Written evidence submitted by Mrs Anne Hardy [GRAS1689]

This submission covers the following questions:

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

I am responding to these questions as an individual, but also as **a former solicitor and member of the Government Legal Service.**

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

The short answer to this is that the definition of "transgender" has changed beyond al recognition in the past 5 years.

To clarify what I mean by this, it is worth looking back at the Hansard debates from the original passage of the gender recognition bill in 2004. The section below is available on Hansard and is a quote from Lord Filkin during the House of Lords debate. The **bold** is mine:

Gender Recognition Bill [H.L.] (Hansard, 29 January 2004) (parliament.uk)

> "The Government's position is that there is an injustice for **a very small number of people in our society who are absolutely convinced that their real-life gender, as they believe it, is out of congruence with what is recorded on their birth certificate**. After a very thorough, careful, proper and patient process of testing and validation by the state and by medical experts, the state 366believes that it is right and fair, as well as in accordance with European law, to adjust that anomaly in the **very limited number of circumstances** in which it applies. Perhaps I may remind the House that that is relevant. **Our best estimates—no one has a final figure—are that probably about one in 17,000 people suffer from gender dysphoria**. The fact that there are so few does not mean that as a society or a state we should not be concerned with trying to give them the legal recognition that they believe they are owed."

I would note that: "1 in 17000" people equates to **fewer than 3,600 people**, in a population of 60 million, such as the UK.

Current estimates are that fewer than 4,000 people have a Gender Recognition Certificate (GRC) (see the Government figures to the end of 2018, which show around 300 people per year being awarded a certificate over the period since the

legislation came into force, which is available here: Tribunals and gender recognition certificate statistics quarterly: October to December 2018 - GOV.UK (www.gov.uk)).

These figures suggest that the GRA **has been a resounding success,** on its original terms, in that the number of those who have benefitted from the gender recognition process matches the original Government estimates as to who it would benefit. To put it another way, **it has helped precisely those that it was intended to help,** which is those with **severe gender dysphoria**.

The reason why there now appears to be a discrepancy in numbers of "transgender" people and those with a GRC is that the **definition** of the term "transgender" (which incidentally is **not** the term used in the Gender Recognition Act 2004 (GRA), which refers to "transsexual") **appears to have changed**. According to the charity Stonewall's current definition of "trans" (available here: What Does Trans Mean? (stonewall.org.uk)), the term now includes "non-binary people" and "cross-dressers". This clearly goes well those who have "severe gender dysphoria", as per the House of Lords debate.

This lack of congruence may explain why the Government's own figures (available here: Trans people in the UK (publishing.service.gov.uk) suggest that there are around of 200k-500k trans people in the UK. Clearly, to go from <5,000 to 500,000 GRC holders would be **an increase of several orders of magnitude**. The question for the Committee, though, is: **does this mean that the whole basis of the GRA legislation needs to be looked at afresh**? If the purpose of the legislation is **not** to **help** a small number of **severely distressed people** manage their condition, then **what is it for**?

I would also note that a whole section of the GRA (section 11) is concerned with marriage. This was clearly a concern for transsexual people and their spouses who wished to transition and stay married in an age (2004) before gay marriage was an option. However, it is less of an issue now that same sex marriage is permitted.

Another point I would wish to make is to **ask the Committee to consider whether there is sufficient public awareness of the change in meaning of "transgender"** as, if there is not, then the whole question as to whether there is sufficient **public support for relaxation of the conditions for getting a GRC** arises. Indeed, I would suggest that **most people think that a "transgender" person is "someone who has genital surgery"**. For example, a recent you gov poll (ttps://yougov.co.uk/topics/politics/articles-reports/2020/07/16/where-does-british-public-stand-transgender-rights) suggested as much, in that it noted the following:

"It is worth noting, however, that Britons do **not support such access for those who have not yet undergone gender reassignment surgery**. By 41-46% to 26-30% people oppose those who have not physically transitioned being able to use their new gender's changing rooms. Likewise, 39-41% oppose them being able to use their new gender's toilets, compared to 31-32% who are in support."

This is important as if the scope of the GRA is widened than it becomes **not just an administrative matte**r which affects a handful of people who deserve sympathy but

a **big issue for society** as a whole, because it changes the whole basis on which services are provided from "sex" to "gender" (please see my response to question 2).

The key point I want to make in this section **is that it is vital that any legislative changes clarify the definitions used.** Personally, I think that the focus of the GRA **should continue to be on those who suffer gender dysphoria and who are genuinely distressed**. It is right that society should assist them in the management of their symptoms. However, I would be very alarmed to see the current definition of people who are able to take advantage of the GRA to include "cross-dressers" and "non-binary" people (terms which would appear to include most of the population), given that one consequence of having a certificate (section 9) is:

> "Where a full gender recognition certificate is issued to a person, the person's gender becomes **for all purposes** the **acquired gender** (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman)."

I explain more on this point below.

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.

Yes. It is absolutely key that the definitions in the two acts are aligned and that they are clarified, as noted in my response to the first question above. It is clear that there is deep confusion about the definitions, for example of the term "transgender". "Gender reassignment" is also unclear and it is becoming even more muddied, with the current trend to refer to sex or gender "assigned at birth", in relation to the process of noting whether a baby is a girl or a boy.

I am a former public sector contracts lawyer, so am aware that **definitions are key**. In my view, the **existing Equality Act 2010 (EA) terms should be used consistently** in other equalities legislation, including the GRA. The EA is based on a consolidating act (from 2006) which pulls together previous equalities legislation so it is the best place to define key terms.

The definitions of "gender" and "sex" are also key in this area. Clearly, human beings cannot change sex. I believe that the term "**gender**" is best used to refer to **the particular social expectations placed on someone who is a particular sex**, as this canchange over time as society evolves, or even be adapted on a personal basis, according to individual preference. However, "sex" itself remains binary - male or female - even for the small number of people with differences of sexual development. There also seem to be, according to some sociologists – I don't have links but the trend can be seen on social media - a multitude of different genders, which would be confusing in terms of legislation. "Sex" is therefore a more useful distinguisher when it comes to providing services.

I would also note that the issue of terminology was brought up in the Hansard debate linked above, although disappointingly, clarifications were not made

I would go so far as to say that the people who draft any updating legislation **must not use "gender" as a synonym for "sex" as this would only add to the existing confusion.**

I am also concerned that any attempt to replace the concept of "sex" with the vague concept of "gender" as the legal basis for providing services, and measuring discrimination against females, would be detrimental to women. The current law and nomenclature has served women well for decades. It should not be changed without consultation with the 51% of the population who would be directly affected by a move to "gender".

Finally, I would add that I find the whole concept of "gender" quite concerning as it often seems to be based on offensive sexual stereotypes such as whether someone wears make-up or dresses. I have no concept of gender identity, although I am a woman, albeit a post-menopausal one. This brings me on the next question, ie:

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?

My answer is: no absolutely not. The current guidance is not clear and further clarification is vital.

In my view, the dereliction of duty on the part of EHRC in this respect is unforgiveable, given their statutory functions, In my personal opinion, they are responsible for a lot of the confusion which now exists (see for example the Oxfordshire case which is reported here Oxfordshire council transgender guide scrapped after girl's court case | Oxford Mail). This case would never have arisen if clear guidance on the interaction between the protected characteristics of sex and gender reassignment was available to schools.

In addition, EHRC's failures have allowed people who are not legally qualified (such as Stonewall) to fill the breach with their own interpretations, which has only caused further confusion and expense, including legal costs as challenges are brought.

In my experience, lawyers are divided as to how the GRA and EA interact when it comes to single sex services – hence the need for urgent clarification. My own view is that the EA should make it clear that **only those with GRCs should be able to use facilities designed for the opposite sex. Also,** the EA obviously intended various exemptions to apply (see Schedule 3). In the case of possible exclusion of those with GRCs from single sex services reserved for those of their "acquired gender" , there should be clear **service by service** (**not case by case**, as that is unwieldy and encourages vexatious litigation) guidance as to how they should be used. Obvious exemptions would include, for example shelters and women's sports.

November 2020