

## About the Respondents

**Claire Harvey MBE** brings years of public sector, regulatory, corporate and third sector leadership experience, and an impressive record of impact and achievement through positive disruption and culture change. A Paralympian, former Prison Governor who managed a resettlement prison, and former Ministry of Justice Lead for Equality and Diversity, she is also the former Head of Corporate Responsibility and Culture at the FSA (the predecessor to the FCA as the UK's financial regulator). Claire is also the former Head of Inclusive Leadership at KPMG. Her passion is the future of work; working with both schools, universities and corporate workplaces, I hope to ensure that young people are ready to be great leaders of the future in organisations that have positive cultures.

**Krishna Omkar** is a corporate lawyer based in London, acting for public and private companies in complex and high value cross-border mergers and acquisitions, private equity, capital markets, and restructuring and insolvency matters. Krishna is named in Legal 500, received an Asian Achievers Award in 2019, and the inaugural Rising Star Award at the British Legal Awards in 2019. Krishna is a recognised thought leader in the field of Diversity and Inclusion, and was also part of a team of lawyers who worked on the successful decriminalisation of same sex relations in India in 2018. He is also named Stonewall's Role Model of the Year in 2018. Krishna has twice, in 2019 and 2020, spoken at the World Economic Forum in Davos on the topics of Diversity and Inclusive Capitalism. In 2019, he was invited by the UN Under Secretary General for Human Rights to host the UN's public-private sector consultation on LGBTQI+ Rights in Berlin.

## RESPONSE

### Section 1

- 1. Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?**
  - The current proposed changes do not make the system any kinder. Also, given that many of the Trans community live in socio-economic disadvantage, or are pushed into socio-economically difficult situations by virtue of seeking to transition, making the system online may have negative implications if this is all that change will achieve.
  - In the previous consultation, (64.1%) said that there should not be a requirement for a diagnosis of gender dysphoria in the future and around 4 in 5 (80.3%) respondents were in favour of removing the requirement for a medical report.
  - One key flaw in the approach is the potential conflation of Transgender identity on the one hand, and Gender-Fluidity and Non-Binarism on the other. These are two distinct matters and ought to be addressed separately. There is a risk of doing a disservice to both Transgender and Gender-Fluid/Non-Binary communities by treating them as one and the same.
- 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?**

## Written evidence submitted by Mr Antonio Zappulla [GRA 1705]

- The fee should be proportional to the administration process.

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

- Currently, to prove gender dysphoria, reports must be submitted from two registered medical practitioners, and at least one of the practitioners must practice in the field of gender dysphoria (alternatively, a registered psychologist practising in this field can also submit a report).
- The problem with this process is that most medical professionals (except gender specialists) are not currently trained to understand gender identity, and this impacts someone's ability to access a GRC.
- [Stonewall's 2018 report on being Trans in the UK](#) shows that:
  - 41% Trans people said that healthcare staff lacked an understanding of Trans health needs when accessing general healthcare services
  - 62% Trans people who have undergone or are currently undergoing medical intervention for the transition are unsatisfied with the time it took just to get an appointment (upwards of 3 years)
- The process of medical diagnosis is arduous and requires resources that the majority of Trans people do not have, including access to medical professionals who are specifically trained in and have a knowledge and understanding of gender identity and gender dysphoria.
- For example, it currently takes upwards of 3 years to secure an appointment at a Gender Identity Clinic.
- This has the effect of penalising Transgender people and setting a very high bar, which the majority of Transgender people, who are socio-economically disadvantaged, cannot reach.
- By doing so, this process also exposes Transgender people who do not have access to the appropriate medical resources required for this certification to harm, as it forces them to either try to avail of resources that are out of their reach (for whatever reason) or to simply do without going through a GRC process as the bar is set too high and too difficult for them to achieve.
- Many people believe this is a safeguard against malicious applications, but there are more effective ways to achieve that (such as a huge fine or legal consequence for malicious applications or misuse) that only impacts those who might want to make spurious applications, rather than everyone who is entering the process in order to live their true lives.
- Whilst an assurance of authenticity should be sought, this should not be framed as a judgement or diagnosis (as there is not a linear path to authentic gender identity) but rather a safeguard that a person has gone through due process and is consistent in their decision.

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

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- Currently, the GRA requires a trans person to provide evidence that proves they ‘have lived in their acquired gender’ for at least two years. Documents currently accepted are: Passport; Driving licence (both counterpart and photo ID parts); Payslips or HM Revenue & Customs (HMRC) documents such as a P60 or P45; Utility Bills; Bank statements; Letters from employers, colleges, universities, doctors or other professional organisation; Student loan documents; Academic certificates or documentation.
  - In the recent UK Government Consultation, 78.6% respondents were in favour of removing the requirement for individuals to provide evidence of having lived in their acquired gender for a period of time.
  - There is currently very poor link to the ‘tests’ required (e.g. having a utility bill in your name) and the outcome (i.e. having gender dysphoria), showing limited understanding of the lived experience of Trans individuals, and basing decisions on gendered stereotypes.
  - Having to ‘prove’ your justification and authenticity is dehumanising; we do not do the same for marriages or civil partnerships, or other systems that have legal implications.
  - The requirement to have lived in your confirmed identity for two years, and evidencing it with documentation such as utility bills and passports, has a negative impact on those who are young, who are not bill payers, those who do not have legal authority for things, or who are socially isolated or socio-economically disadvantaged.
  - Further it does not take into account the fact that in order to have lived in their confirmed gender, a certain amount of gender recognition is required, which may not be possible or accessing for an individual without having been through the GRA process. This risks creating a problem of circularity – where one cannot get a GRC unless one has proof of having lived in a confirmed gender, but one cannot get such proof without a GRC.
  - The term “acquired” gender is misleading – the more accurate term is “confirmed” gender.
- 5. What is your view of the statutory declaration and should any changes have been made to it?**
- Statutory declarations are recognised legal instruments.
  - Does not take account of Gender-Fluid or Non-Binary community, but perhaps a different process and system should be created as the groups are very different. Being Transgender is not the same thing as being Gender-Fluid or Non-Binary.
- 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?**
- In the UK Government Consultation, 84.9% respondents disagreed with the spousal consent requirement in the GRA.
  - [Stonewall’s 2018 report on being Trans in the UK](#) shows that 28% Trans people who are in relationships have faced domestic abuse. In this context, relying on spousal consent risks exposing Transgender people to more harm.
  - Gender identity is a personal issue. It would be unfair to have another individual, even a legal spouse, hold up the process of allowing an individual to live their authentic life.

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Spousal consent does not recognise the reality of complex human relationships and cannot cater for the subtleties of individual circumstances.

- There are already strong legal protections and choices for those in spousal or civil partnership positions which provide protection (such as annulment).
- If those protections are felt to be necessary, this could be through changes in the marriage and civil partnership acts, not adding a burden to the person applying for a GRC.

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

- The age limit should be lowered to enable young people to live authentically at the point in their lives that is right for them. The longer people are forced to live inauthentically, the more harm can be caused to them.
- Young Trans people are particularly at risk by virtue of the inaccessibility of GRCs. The *Youth Chances* survey available at [http://www.youthchances.org/wp-content/uploads/2011/03/YouthChancesSurvey-16-25yearOlds\\_FirstReferenceReport.pdf](http://www.youthchances.org/wp-content/uploads/2011/03/YouthChancesSurvey-16-25yearOlds_FirstReferenceReport.pdf) shows that:
  - 83% Trans young people have experienced name calling and verbal abuse
  - 60% Trans young people have experienced threats and intimidation
  - 35% Trans young people have faced physical assaults
  - 27% Trans young people have attempted suicide
  - 72% Trans young people have self-harmed

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

- A number of Trans people have been really traumatised and humiliated by the process where they have had to say whether they have undergone various medical treatments, despite this not being a requirement under the Equality Act.
- The current process is about judgement of external people on whether a person is worthy, rather than a person-centred administrative process that allows an individual to live their own experience.
- Trans members of society need understanding, respect and the ability to live their lives without the judgement and influence of others.

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

- The results of the UK Government's previous consultation on this matter should have been followed – surely, that is the point of any consultation. The responses in the previous consultation were strongly supportive of reforms.
- Most of the concerns voiced against humanising the process were about safeguards for misuse. All the data is clear that incidents of misuses are few and far between, although they do get a lot of publicity. The government should look to humanise the process whilst providing significant consequences for misuse as a deterrent, rather than penalise

the vast majority of Transgender people for fear that very few may manipulate the system.

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

- The more helpful issue to consider is what needs to be done to adequately provide a legal process for Transgender people to live their lives with dignity and without humiliation, harassment, or harm.

## Section 2

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

- Because the system is dehumanising, extremely intimidating, and sets the bar too high for the vast majority of Transgender individuals to reach. It currently takes nearly 3 years to get a Gender Identity Clinic appointment, and most medical professionals are not trained in gender identity and gender dysphoria, so the chasing of reports and assessments is a daunting and exhausting task.
- The requirement to have lived in one's confirmed gender for two years and to evidence it with documents such as utility bills and bank statements is unrealistic for most Transgender people, who are socio-economically disadvantaged. The data shows that Transgender people are more at risk of being disowned, being bullied at work or being fired, being homeless, and suffering from mental health conditions. It is not realistic to expect them to be able to provide the kind of official documentation required as a starting point for the GRC.

**12. 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.**

- The Equality Act and the Gender Recognition Act play distinct and important roles.
  - Under the Equality Act, *"A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex"*.
  - The Gender Recognition Act 2004 is the piece of legislation that covers the process by which Trans people can change the gender marker on their birth certificate to match their gender identity, subject to a certain criteria.
- The protections provided for those with the protected characteristic of 'gender reassignment' under the Equality Act 2010 are not dependent upon the individual having changed the gender marker on their birth certificate.
- However, there is some understandable confusion on these issues in public discourse, which has been weaponised by a small minority of very vocal people.
- No-one disagrees that the experiences of Cisgender women and Trans women are different, that is not contentious. The issue arises when people try and weaponise that

to exclude women (gender) who were not assigned female at birth (sex) from spaces because of that.

- Science shows that the gender one is assigned at birth, based on visible genitals, is not an accurate marker even of the biological reality of sex:
  - <https://blogs.scientificamerican.com/voices/stop-using-phony-science-to-justify-transphobia/>
  - <https://www.nytimes.com/2018/10/25/opinion/sex-biology-binary.html>

**13. 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?**

- See above
- Again, the issue of people using facilities and services to commit an offence is protected for in criminal law; it is not necessary or proportionate to disadvantage an entire section of society just in case someone might commit a crime (especially when there is extremely low evidence of that ever happening historically).

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

- As stated above, it currently takes nearly 3 years to get a Gender Identity Clinic appointment, and most medical professionals are not trained in gender identity and gender dysphoria.
- Some key statistics are published by Stonewall:  
[https://www.stonewall.org.uk/sites/default/files/trans\\_stats.pdf](https://www.stonewall.org.uk/sites/default/files/trans_stats.pdf).
- Among youth:
  - 83% Trans young people have experienced name calling and verbal abuse
  - 60% Trans young people have experienced threats and intimidation
  - 35% Trans young people have faced physical assaults
  - 27% Trans young people have attempted suicide
  - 72% Trans young people have self-harmed
- Stonewall published a comprehensive report in 2018 on being Trans in the UK:  
[https://www.stonewall.org.uk/system/files/lgbt\\_in\\_britain\\_-\\_trans\\_report\\_final.pdf](https://www.stonewall.org.uk/system/files/lgbt_in_britain_-_trans_report_final.pdf).

Key figures from this report show that:

- 41% Trans people have experienced a hate crime linked to their gender identity in the past 12 months
- 28% Trans people who are in relationships have faced domestic abuse
- 25% Trans people have faced homelessness
- 12% Trans employees have been physically attacked by colleagues
- 36% Trans people in higher education have experienced negative comments or behaviour from staff
- 40% Trans people adjust the way they dress because they fear discrimination
- 41% Trans people said that healthcare staff lacked an understanding of Trans health needs when accessing general healthcare services
- 62% Trans people who have undergone or are currently undergoing medical intervention for the transition are unsatisfied with the time it took just to get an appointment (upwards of 3 years)

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- Clearly, the vast majority of Trans people face abuse, humiliation, and harassment on a scale that the rest of the population cannot even contemplate. They are amongst the most vulnerable and at-risk demographics in any population.

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

- Specific consideration should be given how to do this, the GRA is not the vehicle.
- The GRA operates within the existing paradigm of a binary understanding of gender identity, and within the framework of two existing legally recognised genders.
- Non-Binary and Gender-Fluid communities are not currently considered in any legislation, and this should be reviewed.
- However, the GRA is not the vehicle for this, as it risks conflating Transgender identities (which also operate within the paradigm of two legally recognised genders) with Non-Binary and Gender-Fluid identities, which are not the same. Conflating or confusing these identities further risks putting both Transgender people and Non-Binary or Gender Fluid people at risk by not adequately catering for the considerably distinct issues faced by them. It would do all communities a disservice.

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