain healthcare environments cis people and trans people should be separate. It is argued, however, that this does not preclude trans people from receiving healthcare in settings appropriate to their gender identity, as suitable adjustments can be made. It has been suggested that these issues could be resolved by ensuring the appropriate privacy, dignity and confidentiality of all patients.

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<sup>4</sup> Ibid

11.3 Further guidance should clearly aim to remove discrimination and support all people to safe use of services.

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

12.1 The BMA does not believe that the Equality Act goes far enough to provide adequate protection for transgender people.

12.2 The Equality Act definition of gender reassignment places undue emphasis on the active state of transitioning and only recognises and gives protections to sex as a binary state. Nonbinary relates to a person's gender identity, which is not itself one of the nine protected characteristics in the Equality Act.

12.3 More broadly, reliance on legislation is not enough. As the Women and Equalities' Committee own inquiry into the Equality Act found, enforcement of breaches of the Act is a clear problem and not only in relation to transgender rights.<sup>5</sup>

12.4 The impact of discrimination on trans and nonbinary people using and working in health and care settings is profound and ongoing. The enduring health inequalities faced by trans and nonbinary people (as addressed in relation to question 13 below) show that, while legislative reform is welcome, much wider social changes are needed.

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

13.1 The Committee's own report in 2016 set out these issues clearly, and there is little evidence that the situation has improved since.

13.2 Trans and nonbinary people still face unacceptable delays in accessing support, and NHS England has failed in its duty to commission appropriate specialist services and reduce waiting times for gender identity clinics. NHS England has pledged to bring waiting times down to 18 weeks, but the average waiting time for a first appointment at a gender identity is 18 months according to the LGBT Foundation. This urgently needs to be addressed.

13.3 The BMA welcomed the Government's commitment to open at least three new gender clinics this year to help bring waiting times down. However, progress on addressing the long-recognised need for new clinics has been slow. A 2018 NHSE report on gender identity services for adults<sup>[1]</sup> recommended the establishment of new gender dysphoria services in primary care, initially as pilots for evaluation, in London, Greater Manchester and Cheshire and Merseyside<sup>[2]</sup> with a view to being rolled out more widely. Whilst these long-awaited clinics are welcome, others are still in development and there remains a commissioning gap in accessing specialist support both pre and post referral to Gender Identity Clinics. The BMA is disappointed at the lack of tangible action from NHS England on these issues and would welcome the committee's support in lobbying for this to be addressed as a matter of urgency.

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<sup>5</sup> Women and Equalities Committee (July 2019), Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission. Available at:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/147002.htm>

<sup>[1]</sup> NHSE (2018) Specialised Gender Identity Services for Adults; Report on outcome of public consultation and update to Equality Impact Assessment. Available at: [https://www.engage.england.nhs.uk/survey/gender-identity-services-for-adults/user\\_uploads/gender-services-consultation-report-updated-equality-impact-assessment-v2.pdf#page18](https://www.engage.england.nhs.uk/survey/gender-identity-services-for-adults/user_uploads/gender-services-consultation-report-updated-equality-impact-assessment-v2.pdf#page18)

<sup>[2]</sup> NHSE, Gender Dysphoria Clinical Programme

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13.4 Access to support has been made even more challenging by the pandemic and by consistent, long-term under-funding of public health and precarious funding situations for third sector organisations that provide bespoke support for these groups.

13.5 In addition, pressure on mental health services is acute and growing. Given that we know that many trans and nonbinary people experience mental ill health, including as a result of experiences of discrimination and marginalisation, ensuring timely access to inclusive medical and psychological services is essential.

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

14.1 The BMA believes legal reforms are needed to better support the rights of gender-fluid and nonbinary people. This must include explicit reference to gender fluidity and nonbinary identities as well as the removal of binary definitions from related legislation and processes.

14.2 There also needs to be greater recognition that this is a constantly evolving area. As such, language and reforms need to be future proofed. There is a useful model of language in Article 2 of the Universal Declaration of Human Rights: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

## Appendix

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### **BMA Motion passed at September 2020 ARM**

That this meeting affirms the rights of transgender and nonbinary individuals to access healthcare and live their lives with dignity, including having their identity respected and calls upon the government to:

- i. allow transgender and nonbinary individuals to gain legal recognition of their gender by witnessed, sworn statement;
- ii. ensure that under 18s are able to access healthcare in line with existing principles of consent established by UK Case Law and guidelines published by the public bodies which set the standards for healthcare;
- iii. enable trans people to receive healthcare in settings appropriate to their gender identity;
- iv. ensure trans healthcare workers are able to access facilities appropriate to the gender they identify as;
- v. ensure trans people are able to access gendered spaces in line with the gender they identify as

**November 2020**