Written evidence submitted by The Christian Medical Fellowship (GRA1857)

Inquiry by Women and Equalities Committee

The Government's response to the GRA consultation:

Introduction

This submission is made by Dr Rick Thomas on behalf of the Christian Medical Fellowship (CMF). CMF represents about 5000 UK doctors, nurses, midwives and students. We are the largest faith-based group of healthcare workers in the UK and have close links with about 80 similar organisations worldwide.

Summary

Currently, under the Gender Recognition Act 2004, in order to legally change gender a person needs to be over 18, have been diagnosed with gender dysphoria by a medical practitioner, and have lived in their new gender identity for two years before applying to a gender recognition panel for a Gender Recognition Certificate (GRC). The recognition process is lengthy, interviews may be experienced as intrusive and the gathering of evidence in support of the application can be costly, complex and inaccessible to some trans people. Some reform is therefore required.

The new proposals we believe would be harmful for individuals, their families and society generally. They rely on a self-declaration process that would make gender identity a matter of a person's subjective feelings and changing legal gender a matter of personal choice. They encourage the view that gender identity defines reality and that biological sex is but a social construct, something 'assigned' at birth. This new ideological dogma has no evidence-base in science, but self-declaration would appear to reinforce it as if proven fact.

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

The government proposes to:

- Place the whole procedure online
- Reduce the fee from £140 to a "nominal amount"
- Open at least three new gender clinics this year in order to reduce waiting lists.

The changes are ideologically driven, not evidence based

The proposals advanced in this consultation we suggest would make matters worse, not better. They would replace the current assessment procedure with, in effect, online self-registration. It is not kinder to make it simpler for someone to make a life-changing decision that, evidence suggests, they might later regret. The current law's delays are often seen as too onerous, but their purpose is to allow people time to explore their new identity before making far-reaching decisions. The Government's aim, and its responsibility, should be to develop policies and processes that are evidence-based not ideologically driven. A process of legal gender recognition based on self-identification would appear to reinforce the notion that an individual's subjective sense of their gender identity defines reality, regardless of their biology, as if it were proven fact. More straightforward? Yes. But kinder? No.

The changes are unsafe

It is not kind to introduce intrinsically unsafe procedures. As argued below, gender-dysphoria often co-exists with mental health disorders like anxiety and depression, and sometimes with autism. It is important to distinguish distress relating to one of these other conditions from dysphoria related to gender incongruence. This requires the skills of appropriately qualified healthcare professionals. Self-declaration would deprive people of contact with these professionals at the very time when their assessment and advice could be crucial. There is a real risk that individuals who require psychological support and specialised psychiatric treatment will not receive it. Kinder? Absolutely not.

The changes are unworkable

The proposals remove the requirement for any minimum period of time for the applicant to have lived in their acquired gender. We suggest this will result in a tsunami of ill-considered applications, and that reduction of the registration fee will remove the financial disincentive. Many young people, whose dysphoria could have been alleviated by treating co-existent mental health disorders or by giving appropriate support where family breakdown/social isolation are factors, will instead pursue transgender recognition (and possibly reassignment for which evidence of effectiveness is lacking). Given that many trans activists believe that gender identity is fluid,[1] it is predictable that a significant proportion of applicants will subsequently wish to reverse their gender recognition. More straightforward? Definitely not.

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?

Retained but revised.

The decision to apply for a change in legal gender is a personal choice. The fee should cover associated administrative costs. It should be set at a level sufficient to act as a deterrent against flippant or ill-considered applications, but not so high as to disqualify bona fide applicants. Those in receipt of benefits should be able to apply for a fee waiver or reduction, as at present, but the attendant bureaucracy should be simplified. Where wider costs are incurred, for example in acquiring medical reports or statutory declarations (were these to remain as part of the process, which we would advocate) a simple means of reclaiming such costs should be available to poorer applicants.

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

No.

There is evidence[2] that amongst those who present with gender incongruence there is an elevated prevalence of co-morbid psychopathology, especially mood disorders, anxiety disorders and suicidality.[3] In one study[4] of 579 patients with gender dysphoria, 349 (60.3%) were the female-to-male (FTM) type, and 230 (39.7%) were the male-to-female (MTF) type. Concurrent psychiatric

[1] International Gay and Lesbian Human Rights Commission, Institutional memoir of the 2005 Institute for Trans and Intersex Activist Training, 2005:7-8.
[2] Dhejne C et al. Mental health and gender dysphoria: A review of the literature. Int Rev Psychiatry 2016; 28(1):44-57
[3] Zucker KJ et al. Gender Dysphoria in Adults. Annu Rev Clin Psychol, Vol 12, 2016:217-247.
[4] Masahiko Hoshiai et al. Psychiatric comorbidity among patients with gender identity disorder, https://doi.org/10.1111/j.1440-1819.2010.02118.x (accessed 30.07.2018)

comorbidity was 19.1% (44/230) among MTF patients and 12.0% (42/349) among FTM patients. The lifetime positive history of suicidal ideation and self-mutilation were 76.1% and 31.7% among MTF patients, and 71.9% and 32.7% among FTM patients.
A Dutch study[5] also reported the co-occurrence of autistic spectrum disorders (ASD) and gender dysphoria. The incidence of ASD in a sample of 204 children and adolescents (mean age 10.8) was 7.8%, 8-10 times the normal prevalence.

Self-declaration would deprive these people of contact with mental health professionals at the time when their assessment and advice could be crucial. There is a real risk that individuals who require psychological support and specialised psychiatric treatment will not receive it.

Simplifying legal transition by removing the need for medical diagnosis will also render the process liable to ill-considered applications and frivolous abuse. How can any legal process for gender recognition accommodate the notion that gender identity is deemed by many in the transgender community to be fluid? How many changes of gender will a single person be permitted over a lifetime?

Until recent years, gender dysphoria was viewed as a mental health disorder and required specialist expertise to make a correct diagnosis.[6] Many in the medical profession believe that the change from disorder to dysphoria was ideologically driven, not evidence based. Removing the need for medical diagnosis would remove a sensible 'barrier' to overly easy transition that would result in more people embarking on early medical transition with insufficient thought, more people living to regret irreversible changes to their bodies, and/or wanting to de-transition later, and an overall increase in co-morbid mental health issues including suicidality.

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

No.

Requirement for applicants to have lived in their acquired gender for a period of two years guards against misguided or even frivolous self-referrals, that could otherwise overwhelm the appraisal process. Such a requirement helps to offset any tendency to trivialise the decision.

Two years is, in one sense, an arbitrary choice, but it has the advantage of being long enough to reflect the seriousness of the decision, long enough to 'weed out' uncertain or frivolous applicants, but not so long as to discourage those who are making a serious and fully-informed choice.

The current requirement is especially important for those in the 18-25 age group whose sense of identity is thought by many psychologists to be still forming and not settled (see answer to Q7).

Evidential options might better be provided by individuals who have personal knowledge of the applicant and who enjoy their confidence. For example, the applicant's family doctor, faith community leader or lawyer. Two such pieces of evidence should suffice. If fees are demanded by those supplying evidential statements, there should be a means whereby applicants on low incomes can be reimbursed from the public purse.

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[5] Annelou L. C. de Vries et al. Autism Spectrum Disorders in Gender Dysphoric Children and Adolescents. Journal of Autism and Developmental Disorders, Vol 40, Issue 8, 2010: 930–936.
[6] DSM-5. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 5th edn. Washington DC: American Psychiatric Publishing, 2013, 302.85:455.

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

We believe that there is merit in the requirement that the applicant make a statutory declaration that they *intend* to live in their acquired gender for the rest of their lives. As in answer to Q4 above, it helps guard against ill-considered or frivolous abuse.

However, significant voices within the trans community do not recognise gender identity as fixed but believe it to be fluid.[7] This is clearly at odds with a declaration of intent to live in an acquired identity until death. Therefore, we do not think it can be made a criminal offence if at some later point the applicant has a change of mind or identity, for such is the likelihood when gender identity is regarded as fluid.

The question demonstrates the impossibility of drafting a law in response to an ideological imperative that ignores objective biological facts and makes identity rest on subjective feelings.

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?

No.

Any reform of the current Act must not have the effect of undermining the value or legal status of marriage, nor should it leave a spouse and children even more vulnerable.

To apply for and obtain legal gender recognition without any need for spousal consent would undermine the value of marriage. This is recognised in the current Gender Recognition Act which states that to have hidden the fact of gender reassignment from a spouse renders the marriage null and void.

In a similar way, it should not become possible for one partner unilaterally to convert an existing marriage into something approximating legally to a same-sex marriage. No spouse should be left in the dark about their partner's change of legal gender – it should be a legal requirement for a spouse to consent to any such change.

If the requirement be reduced from 'gaining consent' to 'simply informing', then the award of a GRC to the applicant should be treated as reason in law for the spouse to be granted a divorce, should they request it.

Consideration should be given to the rights and needs of spouses and children affected by the transition of a married partner and especially to the vulnerability of a mother and her children where her marriage to a trans woman breaks down.

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

No.

[7] International Gay and Lesbian Human Rights Commission, Institutional memoir of the 2005 Institute for Trans and Intersex Activist Training, 2005:7-8.

Development psychologists consider identity development to be a process that continues long after adolescence. Modern neuro-imaging techniques have shown that brains continue to develop into our mid-twenties. It has even been suggested that a term such as 'emerging adults' should be adopted to designate 18-25 year olds, for whom it is normal to continue a significant exploration of their own identity.[8] The Australian expert on adolescent health Prof Susan Sawyer puts it this way: 'An expanded and more inclusive definition of adolescence is essential for developmentally appropriate framing of laws, social policies, and service systems. Rather than age 10–19 years, a definition of 10–24 years corresponds more closely to adolescent growth and popular understandings of this life phase and would facilitate extended investments across a broader range of settings.'[9]

The view that a person's subjective sense of gender identity is fully formed by the age of even 18 years rests on increasingly shaky ground. To lower the current age limit at which people can apply for a GRC might be a popular move among trans activists but would lack any evidence base in science.

Furthermore, for consent to be valid it must be fully informed. Studies like that referred to above show that the capacity to make fully informed decisions about one's own gender identity is not reliably mature before one's mid-twenties. Lowering the minimum age for GRC application, and/or removing the two-year period as a requirement will mean that more people make an immature decision to transition, and more will live to regret their decision.

For anyone, at any stage of maturity, to be able to give fully informed consent to a legal change of gender, more than time is required. They need to understand the consequences of the decision. They need to be able to make a settled and sober decision that will last a lifetime. They need to make the decision of their own free will, free of duress arising from peer-group pressure or coexistent mental health issues. It is unrealistic to expect a person whose sense of personal identity, including gender identity, is still forming, to be able to confirm that they have a settled and sober intention to live for the rest of their lives in their preferred gender. To lower the age threshold for application we believe would be unsafe and likely to bring the whole process into disrepute as a result of a high rate of later requests to de-transition.

A 2017 Australian study[10] showed that gender dysphoria in young people is often accompanied by mental health disorders such as anxiety and depression, including attempted suicide. According to trans activists this is due simply to 'minority stress' resulting from society's negative attitudes towards trans people, a claim without supportive evidence. The results of another recent study[11] suggest otherwise. It offers no proof that radical therapies such as puberty-blocking drugs, double mastectomies and cross-sex hormone treatment will prevent adolescents from attempting suicide. If anything, the findings of the survey underline the need for serious scientific research into the potential environmental causes of gender dysphoria and the risks—both physical and psychological—of medical transition.

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[8] Arnett JJ., Emerging adulthood. A theory of development from the late teens through the twenties. Am Psychol. 2000. 55(5): 469-80.

[9] Susan Sawyer S. et al. The age of adolescence. The Lancet – Child and Adolescent Health, 2018, 2(3), p223–228.

[10] Strauss P et al (2017). Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Telethon Kids Institute, Perth, Australia.

[11] Toomey RB et al. *Pediatrics* October 2018, Volume 142 / Issue 4

Lowering the age at which applications for a GRC can be made would only accelerate the tendency towards early affirmation and trans-sex interventions. The long-term effects of puberty blockers in this clinical situation are largely unknown – it is an experimental treatment without any evidence base in science. It is known that puberty blockers lead to stunted growth and subfertility, and impair normal neurodevelopment affecting, among other things, the developing sense of identity! Cross-sex hormones may produce permanent infertility, bone changes, clotting disorders, raised blood pressure and more. It is impossible for teenagers to give informed consent to medical transition when even the doctors don't know what the consequences might be.

In recent years, a new phenomenon, known as rapid-onset gender dysphoria, has been observed to begin suddenly in an adolescent or young adult (usually a girl) who would not have met criteria for gender dysphoria in childhood. A peer-reviewed study published in August 2018 noted: 'the worsening of mental wellbeing and parent-child relationships and behaviours that isolate adolescents and young adults from their parents, families, non-transgender friends and mainstream sources of information are particularly concerning.'[12] The role of social media in spreading a form of 'dysphoria contagion' among contacts needs further research. Lowering the threshold age for applications for GRC would mean that a number of these young people, struggling with the turbulent effects of puberty, social transition and identity issues in general, will be fast-tracked towards cross-sex hormone treatment and reassignment surgery and distracted from addressing underlying psychological issues with the help and support of mental health professionals.

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

The Government is to be commended for seeking to reduce the burden of the process, and It might be possible to improve aspects of the existing law, but removing sensible 'barriers' to overly easy transition will result in more people embarking on early medical transition with insufficient thought, more people living to regret irreversible changes to their bodies, more people seeking de-transitioning and an overall increase in co-morbid mental health issues including suicidality. In this sense, the proposed changes would positively harm those wrestling with gender confusion. The changes would shift the point of balance away from holistic assessment and treatment of co-existing mental health conditions, and towards easier identification as transgender and earlier trans-sex interventions. The reforms set out to make the process 'kinder' – it is not kind to remove sensible barriers to decisions that carry far-reaching and irreversible consequences.

The proposed changes would have an impact on the operation of the 2010 Equality Act. The proposed reforms of the GRA would mean that more people apply for and receive GRCs. Presumably, the gender reassignment protected characteristic of the Equality Act would apply to all with a GRC. In settings where the rights of trans people compete with those of other groups, the point of balance would shift in favour of the trans community. Incremental extension of those rights through subsequent case law would likely follow. The ability of the Act to support those with other protected characteristics would be progressively constrained in a trans-affirming environment.

There would be an impact in the realm of sport, where it would become more difficult to maintain the fairness of a contest. It is obvious that trans women have an advantage over other women in many sporting activities.

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[12] Littman L. Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports. *PLOSOne*, August 2018. https://doi.org/10.1371/journal.pone.0202330

It would become harder to protect single-sex and separate-sex exceptions under the Equality Act. The balance of interpretation of the law would move in favour of the trans community. In seeking to correct one imbalance it is clearly important not to create another that is open to exploitation, whether by ideologues or predators. Making the acquisition of a GRC easier would make it easier for men, including some with a history of physical or sexual abuse of women, to identify as women and thus gain access to 'safe spaces' for women, for example in hospitals, prisons and women's refuges.

The proposed changes would also impact on areas of law and public services other than the Equality Act. For example, accurate record-keeping and statistical analysis provide the basis for much medical research and health-programming. Increasing the number of people whose biology does not match their registered gender will distort those data. In the long term, this is not in the best interests of the transgender community.

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

There will be health professionals who will refuse to refer patients for gender reassignment surgery, or prescribe puberty blocking agents or cross-sex hormones, on conscience grounds believing that it cannot be in their patients' best interests. Their freedom of conscience should be respected and built into any new law as a statutory right.

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

The Scottish government's proposed Bill would reduce the requirement of 'living in your acquired gender' from 2 years to 3 months, with an additional reflection period of 3 months, so overall reducing the current requirement to 6 months.

Whilst an overall six-month period of living and reflecting on life as a transgender person is better than no requirement at all, we believe this proposal to be unworkable. Nowhere in the Scottish government's consultation documents is a rationale provided for the three-month requirement. Why not three weeks or three days? If the reasons for doing away with the current two-year requirement are to 'protect applicants from prejudice or abuse', and to 'avoid problems created when an individual's personal documents are inconsistent or do not match the gender presented', then why accommodate any delay? Self-declaration removes the requirement for medical reports and the proposals do not indicate if or how the three-month requirement will be attested. If the requirement is intended to avoid 'frivolous' applications, there must be some means of confirming that the requirement has been met. In the present climate, such scrutiny is likely to be characterised as discriminatory.

We believe it would also be unsafe, for the reasons given in answer to Qs 3 and 7 above.

The Scottish Bill proposes the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16. This, too, is unsafe, for the reasons given in answer to Q7 above.

Studies show adolescents and young adults to be less risk-averse, more open to novel experiences and more motivated by potential rewards than more mature adults.[13] As a result, teenagers are more inclined to risky behaviours. Two neurodevelopmental factors are thought to play parts in the genesis of this risk-taking propensity. One is the sudden and dramatic release of sex hormones that

[13] Gardner M and Steinberg L. 2005. Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study. *Developmental Psychology*, Vol. 41, No. 4, 625–635

bathe the brain at the beginning of puberty. The other is the relative delay in the maturation of their cognitive control.

Can it be right to consider someone, considered too young legally to purchase or consume alcohol in licensed premises, too young to purchase cigarettes or tobacco, too young to place a bet or get a tattoo, mature enough to change their legal gender? Teenagers are hormonally primed to take risks, and traditionally the law has put legal barriers in their way to save them from making decisions they might later regret.

In summary, we believe that the Scottish Bill contains the same flaws as that presented by the Women and Equalities Committee. It has the merit of recognising the importance of a period of time lived consistently in the acquired gender, and of time to reflect on so significant a decision, as part of the process of acquiring a GRC but, in our opinion, as drafted the Scottish Bill is as unworkable as it is unsafe.

Wider issues concerning transgender equality and current legislation:

Questions in this section have not been answered.

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