

Response to Call for Evidence from the Women and Equalities Select Committee Reform of the Gender Recognition Act

Background

NGA Law (www.ngalaw.co.uk) is a specialist family law firm which supports many LGBT clients. We work with transgender clients who are building families, in children proceedings and in relation to personal family issues including applications for gender recognition certificates.

Brilliant Beginnings (www.brilliantbeginnings.co.uk) is a non-profit surrogacy agency which supports intended parents and surrogates building families together. Our clients include trans parents who need the help of a surrogate to build their families.

Our teams work closely together, and this submission is made on behalf of both organisations.

The government's response to the GRA consultation

We do not believe that the government's proposed changes meet its aim of making the process to change legal gender 'kinder and more straightforward'. In particular, if the government's recommendations are followed:

- Transgender people remain required to produce extensive medical evidence of gender dysphoria, suggesting that being transgender is a medical disorder rather than a question of personal identity. This is demeaning to transgender people who know their own minds and is not reflective of modern understanding of gender identity.
- Transgender people in England will still only be able to obtain a GRC with their spouse's permission. In 2020 it is inappropriate for the law to require spousal permission for ensuring the law reflects your own individual personal gender identity.
- The process of obtaining a GRC involves an application to an anonymous Gender Recognition Panel. There is no transparency, no right to be heard and no right of appeal. No substantive changes have been proposed to the process, other than to enable the application to be submitted online. The current process has a low take-up because of the lack of confidence in the system.
- There is no proposal to afford recognition to people who identify as non-binary. Such trans people are disenfranchised by the law and will remain so.

Our trans clients are saddened and disappointed by the government's response to the public consultation. When the consultation was launched in 2017 the government indicated a strong commitment to progressive reform, and the responses to the public consultation were overwhelming supportive. The government's response has departed fundamentally from the public consultation results, without any real explanation having been given. The changes now proposed are merely administrative tinkering, changes (including moving the application process online) which could have been made without the need for any kind of public announcement (how many other processes have been moved online this year without any fanfare whatsoever?). We do not consider the government's response adequate, either in substance or explanation.

Parenthood for trans people

We are working with increasing numbers of trans people who are building families through assisted reproduction, including IVF, donation and surrogacy. UK law has a comprehensive legal framework dealing with parenthood following the conception of a child in these circumstances. Since 2008, this has included LGB parents, enabling male and female same-sex couples to be recorded on their children's birth certificates as their parents. However, trans parents are completely ignored and excluded from the UK's fertility legislation and this results in bizarre outcomes for children (highlighted recently by the Freddy McConnell case in which a transgender man had to be recorded on his son's birth certificate as the mother rather than the father or parent).

Since s12 of the Gender Recognition Act deals with parenthood, this should be reviewed together with any other reform of the GRA. There has never been a policy decision not to afford trans parents appropriate parental status and titles: the possibility of trans parents conceiving children after a gender transition is simply something that was not considered in 2004 or appropriately provided for. With growing numbers of diverse families, it can no longer be ignored.

November 2020