

Written evidence submitted by Mx D Franklin [GRA1740]

I am D Franklin, a 30 year old nonbinary person submitting evidence because the GRA – and legislation around trans equality – concerns me intimately in terms of my legal rights and recognition, and therefore societal recognition; and because this is the *fifth* time in as many years that evidence on the GRA and trans rights have been called for, between the Westminster and Holyrood governments, without any reform actually having been legislated for.

- Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

The Government's proposed changes *in a very limited sense* meet its stated aim of making the process kinder, but no more straightforward. Putting the process online is no more straightforward than a paper-based system, and the complexity of dealing with the multiple evidences involved in applying for a GRA has not been reduced. Reducing the fee is *arguably* kinder, but retains the essential problem of having a fee in place at all, does not open the process up, and retains all the intrusive and arbitrary elements of the process that are where the unkindness remains.

- 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?

The fee for obtaining a GRC should be removed. It is an unfair financial penalty on a group of people disproportionately likely to be living in poverty, unemployed or in precarious employment, and disabled, as well as without wider familiar or personal support networks, due to societal transphobia. The costs of obtaining evidence for submission for a GRC (such as from GPs) should also be abolished, along with the evidence process itself.

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

The diagnosis of gender dysphoria is the imposition of a medical gateway, policed by cis people, on the identities and lived realities of trans people. It serves no purpose other than pathologizing trans people (the only reason gender dysphoria remains a medical diagnosis in ICD-11 is to allow access to care and rights¹, to retain the requirement for the diagnosis truly renders this circular; and DCM-IV includes gender dysphoria not of itself, but in relation to the distress suffered due to societal transphobia). The inclusion of such a hurdle is less about the reality of trans lives, and more about cis discomfort with trans realities and trans self-definition and identity. It also excludes nonbinary people, who are far less likely, simply due to the lack of medical recognition and understanding, to even be able to access such a medicalising and pathologizing diagnosis in the first place.

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

I reproduce here what I submitted to the Scottish Government call for evidence in March, which asked about a 3-month waiting period, and all of which applies, even more strongly, to the current, longer, two-year period:

The proposal for a 3 month waiting period before application for a GRA is simply another pointless stumbling block in a process already full of them. In order to evidence the period, one must already have undertaken social transition - which trans people only do after serious and lengthy consideration, not on a whim; putting in that three month period means that for trans people, there is a period where all other documents cannot match their birth certificate - potentially outing them.

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5032510/>

Written evidence submitted by Mx D Franklin [GRA1740]

Access to a changed birth certificate should be no harder than access to a changed passport, especially given that a birth certificate may be needed more rapidly - such as in cases of terminal illness, where without a new birth certificate, the death certificate will record the wrong gender. There is no evidence from other countries that a three month period prior to application is necessary, nor does it serve any clear purpose other than as a measure to reassure bigots who will not be reassured by it anyway. It is a false compromise on the backs of trans people.

- What is your view of the statutory declaration and should any changes have been made to it?

The statutory declaration should be the main instrument for obtaining a GRC, rather than an auxiliary instrument at the end of a gruelling, long process. Otherwise, it's fine.

- 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?

The spousal consent provision of the Act needs removing. It does not apply in Scotland, where the introduction of same-sex marriage did not introduce a spousal veto; the lack of any issue in Scotland demonstrates that the only purpose of the veto is to provide a way to delay transition for people with spouses who do not wish them to transition, which is a form of abuse. It is not the rights of the spouse or civil partner who are threatened where transition is in question, but the rights of the trans person.

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

To again quote from my March submission to the Scottish government:

Children are able to give informed consent for a variety of medical procedures (Gillick competence), to marry (age 16), to join the Armed Forces (age 16), to vote in Scottish Parliamentary and local elections (age 16), to consent to sex (age 16), and more - many of which are life-changing and life-defining decisions. [...] Indeed, since children far younger than 16 are positively affirmed a gender identity different than that assigned at birth, and continue to do so into adulthood, with a very low desistance rate based on all studies available at present of children persistently claiming trans identities, it is harmful to block their access to legal gender recognition. Children seeking work experience currently have to out themselves if they intend to work with vulnerable groups, including younger children, and this is not a viable situation. The lack of any provision for under-16s to apply for legal gender recognition is frankly negligent of the needs of trans youth, and an appalling oversight of a singularly vulnerable and marginalised population.

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

The proposed changes will have little impact on people applying for a GRC, because they are so limited, and an even more limited impact on trans people more generally. Because the barriers are retained almost in their entirety, with the only meaningful change being the reduction in cost, it is in fact not meaningfully easier to access a GRC. To have meaningful impact, meaningful reform, including nonbinary recognition, is absolutely vital; to improve the lives of trans people, societal and legal changes are absolutely essential that bake trans acceptance into society.

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

The thing with the most immediate impact on me that should have been included is nonbinary recognition. To quote my submission to the initial Scottish Government enquiry in 2018, 'I am nonbinary. Currently the law does not recognise my gender identity; every encounter with officialdom, with the medical profession, with any authority, involves misgendering myself. Employment forms do not include my existence, they require male/female answers. As such, every encounter invalidates my existence and brings on a sense of worthlessness and dysphoria, as if my very existence ought not be mentioned. Recognition in law would change that, and give me the chance to state who I am; no longer being required to, in essence, lie on most forms.' Nonbinary recognition in law allows us to be counted and included; the government dismissed the need for nonbinary recognition on the basis of there being too few of us, an unanswerable and unprovable assertion when government is not even equipped to say how many nonbinary people there are, and unwilling to do the work to find out.

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

The Scottish Government proposal offers a *more*, but still fundamentally *un-*, suitable alternative to reform of the GRA. It is based on self-identity, rather than diagnosis and assessment by cis "experts"; it lowers the age at which one can apply for a GRC, although only to 16, so does not provide access for children; it reduces, but fails to eliminate, the waiting period for a GRC, and introduces an unnecessary "cooling-off" period after application that serves no purpose except delay; it introduces a new offence entirely unnecessarily, since lying on a statutory declaration is already a legal offence, making a new one specific to GRCs an unnecessary and stigmatising inclusion; and it offers nothing for nonbinary people at all. Forced to choose between the Westminster and Holyrood proposals, I would choose Holyrood's, but it is an unpalatable choice.

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

The process of applying for a GRC is exclusionary of many trans people. Since a GRC is useful but not essential in most circumstances, trans people would prefer to work around the lack of a GRC than deal with the many hoops, difficulties, and dehumanising, stigmatising stages and processes involved in asserting to the government what we already, ourselves, know: our genders. A more streamlined, accessible, fair option would be infinitely preferable. This is without taking into account the number of people who identify as trans and, in some sense, outside the gender binary; I myself cannot meaningfully apply for a GRC because there is no GRC that applies to me.

- 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 inconsistencies in language between the two Acts are minor and covered by case law. Opening up the Equalities Act for amendment in this process is going to cause more, not less, anxiety for trans people, since broadly speaking we are as well protected by it as any other minority group at this stage.

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

Written evidence submitted by Mx D Franklin [GRA1740]

It is worth noting that there is currently no *specific* protection for nonbinary people, or for people who have not undergone gender reassignment surgery and/or applied for a GRC. It is widely understood that we are covered by the current language, but this has not been put to the test, and a judicial opinion could go either way. However, in the present atmosphere I would prefer to rely on the Equality Act as it stands than try to amend it, given the febrile atmosphere around, and targeting of, the Equality Act, especially by trans-hostile groups.

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

The bulk of domestic violence and sexual violence services in the UK, and especially where I reside in Scotland, are trans inclusive; obstacles are related to the disproportionate levels of poverty among the trans community and the *general* lack of access to such services among people in poverty, rather than specifically to being trans.

In healthcare terms, however, there are extremely high obstacles to receiving meaningful care, both primary care and specific gender-related care. The first obstacle I have encountered is misgendering; medical professionals are still broadly unaware of, and unwilling to meaningfully engage with, nonbinary gender. This means any encounter with health services involves being misgendered consistently, which makes healthcare unsafe. Specifically trans healthcare not only has extremely long waitlists at every level, meaning trans people are left in distress for *years* at a time for even an initial appointment let alone for receiving actual care, but also has higher gateways for access to care than any other kind of care; informed consent is not the model, but rather, medically-gatekept necessary procedures are withheld on spurious grounds. This is especially true, once again, for nonbinary people, whose recognition within gender identity services is little better than outside them, and for whom accessing medical support for transition-related care is near-impossible. I was on a waiting list for an initial appointment for two years before my initial appointment at Sandyford before being referred to an endocrinologist for an initial consult after multiple counselling sessions; since when, years on, I have heard nothing, in part because my counsellor was unconvinced that nonbinary people might need any transition care – or even existed.

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

The law as it currently stands completely fails nonbinary trans people: by completely ignoring us, denying us the possibility of legal recognition. Currently the status of nonbinary people is incredibly legally murky at BEST, with no case law on the record except on the matter of passports; this debate has so far been a huge missed opportunity to correct that and recognise the growing number of people who identify as nonbinary and deserve to be seen as such, and not only to recognise us, but to use the state to legitimise our identities in the eyes of the public, as decriminalisation and same-sex marriage did for homosexuality. Legal reform should include explicit recognition, including on ID documents such as passports and birth certificates, of nonbinary gender; requirements for data gathering on sex and gender to include nonbinary and other genders; and a full legal recognition, rather than a complete silence in law, on nonbinary genders.

I would like to close my evidence by reminding the committee that for those of us in Scotland, this is the fifth time since 2015 that we have been asked to submit evidence to an enquiry or to a Bill

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consultation on our rights and on the GRA. In that time, Westminster and Holyrood have both walked back their initial proposals dramatically, astroturf hate groups such as ForWomenScot and WeAreFairCop have sprung into being, the press has run demonisation campaigns against trans people as a threat to women, and no advance whatsoever has been made in trans rights or trans care. It is becoming increasingly apparent that trans people are not only not a priority for the Government, but hatred and violence against us is barely a matter of concern for them. This absolutely must be addressed for trans people to have any faith in Government in future.

November 2020