

I am submitting evidence to highlight the failure of the Gender Recognition Act 2004 (GRA), and all subsequent reviews, consultations and inquiries, to address the rights of transgender parents and their families. While this was arguably understandable – though still ethically problematic – in 2004, it is completely untenable 16 years later.

Non-nuclear families are no longer simply a reality, they are fast becoming the norm. LGBTQ+ families as a whole are failed by family law on numerous fronts, including by outdated surrogacy regulations and the mish-mash of laws that tack LGB parents onto the 1953 Births and Deaths Registration Act.

All of these discriminatory shortcomings are in need of urgent remedy and this is our opportunity to recognise and formalise the rights of families with transgender parents.

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Legal Context

1. What does the GRA say about parents?

The only mention of parenthood in the GRA is under section 12:

The fact that a person's gender has become the acquired gender under this Act does not affect the status of the person as the father or mother of a child.

After extensive consultation with legal experts, and simply by virtue of being a British trans person with intimate knowledge of our recent social history, I well understand the original, limited scope of this section.

Its primary meaning is that people who are already a mother or father at the time they are granted a gender recognition certificate (GRC) remain a mother or father. In this sense it has both retrospective and prospective meaning, albeit only with regard to children born prior to the granting of a GRC. Secondly, its intent is to ensure that a parent who transitions is still subject to their parental responsibilities. In the early 2000s, when the idea of transition was still shrouded in secrecy and shame, the possibility that trans people would seek to completely disappear into their “new identity” must have seemed a very real risk.

This view is supported by experts such as Natalie Gamble Associates, a law firm specialising in LGBT parenting rights, which interprets s.12 as follows:

It means that you will remain your children's legal father if you become a woman, and you will remain your children's legal mother if you become a man. There is no clear provision for transgender parents who conceive after having transitioned.

In 2004, the single sentence of s.12 was intended to reassure legislators that trans people could be responsible parents to the children they already had. It was *not* intended to – and self-evidently does not – address the complex and nuanced reality of trans parenthood and in all its contemporary forms, especially where we become parents after gaining a GRC.

If the wording itself (or lack thereof) does not make this clear enough, any knowledge of trans life and healthcare at the turn of the 21st century does. In other words, we know that trans people were expected, if not legally forced, to “fully transition”, which in turn would prevent them becoming biological parents. We know that transition was, and sometimes still is, seen as a one-size-fits-all linear process. We know that doctors did not understand the effects of testosterone on trans male fertility, i.e. that it causes no damage. The possibility of post-GRC biological parenthood was not just ignored, it was unthinkable.

From a trans activist involved in campaigning for the GRA (name available on request):

We were focused (for example) on heteronormative formations of the family, using fertility treatment or adoption. There were so few trans guys who opted to carry a child. The reason of course is that you just didn't dare think it. Back in the 70s you couldn't have got treatment if you even admitted to ever fancying a guy. They'd have refused treatment even if you had given birth as a consequence of rape, but if you had voluntarily chosen to have a child and then asked for gr treatments you'd have risked having your child removed, and being sectioned. So when we were constructing the act we simply didn't engage with the question.

2. What did the ECHR say in Goodwin?

The 2002 European Court of Human Rights judgement in *Goodwin vs. The United Kingdom* obliged the UK government to create a system of legal recognition for transgender people.

This passage is key (emphasis added in bold):

6. Striking a balance in the present case

89. The Court has noted above (paragraphs 76-79) the difficulties and anomalies of the applicant's situation as a post-operative transsexual. It must be acknowledged that the level of daily interference suffered by the applicant in B. v. France (judgment of 25 March 1992, Series A no. 232) has not been attained in this case and that on certain points the risk of difficulties or embarrassment faced by the present applicant may be avoided or minimised by the practices adopted by the authorities.

*90. Nonetheless, the very essence of the Convention is respect for human dignity and human freedom. Under Article 8 of the Convention in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings. In the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. **In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable.** Domestic recognition of this evaluation may be found in the report of the Interdepartmental Working Group and the Court of Appeal's judgment of *Bellinger v. Bellinger* (see paragraphs 50, 52-53).*

Some of the language used by the ECHR now seems crude and outdated, in particular the term “post-operative transsexual”. In any case, the GRA 2004 did not carry forward this issue because it deliberately did not include any requirement for surgery or hormone treatment for those seeking a GRC. In fact, the government has been known to cite this fact quite proudly, apparently feeling that it made the GRA a uniquely progressive piece of legislation.

In 2017, in the case *A.P and Others v. France*, the ECHR negated its own language in *Goodwin* anyway, by [ruling](#) that sterilisation requirement in legal gender recognition violates human rights.

Yet, the rest of the sentence is still acutely relevant and goes to the heart of the predicament trans parents find themselves in today, namely: “the unsatisfactory situation in which [transgender people] live an intermediate zone as not quite one gender or the other”. The ECHR was and is correct in finding that this situation is “no longer sustainable” and yet, 18 years later, our legislators still refuse to engage with this aspect of it, let alone fix it.

3. The government’s interpretation of parenthood post-GRC

Even if the notion of “post-operative” in the sense of being unable to reproduce was still legally justifiable, it does not cover trans parents who do not give birth or provide sperm but who have children through assisted reproductive technology, e.g. IVF.

In 2018, I sought a judicial review (*McConnell vs The Registrar General*) and as a result of this the government was forced to clarify its position on s.12 GRA in relation to all transgender parents.

Their interpretation of s.12 – clarified on-the-hoof in court – is that children conceived *after* their parent is granted a GRC must have that parent registered according to their gender/sex assigned at birth. The government says it does not matter how long ago their parent legally transitioned or how the child was conceived. It does not acknowledge the clash this creates between a child’s reality and their parent’s legal gender on the one hand and the child’s birth certificate on the other. The government says simply that, in effect, gender recognition is revoked at the point of parenthood. In other words, trans people must informally agree to not reproduce in order to be legally recognised. What is this if not de facto sterilisation?

Take the example of a cis heterosexual husband and wife undergoing IVF treatment. The husband can sign a form at the point of treatment to ensure he goes down as ‘father’ on the birth certificate, whether or not his sperm is used. However, the government now says that if that husband is a trans man with a GRC, i.e. he is legally male, he does not have the same right.

The government’s interpretation of s.12 is not supported by any clarifying notes in the legislation, nor by any contemporaneous discussion in parliament nor any select committee or consultation. Furthermore, nowhere is it explained to transgender people, the HFEA or the Registrar General (RG) that trans men are to be treated as women, and vice versa, for all purposes of parenthood; starting at conception and continuing through pregnancy, birth and, presumably, the rest of their lives.

The reality is that, in the case of trans men, the exact opposite has been happening. Trans men whose partners give birth are routinely recognised as fathers by the HFEA (this was also my experience while undergoing fertility treatment) and registered as ‘father’ by the RG. I know men in this situation who, until I spoke to them about my case, had no idea this was supposedly incorrect. On top of the anxiety this creates in them and their partners, it causes me great pain not to be able to reassure them that their child’s birth certificate is not invalid because, frankly, I am not sure if this is in fact the case. There are now potentially hundreds of children whose UK birth certificates the government has rendered invalid.

I know men who did disclose their trans status (because they did not think to) and were registered as ‘father’ but I also know men registered as ‘father’ whose trans status was known to the registrar. Evidently, until the government made its position clear (or, possibly, changed it) in the High Court in 2018, everyone involved thought that this was how things were meant to be and that s.12 only referred to a child conceived prior to the granting of a GRC.

This is surely a fair assumption. One of the core purposes of the GRA (alongside people not having to live in “an intermediate zone”) is to prevent trans people from being outed unnecessarily, hence GRA s.9(1):

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).

How then should a trans man whose wife gives birth be registered, according to this government?

In court, the government insisted that he would be registered as ‘Parent 2’. This might sound reasonable at first as it sounds gender neutral. However, the Human Fertilisation and Embryology Act 2008 (HFEA) states that this label is exclusively reserved for the female partners of birthing women. In other words, this is the government’s confusing solution for allowing lesbian couples to register on their child’s birth certificate. ‘Parent 2’ is not legally gender neutral; it is the label for a female parent who does not give birth (but who is, of course, in every meaningful modern sense, a mother).

I will now attempt to list the other scenarios created by the government’s current position on s.12. I am not including adoption certificates or parental orders, which are even more complex, and since the GRA does not recognise nonbinary people, I regrettably cannot account for them here either.

Cis men and women on birth certificates:

- A cis man cannot register as ‘parent 2’. He can only register as ‘father’.
- A cis woman who does not give birth cannot register as ‘mother’.
- A cis woman who gives birth can *only* register as ‘mother’, even if she is a surrogate and would much rather not (hence the surrogacy law reforms currently under review).
- The people in all these scenarios may or may not be genetically related to the child. A birth certificate does not include this information, it is only a record of legal parenthood.

Trans woman with a GRC:

- She can only ever be registered as ‘father’ on a birth certificate.
- She may be genetically related to her child (either with samples frozen prior to HRT or fresh) or her and her partner or wife may have used donor sperm.

Trans man with a GRC:

- If he gives birth must be registered as ‘mother’.
- If his partner or wife gives birth, he must be registered as ‘parent 2’, never ‘father’.
- In both scenarios, the man’s eggs may or may not have been used, i.e. he also may or may not be genetically related to the child.

This is the government's "coherent legislative framework".

4. What solution was proposed at the time of the GRA?

If we go back to the drafting of the GRA itself, an entirely different and even more convoluted "solution" was proposed for transgender men. A trans man whose family was in this situation in the 90s explained to me that when he and his partner wanted children they sought IVF treatment and his female partner became pregnant. When the child was born only she could go down on the birth certificate. He was then forced to go through the process of a step-parent adoption for his own child, complete with court applications and a social worker assessment.

The fact that this was considered the best solution in 2004 is understandable given that this was prior to the HFEA 2008, marriage equality in 2013 and awareness of LGBTQ families more broadly. Yet why did the government not mention this step-parent adoption solution during our court case?

Given that trans people are not mentioned in the HFEA or in any other aspect of family law since 2004, it is disingenuous (at best) of the government to say that the current legal position of trans parents has been consciously factored into legislation through time or can be satisfactorily interpreted from s.12 of the GRA.

5. Conclusions

The reality is that trans parents do not have a legal position. We have been left out and forgotten at every step. We were not expected to become parents post-GRC, except in rare cases that could be imperfectly accounted for, or effectively covered up, by a step-parent adoption. In fact, the reality is that hundreds of trans men have carried and given birth in recent decades and hundreds more trans people have become parents while fully settled in their trans identity.

The government must now, finally, take responsibility for this gap in gender recognition law and the many instances in which said gap creates contradiction, confusion and discrimination in other laws, including but not limited to the HFEA and the BDRA.

Personal Experience

6. Getting my GRC

Like many trans people, I applied for a GRC years after I medically and socially transitioned. For a long time, having a GRC did not feel necessary. I had my correct passport and driving licence and I had transitioned before entering the world of work so I had no problem gaining recognition on that front. I'm slightly ashamed to say that I didn't even know what the GRA

said or what a GRC was for, except something to do with going to prison or getting married, neither or which were on my horizon. GRCs never came up in conversation at my gender clinic appointments or in my social circles. I still could not tell you whether I know anyone else with a GRC.

When I did decide to apply, I saw it as a paperwork exercise. I was planning to start a family and felt like I should officially get all my documents matching up. Still, I did not see a connection between having a GRC and becoming a parent. For a long time, I assumed trans men could be registered as 'father' no matter what. The opposite simply never occurred to me.

I applied for my GRC without much hassle. The cost felt significant but not quite prohibitive, which I realise is a privilege. It was stressful and took ages to get all the paperwork gathered. I was surprised to have to pay for my GP's medical report, on top of the cost of the application. But I knew I met all the requirements, so I was never worried about the outcome itself. I never saw a contradiction between the wording of the application and my plans to have kids, even if that meant giving birth to them. The majority of trans men I knew did not have lower surgery, for a variety of reasons, and no one talked much about hysterectomies. If they were mentioned, it was usually to reassure someone that they were not risking cancer by not having one while on Testosterone, as trans men were routinely warned until a few years ago.

Put simply, trans people know that our bodies do not define us. Excuse my directness but we know that peeing without a penis – as most trans men do multiple times a day – does not invalidate our gender identities or lived realities as men. So, why would it contradict having a GRC, especially if the application says nothing about having surgery?

It felt very strange sending so many personal documents off to an anonymous panel but again, for me, it was just a box ticking exercise. When I was told there was a backlog of applications, it was disappointing but thankfully they were able to tell me over the phone that my application had been approved before it was returned in the post.

When it arrived I was actually surprised by how emotional I felt, seeing my new birth certificate, with 'M' on it. The GRC itself felt less important and even then I found the HMRC stuff confusing. I just followed the instructions and forgot about it. From that point until I realised I had to go to court almost year later, I felt very secure in my legal identity and grateful for a system that could fully recognised me as a transgender man and eventually, I thought, a father.

7. Becoming a dad

Throughout my treatment with a fertility clinic in London, I was recognised as a man who could get pregnant. I was never misgendered or disrespected in person. This was just before the HFEA published its full selection of gender neutral forms but the clinic was happy for me to hand correct the HFEA forms wherever they misgendered me.

Later, under the care of an NHS community midwife, I was treated in exactly the same respectful way, as a man who was pregnant. It never caused confusion or difficulty. On the contrary, my midwife told me they had already changed their IT system to make it so that my gender marker could remain as 'M' on the system, after another trans man in the area gave birth the year before.

After giving birth at my local hospital, the midwifery team wished me luck registering as 'father', even though by that point I knew I would likely have to go to court over it. The hospital staff were confident that if they made my situation clear on the official notice of birth that the local registrar receives, it would all work out. Their optimism made me so happy but when my suspicion that they were wrong was confirmed I was crushed yet again.

There was a final, surprising ray of hope when I made the appointment to actually register my child at the local library. Initially, the local registrar also thought it would be possible to register me as 'father' given my own male birth certificate and GRC. It was only after she checked with the RG in London that she had to call me back to let me down.

It was then that I felt I owed it to my child and others born to trans parents to instruct my solicitor to lodge an application at the high court. I also felt I owed it to other trans men, especially young trans men and boys, who are deterred from starting families by the current legal situation.

This is a quote by Professor Sally Hines, principle investigator on the University of Leeds' [Trans Pregnancy Project](#), from her expert witness statement to the High Court:

The empirical material gathered by the [ESRC](#) funded project 'Trans Pregnancy' points strongly to the problems of gender identifiers on children's birth certificates for trans male research participants. This was unanticipated at the start of the project. As researchers we envisaged that the physical changes brought by pregnancy would be articulated as the most difficult factor for a man who undergoes pregnancy and gives birth.

The research has found, however, that the process, as a man, of having to declare oneself as 'mother' on your child's birth certificate is deeply distressing. It was one of the major factors identified by young men in focus groups as deterring them from becoming pregnant in the future, and it was a key factor that caused distress, anxiety, harassment, awkwardness, fear and a return of gender dysphoria after becoming parents for interview participants. While some findings point to the subjective emotions brought by the process of having to identify as 'mother' on their child's birth certificate, others reflect problematic experiences in a range of social situations, including the registrar's office, health care settings, child care and educational environments. Such difficulties lead the research to conclude that having to declare oneself as a 'mother' is both subjectively traumatic and procedurally taxing for trans men who become birth parents.

Indeed, in the main, participants recounted the legal obligation as the most negative aspect of their parenting experience.

8. Going to court

When I first sought legal representation, thinking that I may at some point be forced to go to court to fight for the right to register as 'father' or 'parent', I genuinely did not think it would be a controversial case. Having reviewed the current legislation, my lawyers felt similarly, as did the legal team that would represent my child's interests separately. This is because, to all of us, it seemed like a straightforward gap in the law. The GRA only took into account people who were already parents when their GRC was granted and this made sense. It was the least surprising thing in the world that no one accounted for the rights of transgender parents, let alone birthing dads, back in 2004.

Therefore, the court case was simply me raising my hand to say: 'Hey, we exist too and so do other trans people who become parents after they transition. We seem to have been left out of the law in various places and it creates some glaring inconsistencies. Could you fix this, please?'

I never expected the government to mount such a huge fight against this request. I certainly never expected them to do so with such disingenuous and often downright offensive reasoning that erases the existence of all sorts of families that do not adhere to traditional, nuclear norms. The most bizarre of these was the court's repeated equating of a child's right to know who gave birth to them with the need to register that person as 'mother'. There are so many ways in which this fails to reflect and respect modern families.

Most shocking of all was the President of the Family Court's decision that, in line with the government's interpretation of s.12 of the GRA, 'mother' was no longer a gender-bound term. Aside from being false and offensive to actual mothers, this logic falls apart as soon as one goes deeper into the legislation. How, for instance, does s.12 interact with the BDRA, the HFEA and the Equality Act?

The HFEA defines 'mother' as:

The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child (Section 33.1).

Where the Equality Act 2010 refers to pregnancy, it states that:

17.2 A person (A) discriminates against a woman if A treats her unfavourably because of a pregnancy of hers.

17.3 A person (A) discriminates against a woman if, in the period of 26 weeks beginning with the day on which she gives birth, A treats her unfavourably because she has given birth. (Section 17)

If the government intended for the wording of these laws to cover transgender men too – their justification for opposing my claim in court, which the judge agreed with – are 'woman' and 'she' also no longer to be considered gender bound?

The alarming consequence of this judgement is [summed up](#) well by my solicitors, Laytons LLP:

Such a narrow interpretation of the Gender Recognition Act 2004 will force all transgender people to choose between being a parent and having full recognition of their gender. The judgment asserts the term 'mother' and 'father' are not gender bound while simultaneously forcing registration according the transgender individual's birth gender... Recognition of such an important facet of a person's identity is a fight that started long ago, but today's judgement demonstrates how that fight must continue if equality in law is to be achieved.

By way of illustration of the tone of the court's engagement with these issues, I include this quote from the Court of Appeal judgement:

If, and in so far as the argument is that that the word "mother" is no longer to be regarded as it would have been many years ago, or even at the time that the GRA was enacted in 2004, it seems to us that is precisely what the President sought to do in his judgment, when he construed that concept to mean the person who gives birth to a child rather than a gender-specific word like "woman". Secondly, if and in so far as the argument is that the word "mother" should be construed as "father", that would offend against the principle as enunciated by Lord Bingham that the word "dog" cannot be construed to mean "cat".

I did not expect to lose on this surreal and dehumanising basis. I expected, at the very least, to get a fair, good-faith hearing. My lawyers and I did not expect to be denied a hearing at the Supreme Court when there were multiple points of law that the High Court and Court of Appeal never even engaged with. And I never expected to be writing all this down here, to submit as evidence to a select committee that itself, until now, does not seem to have spent any time thinking about trans parents and our families.

Our case will now be submitted to the European Court of Human Rights, despite the fact that a political, legislative and administrative solution could so easily be found by this government, if it was only willing.

At the ECHR our case will join similar ones from Russia, France and Germany. A trans father who gave birth has already won the right to be registered as his child's 'father' in Sweden (where sterilisation was required for gender recognition until 2013), so the UK cannot quite lead the way but it can still be a leader on this fundamental issue of trans parental recognition.

9. This is for our children and our families

In closing, I want to make clear that our rights as parents are not the most important thing at stake here. What matters most is our children. What matters most is what *their* documents

and what these pieces of paper mean for their futures, in a world that is ever more diverse and less binary, even as the law is utterly failing to keep up.

The current situation saddles them for life with inaccurate, contradictory and potentially dangerous – in some professional and geographic settings – personal documents. I could correct mine, thanks to the GRA, but my child does not have that same ability. I can *choose* to disclose my trans status, when it is safe and appropriate, but thanks to his birth certificate, my child and hundreds more like him cannot.

How can this be right?

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