Written evidence submitted by Bayswater Support Group [GRA1508]

A About the Bayswater Support Group

1 We are the UK's only support organisation wholly run by and for parents of children, adolescents and young adults who identify as transgender. We aim to reduce parents' feeling of isolation, to inform and encourage parents in advocating on their child's behalf, and to support them in responding to their child's gender distress sensitively at what can be a vulnerable time for family relationships. Our parents come from all walks of life, including the NHS, mental health professions, teaching, academia and journalism. In the past year 250 families have sought our help.

2 There is no consensus among parents about how to support their child's gender identity development. For some, the most compassionate response is to rapidly acquire a supply of hormones to adapt the child's body to their new self-image. As it underpins our approach to your questions, we outline below our own ethos.

B Gender Dysphoria in Adolescence

3 The children whose parents we support mostly experienced a "gender-uncontentious childhood"[1] and their gender identity issues began in adolescence, when they also suffered "significant psychopathology and broader identity confusion than gender identity issues alone."[2] Clinical attention is only now turning to this 'adolescent-onset' group[3] [4] [5] [6] [7] [8] [9] for this is a new presentation of gender dysphoria. Until recently, most children at gender clinics (such as the NHS's GIDS) had life-long 'early-onset' gender dysphoria, often beginning in toddlerhood. Puberty blockers and hormones were intended for children with early-onset gender dysphoria: clinicians judged that their trans identity - if it had endured since toddlerhood into adolescence - was very likely to remain stable throughout life, so it was safe to consider interventions.

4 Debates about whether to intervene medically in this adolescent-onset group are highly contested, for there is no confidence in the stability of gender identity changes that happen during adolescence, and no evidence of the efficacy of interventions. In the words of Carl Heneghan, Professor of Evidence-Based Medicine at Oxford University, "we have accepted that individuals facing distressing life-changing situations are ill informed." Medical interventions for gender dysphoria are largely "an unregulated live experiment on children."[10]

5 Often there are clear signs that society has signalled to a child that he or she is unacceptable in some way - such as due to their sexuality or neurodevelopmental difference - and the trans identification in adolescence can be the child's adaptation; or as GIDS clinicians have observed:

> *Young people access our service with the clear expectation of being entitled to a physical, concrete medical 'cure' that will offer respite and a solution to the pains of growing up and ordinary re-negotiation in the relationship to one's own post-pubertal body...* [*this*] *is different to an adolescent creative exploration of alternative ways to be and 'people to be like', in that irreversible medical treatments on the body can foreclose future development and change*.[11]

6 In the past decade there has been an extraordinary rise in numbers of these adolescent-onset children, who now comprise most referrals to GIDS. Most striking is the 4718% rise since 2009/10 in girls seeking to escape their female identity and body. Formerly a minority of patients, they are now three-quarters of GIDS referrals.[12] The reasons for these changes are unknown; GIDS says "Just like everyone else in society we are going through a process of trying to understand what is happening."[13] But as Dr Sarah Davidson of GIDS has pointed out, if:

> *we make something into a phenomenon, then naturally we might recognize it in ourselves or our children. People are seeing this in places where it was not seen previously.... We are directing young people to services where they are signposted to a psychologist and a medical doctor, whereas previously, because it wasn't a phenomenon, they would have worked it through with their friends and experimented. The real worry is crystallizing and solidifying a situation before it has been fully worked through*.[14]

7 Thus as parents we are very cautious about clinical approaches, school guidelines, public policy, consumer messages and law that make trans identities in the young 'a phenomenon'; we're more interested in giving our children the best chances in life by addressing their underlying mental health and developmental realities. We're sceptical of prematurely applying identity labels in childhood, such as 'transgender', that might 'foreclose future development and change', 'crystallising and solidifying a situation before it has been fully worked through'. GIDS emphasises the importance of keeping options open, and cautions that children "have told us how hard it was to further explore their identities, or consider transitioning back, once they and other people had fought so hard for them to be able to express themselves in a certain way." Even though it "may seem very unlikely indeed" that a young person's current identity will change, "gender is complicated and young people are constantly developing."[15] WPATH's Standards of Care for pick up the same point: "some identity beliefs in adolescents may become firmly held and strongly expressed, giving a false impression of irreversibility."[16] As the GIDS Director has commented, “If a lot has been invested in living in a gender role, then, potentially, it is difficult for young people to say: ‘Well, actually I don’t feel like that any more.’ "[17]

8 Families in our group find especially unhelpful 'affirmative' approaches that encourage vulnerable children to view their psychological and developmental challenges within a framework of social justice, making difficult feelings something to address by campaigning for and enforcing rights, rather than careful exploration, in a therapeutic setting. Our children's differences make them authentically non-conforming in ways that may not fit the prescriptive models of difference which schools and society promote.

C The Government’s response to the GRA consultation

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

9 A diagnosis of gender dysphoria is the prime determinant of eligibility for a GRC and is a requirement in 40 out of 49 European countries.[18] Far from its removal, the centrality of diagnosis in the UK system

should be affirmed. To remove it would not represent merely a relaxation or broadening of eligibility, but would fundamentally re-purpose the GRC.

10 As the FtM Network, the Gender Trust, GIRES, Press for Change and others told the government's *Interdepartmental Working Group on Transsexual People* (2000) - whose recommendations were the basis for the 2004 GRA - "Being transsexual... is a condition or syndrome wherein the drive for reassignment is overwhelming. Increasingly, scientific medicine includes transsexuality as one of the many intersex conditions that exist... [it is] a condition, increasingly recognised in scientific medicine as one of the many possible intersex conditions that exist".[19] As GIDS put it recently, "Gender reassignment is a term which is standardly used to refer to surgery"[20] and we understand GRCs to have been intended primarily for post-operative transsexuals.

11 GRCs were designed to alleviate difficulties that the UK's population of transsexuals faced when at certain key life moments they were nevertheless still deemed by the state to be members of their birth sex. It was a compassionate attempt by the state to effect in law what medicine cannot. Campaigners for the GRC told the government that it would impact "maybe 5000 people... Transsexual people are such an insignificant number in our society".[21] To the end of Q1 2020, 5597 GRCs have been issued.[22] Thus, in their intended population of transsexuals, numbers applying for GRCs are high.

12 Whether gender dysphoria is any more categorised as a mental health problem or some other kind of problem, it is nonetheless deemed to be grave enough that its standard treatment is hugely invasive, inherently risky, requires life-long follow-up and has far-reaching effects including sterility. It has been argued that a diagnosis is no longer needed for the GRC since gender dysphoria "should be regarded no differently from, for example, being pregnant".[23] The fundamental difference, of course, is that being pregnant is an externally verifiable physical state, but there is no test for being transgender: no ultrasound scan can locate a person's inner gender identity, it is simply a belief, whose truth exists in them alone. Ultimately the question is: whether a person's status in law should be based primarily on a self-defined, inherently subjective quality or an externally-observable one that is amenable to verification. The diagnosis requirement is at least a gesture towards verifiability.

13 The case has been made for GRA reform on grounds that "individuals should be free to live their lives as they choose".[24] We agree that decisions around clothing, names, relationships, private aesthetic surgery and much besides, are matters of personal choice for capacitous adults in which the state should not interfere, and of course people are also free to nurture all manner of deep-seated feelings about themselves. However, the exercise of personal choice, and decisions taken to manage 'a condition or syndrome wherein the drive for reassignment is overwhelming', are categorically different. The state should embrace the former (free choice) through consumer and other rights, and seek to alleviate the latter (the urge for sex reassignment) through *The NHS Constitution for England* (2012)[25] under which NHS services are provided on the basis of clinical need. There is no rationale for sex reassignment without a relevant clinical diagnosis.

14 An argument based on an analogy with gay rights does not apply, unless or until identifying as transgender loses its association with invasive medical treatment undertaken on physically healthy bodies. Once, society saw homosexuality as a mental disorder and gay people were subjected to cruel

and ineffective attempts to change them medically. But we now recognise it as a healthy natural variation that requires no medical intervention. The argument goes that trans people are in the same position, and many campaigners for gay rights have taken up their cause. However, the situations are fundamentally different for, whereas the idea that gay people needed to be changed medically has been discredited, the rise of transgender identity requires an acceptance that many trans people *do* need to be medically changed.

15 We long for the day when identifying as transgender is no longer associated with any medical treatment. We support any proposal that facilitates this uncoupling; that helps people – to borrow J.K. Rowling's words – to be free to dress however you please, call yourself whatever you like, sleep with any consenting adult who'll have you, live your best life in peace and security - to break free of society's gender stereotypes, in other words, without the need for burdensome medical interventions with lifelong consequences. That would be true gender diversity; but what we see promoted by 'diversity' organisations is the ever-growing proliferation and policing of gender categories which encourages children to conform to others' ideas of how they should be. We agree with GIDS's testimony to your committee, that:

> *There is always a risk that the work of GIDS in offering physical intervention itself represents a potentially oppressive acceptance of a version of gender that many - not just gender non-conforming people - experience as limiting.*[26]

16 Although transsexuals continue to use this word to describe themselves,[27] the category has been subsumed within the more expansive category of 'transgender' which encompasses a broad and disparate range of belief systems and behaviours. Veteran trans tights campaigner, Bernard Reed OBE, defines it as:

> "an umbrella term describing all those whose gender expression falls outside the typical gender norms. It is often the preferred term for those who change their role permanently, as well as others who, for example, cross-dress intermittently for a variety of reasons including erotic".[28]

Stonewall offers the following definition:

> *An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.*[29]

The Crown Prosecution Service recently attempted a definition of "transgender/trans" people that included "transsexual people, transgender people and cross-dressers or anyone who challenges gender norms".[30] And a popular visualisation of 'transgender' depicts an umbrella under which various labels shelter, including 'Masculine Women', 'Feminine Men', and '<u>any</u> individual who ... challenges their society's traditional gender roles and/or expressions'.[31]

17 The GEO "tentatively estimates" the current transgender population at between 200,000 and 500,000;[32] your committee's *Transgender Equality* (2016) report estimated 650,000 were "likely to be gender incongruent to some degree";[33] and James Palmer, the senior commissioner for gender dysphoria at NHS England, is "thinking about designing a healthcare service that will allow 1 to 3% of the population at some point in their lives having a discussion about their gender,"[34] potentially promoting the number of trans people into the millions.

18 Granting legal recognition of a change of sex to such numbers, and to so many who plainly have not undergone any physiological changes (most are still 'bepenised') would represent a broad reshaping of society whose implications require thorough and thoughtful consideration and consultation across government and society. The needs of the diverse groups sheltering under the trans umbrella require and deserve different policy solutions than transsexuals and the answer is not simply to extend previous policy solutions to cover more people - but rather to fundamentally re-think the legal framework for sex and gender its entirety.

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

19 The two year 'real life' test should not begin before age 18, for a GRC should be a reflection of fundamental life changes already made. Many young people leave home around the age of 18, when they attain their legal majority but still are developing (see para 22 below). Living as a child in the parental home before adulthood does not offer a meaningful test of living in the acquired gender role as an autonomous adult, thus it makes sense to ask applicants to undertake a significant period of independent living as young adults.

20 The lack of a GRC is no impediment to living in the acquired gender, so should not offer a practical impediment to life at this stage. Without a GRC, an individual can change their name and the sex or gender markers on their passport, bank accounts, driving licence, student ID (eg for a degree certificate), NHS record, National Insurance records (name only), workplace records, deeds and mortgage documents, and their credit record.[35] Indeed such identity and household documentation can be submitted to the GRC panel as evidence of two years' experience of life within the acquired gender.

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

21 The age limit should not be lowered, for reasons outlined in paras 6-8 and 19 above. Identifying as a member of the opposite sex, or questioning your gender, are developmentally typical stages of adolescence for many, including those who go on to become same sex-attracted adults, and those whose neurodevelopmental differences cause identify confusion in adolescence. No law should interfere with these natural developmental processes; far from it, the law should do everything it can to protect them.

22 The arguments for raising the age above 18 are stronger than for lowering it, as there is growing recognition that the years from mid-teens to 25 represent a distinct developmental stage. As the Royal College of Physicians says, "young adults and adolescents (YAA) aged between 16 and 25 years need to be considered as a defined population."[36] The NHS's toolkit for delivering developmentally appropriate healthcare recognises that "young people's development does not have a fixed time frame attached. Much of this development will take place after reaching the legal age of adulthood at 18."[37] The Care Quality Commission has judged that "Adolescence/young adulthood should be recognised across the health service as an important developmental phase."[38]

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

23 There is a baffling lack of concern for the needs of people who transition twice (de-transition). As the *International Association of Therapists for Desisters and Detransitioners* puts it: "Society has worked hard to respond to people coming out as trans, but does not yet have a script for those who have to come out again as detransitioning. Our patients have described an array of responses, including angry criticism, misunderstandings or minimisation, or statements that remind them that transition does work for others."[39] Women who transitioned medically and legally, are left in a no-man's-land having now accepted their female bodies, and reidentified as women, but are recognised in law as male. A majority of detransitioners "now understand themselves to be gay or lesbian and now understand their transition to have been motivated in part by internalized societal homophobia."

D Wider issues concerning transgender equality and current legislation

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.

24 Greater clarity aimed at distinguishing between sex and gender will be very helpful, for in the past these terms have been used as if they are interchangeable. Regardless of the relative merits of gender and sex as determinants of an individual's legal rights, it's clear now that the two terms have distinct meanings: sex describes the body, and gender is society's values and expectations associated with the body.[40] The solution must be always to be explicitly clear about the differences between sex and gender, and to stipulate always whether a law or policy or data gathering exercise concerns one or the other or both; and to be clear about the reasons why. Otherwise it creates space for parties to read into these words the meanings that favour their own agendas. Where there is serious disagreement - as certainly exists on this topic - the need for a common language to serve as the basis for discussion is essential.

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?

25 A child cannot legally change their gender and we ask that schools protect the legal status of minors and heed the caution we outlined in paras 7 and 8, through the provision of services and also in

teaching. Schools should be clear about biological realities, that nobody is 'in the wrong body', we are simply in our own bodies and that is sometimes difficult and sometimes wonderful, and that we must care for our bodies; and at the same time teach the young that a progressive, caring society would be one where nobody felt a need to change their body simply because of society's gender categories, or to feel comfortable about their masculine or feminine self-image. Feminine personalities can inhabit male bodies and vice-versa, and this is no cause for medical intervention.

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

26 EA s.7 defines the protected characteristic of "gender reassignment" as "where a person has proposed, started or completed a process to change his or her sex... in relation to the protected characteristic of gender reassignment, a reference to a person who has a particular protected characteristic is a reference to a transsexual person."[41] Given the wide 'umbrella' of beliefs and behaviours it is obvious that many trans people do not possess the protected characteristic of gender reassignment.

27 EA s.10 and Article 9 of the European Convention offer a better basis for protecting the transgender identity beliefs of people other than transsexuals - ie who live according to gender roles not typically associated with their sex. Given the contested nature of gender identity, this would protect both belief and absence of belief, and not merely the belief but its expression and practice. Crucially, the belief need not be "susceptible to lucid exposition or, still less, rational justification."[42]

- It would offer legal protection to people who make sense of themselves through a transgender identity and who live permanently according to that identity, but who have no intention of changing their sex characteristics;
- it would distinguish and protect the interests of transsexuals, whose protection would come from s.7;
- it would reduce division with biological females because the legal protection of a person's belief that they were a member of the other sex would derive from its validity as a philosophical belief, not from their membership, in legal terms, of the protected characteristic of sex;
- it would protect also the absence of belief, which is widespread in society. If schools wish to teach gender identity, they would also have to teach the absence of gender identity and to situate this teaching not within sexuality and biology but philosophy and belief;
- it would usefully require lawmakers and the courts to make realistic distinctions between (to borrow Bernard Reed's words) 'those who change their role permanently' (protected) and those who 'cross-dress intermittently for a variety of reasons including erotic' (unprotected).

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[1] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/oral/21638.html at Q51

[2] De Graaf & Carmichael, 2019 https://doi.org/10.1177/1359104518812924

[3] Bonfatto & Crasnow (2018) https://doi.org/10.1080/0075417X.2018.1443150

[4] Kaltiala-Heino et al (2018) https://doi.org/10.2147/ahmt.s135432
[5] Sevlever et al (2019) https://doi.org/10.1007/s10508-018-1362-9
[6] Marchiano (2017), https://doi.org/10.1080/00332925.2017.1350804
[7] Littman (2018) https://doi.org/10.1371/journal.pone.0202330
[8] Hutchinson, Midgen & Spiliadis (2019), https://doi.org/10.1007/s10508-019-01517-9
[9] Zucker (2019) https://doi.org/10.1007/s10508-019-01518-8
[10] Professor Cal Heneghan, 'Doubts over evidence for using drugs on the young', The Times, 8 April 2019
[11] Bonfatto & Crasnow (2018) https://doi.org/10.1080/0075417X.2018.1443150
[12] https://gids.nhs.uk/number-referrals
[13] http://gids.nhs.uk/current-debates
[14] https://www.medscape.com/viewarticle/901017_2
[15] http://gids.nhs.uk/parents#how-can-i-encourage-exploration-and-keep-options-open
[16] https://wpath.org/publications/soc at p.18; also reflected in NHS guidelines at https://www.england.nhs.uk/wp-content/uploads/2017/04/gender-development-service-children-adolescents.pdf
[17] Dr Polly Carmichael, *Guardian* 11 September 2015, at https://www.theguardian.com/society/2015/sep/12/transgender-children-have-to-respect-who-he-is
[18] https://tgeu.org/wp-content/uploads/2020/05/index_TGEU2020.pdf
[19] http://docs.scie-socialcareonline.org.uk/fulltext/wgtrans.pdf at Annex 2, paras 3.3.1, 3.7.2
[20] Tavistock and Portman NHS Foundation Trust FOI 19-20432 at https://tavistockandportman.nhs.uk/about-us/contact-us/freedom-of-information/foi-disclosure-log/
[21] http://docs.scie-socialcareonline.org.uk/fulltext/wgtrans.pdf at Annex 2, para 3.7.3, 3.7.5; see also http://news.bbc.co.uk/1/hi/uk_politics/3246464.stm
[22] https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2020 The total up to Q1 2020 is given in Table GRP_1 in the spreadsheet 'Main Tables (April to June 2020)'
[23] https://uncommon-scents.blogspot.com/2020/11/the-women-and-equalities-committee-gra.html?m=1
[24] https://www.conservativehome.com/platform/2020/08/nicola-richards-and-alicia-kearns-why-it-makes-sense-for-us-to-reform-the-gender-recognition-act-gra.html
[25] https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england
[26] http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Women%20and%20Equalities/Transgender%20Equality/written/19794.html
[27] For example, *Seven Hex: Thoroughly p***ed off with the state of humanity...also a male transsexual*, at https://sevenhex.com; and *The Lonely Transsexual: A Struggling Transsexual in The New Transgender Era*, at https://lonelyts.blog
[28] http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Women%20and%20Equalities/Transgender%20Equality/written/19294.html
[29] https://www.stonewall.org.uk/help-advice/faqs-and-glossary/glossary-terms#t
[30] Crown Prosecution Service, *Lesbian, Gay, Bisexual and Transgender (LGBT+) Bullying and Hate Crime Schools Pack*, glossary
[31] Used, for example, in slide 9 of this presentation from the U.S. Pride Institute: https://www.naadac.org/assets/2416/marsha_partington_ac15_lgbt.pdf
[32] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721642/GEO-LGBT-factsheet.pdf
[33] Select Committee report, para 8, citing GIRES estimate.
[34] https://www.telegraph.co.uk/news/2018/06/04/nearly-two-million-britons-expected-question-gender-health-boss/
[35] https://www.gires.org.uk/documents-to-be-changed-upon-gender-transition/
[36] https://www.rcplondon.ac.uk/projects/outputs/why-young-adults-and-adolescents-need-better-healthcare

[37] https://www.northumbria.nhs.uk/wp-content/uploads/2017/04/nhs-making-healthcare-work-web-02.pdf
[38] https://www.cqc.org.uk/sites/default/files/CQC_Transition%20Report.pdf
[39] https://iatdd.com/introduction-to-detransition-for-therapists/
[40] https://www.who.int/health-topics/gender#tab=tab_1
[41] 2010 EA s.7(1), s.7(3)(a)
[42] R (Williamson) vs Secretary of State for Education and Employment [2005] 2 AC 246, para 23