

# **Evidence from Sex Matters to the Women and Equality Committee Inquiry on Reform of the Gender Recognition Act, 2020**

## **1 Introduction**

- 1.1 Sex Matters is a not-for-profit organisation which advocates for clarity about sex in language, policy and law, in order to safeguard the human rights, health, safety and dignity of everybody. Sex matters in life and in law. This is particularly important for protecting women's rights, and safeguarding children and vulnerable people. Clarity about sex also has implications for protecting the rights and wellbeing of people with other protected characteristics, including age, disability, race, religion or belief, sexual orientation and gender reassignment.<sup>1</sup>
- 1.2 We are pleased that the UK government has decided not to advance "self-identification" reforms of the Gender Recognition Act 2004 ("the GRA"). Allowing individuals to change the sex recorded on their birth certificate is an extraordinary measure, which was intended only to apply to a very small number of people. The consequences of this were under-explored at the time. Changing the eligibility criteria to a simple self-declaration could expand the pool of applicants by up to a hundred-fold, bringing in a different and much wider group than the original legislation was ever intended to cover. Muddying the legal definition of sex would have far-reaching consequences in society.
- 1.3 This evidence draws on (1) an online survey of the views and experiences of people concerned about gender self ID,<sup>2</sup> (2) an analysis of data from the Gender Recognition Panel and the minutes of the Gender Recognition Panel User Group<sup>3</sup> and (3) recently published academic and legal analyses on the issue of single sex services,<sup>4</sup> as well as other relevant literature.

## **Summary**

Our submission concentrates on eight of the Committee's questions:

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<sup>1</sup> [www.sex-matters.org](http://www.sex-matters.org) [info@sex-matters.org](mailto:info@sex-matters.org)

<sup>2</sup> The Gender Dissidents Survey, 2020 [www.genderdissidents.net](http://www.genderdissidents.net)

<sup>3</sup> Forstater, M. 2020. Long, Slow, Demeaning, Intrusive and Distressing or Swift, Professional and Respectful? Evidence from the Gender Reassignment Panel in Practice, March 2020  
<https://drive.google.com/file/d/1WU2ddIYVIRbMf3hEajlHHlrKL3l0zggn/view>

<sup>4</sup> Julius Komorowski (2020) "Sex and the Equality Act" (2020) 65(1) Law Society of Scotland Journal <https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-01/sex-and-the-equality-act>; Rebecca Bull and Alessandra Asteriti (2020) Gender Self-Declaration and Women's Rights: How Self Identification Undermines Women's Rights and Will Lead to an Increase in Harms: A Reply to Alex Sharpe, Modern Law Review, <https://www.modernlawreview.co.uk/asteriti-bull-sharpe/>; Lucy Hunter Blackburn, Kath Murray and Lisa Mackenzie (2020) Losing Sight of Women's Rights (again): A Response to Cowan et al, Scottish Affairs, Vol 28, Issue 1 <https://eupublishing.com/doi/abs/10.3366/scot.2020.0348>

**What else should the Government have included in its proposals:** the government should consider the impact on women of any proposal.

**Will the changes make the process “kinder and more straightforward”?** The process will make the process more user-friendly; but perceptions that the current process is overly onerous are not supported.

**Why is the number of people applying for GRCs so low?** The number of people applying for GRCs is not low, it is in line with original estimations of demand by transsexuals.

**Should the requirement for diagnosis be removed?** No. Allowing people to change legal sex without medical oversight would lead to greater numbers of people misdiagnosing themselves.

**Should the spousal consent clause be reformed?** No, the spousal consent clause provides a critical protection for the rights of the non-transitioning partner.

**Are there challenges in the way the GRA and Equality Act 2010 interact?** Yes. A key challenge is that the protected characteristic of sex has become confused by misleading guidance.

**Are the provisions for single-sex and separate-sex spaces and facilities clear and useable?** The provisions in the Act are wide ranging and reasonably clear but they have been made unusable by guidance that undermines clarity on single sex services.

**Are legal reforms needed to better support the rights of gender-fluid and non-binary people?** No. No legal reforms should be made which further confuse the matter of sex. There is no particular reason why people’s subjective sense of themselves requires bureaucratic recognition.

We make six recommendations:

1. **The Government Equalities Office should publish clear guidance on single and separate sex services** in the Equality Act.
2. **The Department for Education should publish specific guidance for schools** on the protected characteristics of “sex” and “gender reassignment”.
3. **The government should require all departments to ensure that the term sex is correctly used** in their policies, equal opportunities monitoring and equality impact assessment frameworks.
4. **An amendment should be added to the Equality Act to clarify that the protected characteristic “sex” means sex in the common law sense.**
5. **The EHRC should commission a review of charter schemes offered by private bodies to employers** and develop principles for charter schemes to ensure they are in line with the Equality Act.
6. **The government should commission a review of the application of S 22 of the Gender Recognition Act in public services** to consider how “sex secrecy” provisions interact with, consent, safeguarding and other reasons why sex information is routinely disclosed and collected.

## 2 Background

2.1 The Gender Recognition Act 2004 (GRA) was passed following a ruling of the European Court of Human Rights (ECHR) (Goodwin v UK [2002]) about information privacy and the right to marry. The European Court of Human Rights held it was a breach of Article 8 for Goodwin, a post-operative transsexual, to have to show a birth certificate revealing information about sex when applying for insurance, mortgages and pensions, and thus face potentially intrusive questions. The case did not consider the use of communal services provided for members of the opposite sex (such as for their bodily privacy and dignity). The judgment found:

"Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender reassignment, it reaches the conclusion that the fair balance that is inherent in the Convention now tilts decisively in favour of the applicant. There has, accordingly, been a failure to respect her right to private life in breach of Article 8 of the Convention."

2.2 In advance of the enactment of the GRA, government policy explicitly stated that GRCs are intended for the group they identified as transsexuals undergoing medical transition with a diagnosis of gender identity disorder/ gender dysphoria/ transsexualism. It was recognised that there was a much larger group of people who cross-dress for other reasons and were explicitly excluded from the provisions of the GRA by the policy makers and legislators at the time. As the Department of Constitutional Affairs stated in a briefing in 2003:

"Transsexualism is not transvestitism or cross dressing for sexual thrill, psychological comfort or compulsion".<sup>5</sup>

2.3 The current process for obtaining a GRC is that applicants are required to fill in a form and submit specific documentation by post. The original documents are then copied and returned immediately.<sup>6</sup> The panel assesses most applications on paper, not via an oral session (two panel members, one medical and one legal, meet and typically discuss 14 applications in one sitting). Overall the success rate for applicants for a GRC is around 95%. The GRP key performance indicator is for 75% of applications to be completed within 20 weeks of receipt. The administrators consistently report that this target is met (with many completed in 8 or 11 weeks).<sup>7</sup>

2.4 The GRA enables a person to change their legal sex so that when a person has a gender recognition certificate "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)" (GRA 2004 S.9(1)). Furthermore it makes information about a person's sex subject to strict confidentiality with criminal penalties in relation to employers, service providers and others who deal with a person in an official capacity (GRA S12).

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<sup>5</sup> Department for Constitutional Affairs (2003) Government Policy concerning Transsexual People [http://www.pinktherapy.com/portals/0/downloadables/GenderMinorities/Government\\_Policy\\_Concerning\\_Trans.pdf](http://www.pinktherapy.com/portals/0/downloadables/GenderMinorities/Government_Policy_Concerning_Trans.pdf)

<sup>6</sup> UK Government, Gender Recognition Certificate: Documents you Must Provide <https://www.gov.uk/apply-gender-recognition-certificate/documents-you-must-provide>

<sup>7</sup> Forstater (2019) op cit.

- 2.5 The Government has said it will place the whole procedure online, reduce the fee from £140 to a “nominal amount” and open at least three new gender clinics this year in order to reduce waiting lists.

**3 Question: What else should the Government have included in its proposals, if anything?**

**Answer: The government should consider the impact on women in any proposal on GRA reform and in clarifying how the GRA and Equality Act interact.**

**Evidence:**

- 3.1 While the ECHR did “not find any significant factors of public interest” in the case of Goodwin, it has become clear that allowing people the legal fiction of changing their sex does have impacts on the fundamental rights of other people, particularly women. Arguments about the impacts on women and girls were strongly raised as part of the government’s consultation on self-ID.
- 3.2 There are conflicts of rights, which include the fundamental rights not to be subject to degrading treatment (Article 3) and not to have private life interfered with arbitrarily (Article 8), as well as freedom of belief (Article 9) and freedom of expression (Article 10). Most people believe that a person with a male body is a man. A minority of people have recently begun to believe (or say that they believe) that a person with male body can be a woman. It is widely understood that forcing people to undress or undertake bodily hygiene functions with people of the opposite sex (whether strangers, colleagues or classmates) is degrading treatment. For most people, then, separate sex services for washing, changing and communal accommodation are a way to enable them to access public life (such as school, workplace, the cinema, the pub, the gym) without being forced into degrading situations. Lack of clear language and rules about sex makes it difficult to maintain single sex spaces. This was not considered either by the ECHR in the Goodwin decision, or in the enactment of the GRA. Shockingly, there was no consultation whatsoever with women at the time of the passing of the GRA.
- 3.3 Single sex facilities are particularly important for women because of the risk of voyeurism, exhibitionism and sexual assault. Ambiguous rules about who can use a “single sex” space increase these risks. Studies confirm that males who identify as transgender, as a group, tend to exhibit male rather than female patterns of offending.<sup>8,9</sup> A Freedom of Information request by campaign group Fair Play for Women, published in October 2017, revealed that 60 out of 125 convicted transgender individuals were sex offenders.<sup>10</sup> Recent data provided by the UK government show that seven out of 124 sexual assaults in the female estate since 2011 were committed by transgender prisoners.<sup>11</sup> Considering the number of transgender inmates, these figures shows transgender prisoners carried out at least five times more sexual assaults

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<sup>8</sup> Dhejne, C. and Others (2011) “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden” PLoS ONE 6(2): e16885  
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885> .

<sup>9</sup> Women Are Human, which collates news reports of crimes committed by transwomen and by cross-dressing males. A review of the information on 13 March 2020 revealed 162 reports of crimes, mostly sex offences, committed by self-identified transwomen, and 23 committed by cross-dressers, over a period of about 2 years. The reports were mostly collated from UK and US newspapers. At <https://www.womenarehuman.com/category/crime>

<sup>10</sup> Fair Play for Women, “Half of all transgender prisoners are sex offenders or dangerous category A inmates”, 9 November 2017, at <https://fairplayforwomen.com/transgender-prisoners>

<sup>11</sup> UK Parliament – Prisoners: Sexual Offences: Written Questions HL3198 5 May 2020, Answered by Lord Keen of Elie.

then other inmates.<sup>12</sup> A latitudinal study in Sweden in 2011 also found that male-to-female transgender individuals “maintain male patterns of offending” over time despite their transition.<sup>13</sup>

- 3.4 Surveys show that a minority of people say they feel comfortable sharing “single sex spaces” with members of the opposite sex. A recent YouGov survey found that while 42% say a “transwoman” should be allowed to use women’s changing rooms and 46% say they should be allowed to use women’s toilets, when it is explained that “transwoman” does not necessarily mean that a person has had genital surgery, these figures drop to 26% for changing rooms and 31% for toilets. Only 20% say that transwomen should be able to play women’s sports. Younger people tend to be more willing to allow males into women’s spaces and services.<sup>14</sup>
- 3.5 Many women feel particularly strongly about the risk to women’s rights from overwriting sex with self-identified gender. The importance of these concerns to many women has been demonstrated by the establishment of new grassroots groups in response to the government’s proposal in 2017 to introduce self ID. Woman’s Place UK, set up in November 2017 to enable women to discuss the proposals for GRA reform, has hosted 26 events around the country and sold 5,521 tickets. Fair Play for Women’s awareness-raising on the women’s rights aspects led to 18,370 submissions to the consultation. Neither of these organisations has any external or government funding. A recent review found 40+ grassroots groups organising around women’s concerns about policy treatment of sex and gender.<sup>15</sup>
- 3.6 An online survey undertaken as part of the supporting work for setting up Sex Matters provides an insight into these concerns. Over 700 people replied to the online survey (some 650 from the UK, which was the main focus of the survey). Nine out ten of those who responded were women, and most talked about **women’s rights and the ability to talk about the reality of women’s lives.**<sup>16</sup>

*“We can’t deny science and change fundamental realities about men and women to suit a tiny but vocal minority. I want people to live their true lives and be happy but not at the expense of women and girls.”*

*“I am a woman and I care about the rights of women to speak about our lived experiences, to have spaces of our own, and to be homosexual without being shamed.”*

*“I am concerned because women can no longer say ‘woman is adult human female’ without being accused of transphobic and biological sex classes are now up for debate.”*

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<sup>12</sup> The Government statistics show that transgender inmates make up about 1% of the 3,600 female jail population but are responsible for 5.6% of sexual assaults in women’s prisons. The estimate of 1% is based on HMPPS Offender Equalities Annual reports 2018 and 2019 (42 and 34 trans prisoners respectively), at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/848759/hmpps-offender-equalities-2018-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848759/hmpps-offender-equalities-2018-19.pdf)

<sup>13</sup> Evidence given by the British Association of Gender Identity Specialists to the Transgender Equality Inquiry, Dr James Barrett, <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Women%20and%20Equalities/Transgender%20Equality/written/19532.html?fref=gc&dti=558986097619975>

<sup>14</sup> Yougov (2020) Survey Results - 22nd - 23rd June 2020 <https://docs.cdn.yougov.com/ai3h3xvf7o/Transgender%20data%202020.pdf>

<sup>15</sup> <https://gender-dissidents.net/resources/>

<sup>16</sup> <https://gender-dissidents.net/tag/womens-rights/>

3.7 Many talked about the importance of **retaining single sex spaces**.<sup>17</sup>

*"I have an elderly mother, a teenage daughter & I'm in my 40s. We are all impacted by the loss of single sex protections for different, but entirely biologically female reasons... Loss of privacy, dignity, safety, recovery from trauma and the right to participate in public life – we all have reasons for the need of female only provisions across many aspects of our lives."*

*"I believe women have the right to single sex spaces. It is patently unsafe to allow men who self id as women into women's toilets, prisons, hospital wards, refuges, changing rooms. If a third space is needed, it should not replace female space."*

*"coming across a group of trans identifying men in the women's toilets in a restaurant was a shock and I felt intimidated. I asked them to leave, I was told to "Fuck off, we have a right to be here you ugly little transphobe". It was reported to the restaurant manager who did nothing. Imagine if a young girl or child had gone into that toilet alone!"*

*"Several years ago, a friend and I walked into a public bathroom with my friends then 6 year old daughter, 'K'. At the wash basin was an individual dressed as a woman, but otherwise their appearance was very much male. Short hair, facial hair, tattoos on the arms etc. K asked quite loudly as children will, why is that man in the girls room? My friend, trying to be diplomatic, shushed her daughter and said that all ladies can use a ladies room. K said, but he's a man, in a dress. At this point the individual, flashed us his entire male genitalia and said he identifies as a woman and if we don't like it, suck this. "*

*"As an ex prisoner I was horrified at the policies allowing men into women's prisons and could not imagine the thought of women I'd known and cared about having to share cell and living space with men, particularly knowing how traumatised by men many of those women had been."*

3.8 Some women highlighted their own experience as **survivors of male violence**, or working with survivors and perpetrators of abuse:<sup>18</sup>

*"I think that it is crucial for female only spaces to exist. I was raped in a changing room and I do not wish to see a woman with a penis in a changing room or in the showers of my gym."*

*"For the last few years have watched too many abused women and their children walk out of services other women fought tooth and nail to have provided for them, safe spaces away from men and the risk of abuse. They are walking out because they are no longer being treated as single sex spaces and the main services providers for some reason want to pretend this is OK women are being made to feel unsafe and uncomfortable by the services meant to help them."*

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<sup>17</sup> <https://gender-dissidents.net/tag/single-sex-spaces/>

<sup>18</sup> <https://gender-dissidents.net/survivors-of-violence-against-women>

*"I have seen first hand what male predators do and the lengths they will go to to commit their crimes. I have no fear of transexual women, fully support them, but I am certain that self-ID will allow abusers to use the trans community as a cover."*

*"As a teacher, parent and Girlguiding leader this goes against all the safe guarding I have ever been taught. This matters to me because the safeguarding and single sex spaces exist for a reason and they are trying to be removed with no proper debate."*

- 3.9 One women told how a longstanding women's centre was closed down over the lack of ability to maintain it as a women only space:

*"We asked him to leave. He refused. He came to a brunch, made a speech about how he'd come to educate lesbians about transgender issues and, as women tried to leave the room, forcibly hugged them. They made complaints to us. We banned him from lesbian events for touching women without their consent and took the issue to the police who did nothing. The trans-identified man said he'd take the women's centre down. And he did. He applied to become a committee member. The committee at that time was dominated by straight white Momentum Labour women who welcomed him. The BAME women, many of whom are not allowed by their faith to attend events where there is a man present, took their funding and left. Many of the lesbians boycotted the women's centre events in protest. The women's centre closed down."*

- 3.10 Many **lesbians** responded about how the push to overwrite sex with gender identity is homophobic and means that heterosexual males are now identifying as lesbians on lesbian dating sites, in associations and groups, and politically:<sup>19</sup>

*"As a Black lesbian, I've gone from fully supporting gender id politics to questioning some things to questioning everything. I realized how homophobic and sexist their rhetoric is, how riddled it is with contradictions and inconsistencies that I'm told I don't have a right to question or challenge or have basic concerns about. This is not progress, it's fascism."*

*"I became increasingly concerned about the increase in welcoming formerly straight men, now identifying as lesbians to our group. This is gaslighting lesbians, especially those who are perhaps more recently come out ....I was accused of transphobia (by a small number of other women), I eventually left the lesbian group, having been a very active member for 20 years."*

*"My sexuality is being rebranded as a gender preference and I'm increasingly being marginalised within the LBGT community in favour of heterosexual men who when they identify as women claim a lesbian sexuality."*

*"Most [males identifying as lesbians on lesbian dating sites] didn't declare this and I worked it out. I felt humiliated and a bit scared that I might have met someone in person without knowing they were biological men. It chilled me to the bone. I can now spot them and block them, but it was unpleasant and degrading for me at the time."*

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<sup>19</sup> <https://gender-dissidents.net/category/lesbians/>

3.11 Some talked about **women's sports**:<sup>20</sup>

*"I want sports to be fair; I want young female athletes to benefit from them the same way I did, and I want elite female athletes I look up to to have the wins they deserve."*

*"Self ID worries me immensely because it feeds in the idea that the physical reality of sex no longer matters and could lead to exclusion of women from work and sports especially in minority communities. In a word it is not progress."*

*"Both my daughters play sport to a high level and I see the strength, resilience and confidence this gives them. I don't want female sport ruined by having to compete against men."*

*"Women's sports exist to provide a level playing field and allowing trans women with women to compete distorts this level playing field. It will have a negative impact on the careers and livelihoods of women athletes which is already underfunded and under resourced compared to men's sports."*

3.12 Many people wrote about how not being able to talk clearly about sex is **detrimental to their ability to do their job**, and about conflict with policies at work.<sup>21</sup>

*"I have to be careful about my views at work for fear of repercussions especially when trying to raise safeguarding concerns for young children and people who say they are trans."*

*"I work with people with learning disability. I was working with a man with severe learning disability who was suddenly suffering from anxiety. Met with staff team – one of them was clearly a late-transitioning trans-identifying man – had previously worked there as "Charles", now referring to himself as "Charlotte". I was discouraged from mentioning this as part of the psychological formulation."*

*"As a medical professional I am increasingly concerned about the conflagration of sex to gender. On medical forms we increasingly now have to ask someone their gender not their sex and I have personally examined patients who declare their sex to be female but turn out to be biologically male with male genitalia. "*

*"I'm afraid to discuss the issue with anyone outside my home because of potential consequences at work [as a civil servant], I've been called a TERF by previous colleagues. I no longer speak about it outside my home. It just feels that the world has gone mad and it's now somehow taboo to talk about being female and about female experience. I feel completely disempowered."*

*"I asked why my work policies misrepresented the Equality Act. I was taken aside by my manager and instructed that I must not speak to anyone regarding this issue any further."*

3.13 Many people talked about **freedom of speech and the suppression of debate**:<sup>22</sup>

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<sup>20</sup> <https://gender-dissidents.net/tag/sports>

<sup>21</sup> <https://gender-dissidents.net/tag/work>



*“[For standing up for lesbian rights] I’ve been shunned and ostracised by my local community ... I’ve been physically threatened by a local transwoman, banned from my pub, banned from all Prides, silenced on social media. I’ve had my Medium account permanently suspended.”*

*“I have never seen such brutal silencing of women’s voices, just for stating basic scientific facts”*

*“[We are] being asked to lie and to deny reality in order for others to feel more comfortable, whilst seeing those rights being taken away. My belief in free-speech is not only to protect my right to speak, but also to hear.”*

*“Any issue where debate is stifled is frightening. This one in particular feels so cultural and of its time and yet it has real long term consequences for the lives of women and men.”*

**4 Question: Will the Government’s proposed changes meet its aim of making the process “kinder and more straightforward”?**

**Answer:** The planned administrative improvements to the GRA process are likely to make it more user friendly. This is to be welcomed. However popular perceptions that the current process is overly onerous are not supported.

**Evidence:**

- 4.1 Evidence for this section is drawn from a review of the minutes of the **Gender Reassignment Panel (GRP) User Group** between 2006 and 2018.<sup>23</sup> These minutes provide a valuable record of feedback and discussions involving people close to the GRP process in real time. They also draw on statistics from the Courts and Tribunals service.<sup>24</sup>
- 4.2 The case for demedicalised self ID is often made on the basis that the current process is difficult and dehumanising. The evidence from the user group suggests that these perceptions are overblown. Public descriptions of the GRP process often include the words such as *bureaucratic, demeaning, dehumanising, distressing, expensive, humiliating, intrusive, invasive, long, secretive or traumatic*. **None of these words appear in the detailed minutes of the discussion of the user group from 2006-2018.**
- 4.3 Discussions at the GRP User Group emphasise that while the documents must allow the panel to determine if the legal criteria have been met, the requirements are not for voluminous documentation (2-3 documents per year such as bills or wage slips for each of two years).

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<sup>22</sup> <https://gender-dissidents.net/tag/free-speech>

<sup>23</sup>The User Group is made up of panel members (both legal and medical members), panel administrators, Ministry of Justice officials, representatives from trans advocacy organisations (most consistently Press for Change, but also GIRE, Gendered Intelligence, The Beaumont Society, Scottish Trans Alliance, Galop, The Intercom Trust, Mermaids) and clinicians. It meets around once or twice a year (18 times between April 2006 and November 2018). The minutes obtained under FOI are here: <https://drive.google.com/file/d/16AtT2wC2mjhA5HpXqI6AJ6w49QcwzujK/>

<sup>24</sup> Forstater, M. 2020. Long, Slow, Demeaning, Intrusive and Distressing or Swift, Professional and Respectful? Evidence from the Gender Reassignment Panel in Practice, March 20201 <https://drive.google.com/file/d/1WU2ddIYVIRbMf3hEajlHHlrKL3l0zggg/view>

4.4 It is commonly noted in the meetings that there is widespread misunderstanding of how the GRP works. In the 2018 meeting in Leicester, Suzanne van Rossenberg of the Government Equalities Office notes *“LGBT surveys showed a lack of knowledge and misunderstanding about the GRC process”*. Her report<sup>25</sup> found that 43% of trans people who did not have a GRC thought the process involved an interview, and 15% thought that surgery was required. <sup>25</sup> Bringing the process fully online may help to make these misunderstandings less common.

4.5 In user group meetings, it is regularly reiterated that the panel and administration see their role as supporting applicants. Paula Gray, until recently President of the Gender Recognition Panel, also explains the approach:

*“we wanted to give people every opportunity to show their entitlement to a GRC, even if that meant a number of chances to provide the appropriate documents. ....We rarely refuse applications, and when we do it’s generally due to a consistent lack of co-operation, the applicant having been given a number of opportunities to provide the necessary documentary evidence. I probably deal with about 200 cases a year - although some are previously adjourned applications and over some 14 years I think I have refused three”.*<sup>26</sup>

4.6 In several User Group meetings it is discussed that almost no applications are refused outright by the panel when first presented. In around 30-40% of cases the initial application is incomplete, and either the administrators who receive the application send it back for completion, or the panel issues “directions” at the first hearing, asking for further documentation:

*“It was stressed that applicants are given every opportunity to comply with the requirements, even the opportunity to withdraw and apply under a different route before any applications are refused”* (London 2006).

*“The Panel only turn down a small number of applications. The aim of the Panel is to assist applicants to be granted a Gender Recognition Certificate (GRC) wherever possible and use the power to give directions to promote this aim.”* (London 2008)

4.7 One common reason for applications to be rejected is **the statutory declaration not being fully completed**.

*“This has a lot to do with the fact that the Solicitor who has signed it has not checked that each statement has been completed. This is something that the admin team at Leicester do check and if it is incomplete send it back for completion before the application is sent to the panel to avoid a delay.”* (London, 2007)

*“Currently there is two ongoing issues with current applications that are lodged, firstly there are still quite a number of applications which require further attention, for instance only one medical report supplied or the statutory declaration has not been completed or witnessed correctly. (London, 2014)*

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<sup>25</sup> UK Government (2018) National LGBT Summary Report <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report>

<sup>26</sup> Gray, Paula (2019) The Gender Recognition Panel, Courts and Tribunal Journal <https://www.judiciary.uk/wp-content/uploads/2018/03/Tribunals-Journal-Edition-2-of-2019-1.pdf>

A well designed online process could make these documentary evidence requirements clearer, and reduce error rates on the statutory declaration. However, an online-only process might also pose barriers for some users who rely on the guidance and support of the administrative team.

**5 Question: Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?**

**Answer: The number of people applying for GRCs is not “low” – it is in line with original estimations of demand for GRCs by transsexuals. There are a much larger number of people who were termed transvestites at the time of the legislation.**

**Evidence:**

- 5.1 In response to the consultation on the Gender Recognition Act, people who identify as transgender but have not sought a GRC stated that the reasons were – they did not qualify (44%), it was too bureaucratic (38%) and too expensive (34%). As the evidence in section 4 highlights, the GRC process is not particularly onerous for people who have already gone through the process of having medical treatment which might make their sex anything less than obvious to other people. Stephen Whittle and Fiona Simkiss (2020) note that:

*“Objectively the second two reasons are myths; objectively, despite being daunted, most could complete the forms in an afternoon, and as 60 percent of trans respondents had an income under 20,000, fee remission would mean that most pay nothing.”<sup>27</sup>*

- 5.2 This suggests that the actual reason why people do not apply is because they are not eligible, and those who are eligible usually receive a GRC without difficulty, as shown by the success rates.
- 5.3 In fact the number of people applying for a GRC is in line with the original target population. When the Gender Recognition Act was first passed, it was recognised that there was an existing population of transsexuals who had transitioned over previous decades. The intention was that the status should only be granted to “a very small number of people who suffer very seriously because of the condition [of gender dysphoria] that they have experienced”.<sup>28</sup> The estimate, based on the number of people who had already changed records with HMRC, the DVLA or passport office, was that there were approximately 5,000 transsexual people in the UK at that time (around 80% male).<sup>29</sup> Since the enactment of the Gender Recognition Act, up to July 2019, a total of 5,623 GRCs were issued. After the initial backlog of “fast track” applications, new GRCs have been issued at a rate of around 300 a year. This matches a 2007 estimate that around 300 genital reconstruction surgeries are undertaken in the UK each year (although surgery is not a requirement).<sup>30</sup>

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<sup>27</sup> Whittle, S., & Simkiss, F. (2020). A perfect storm: The UK governments failed consultation on the Gender Recognition Act 2004. In C. Ashford & A. Maine, Research Handbook on Gender, Sexuality and the Law (pp. 211–231). Edward Elgar Publishing. <https://doi.org/10.4337/9781788111157.00024>

<sup>28</sup> Lord Filkin Hansard Official Report 11/02/2004 col 1094-1095.  
<https://publications.parliament.uk/pa/ld200304/ldhansrd/vo040211/text/40211-01.htm>

<sup>29</sup> When the GRA was first enacted it was estimated that there were 5,000 transsexual people with a diagnosis of gender dysphoria, mainly undertaking a medical and surgical transition. Fairbairn, C. 2004. The Gender Recognition Bill (HL). (Bill 56 2003/04). House of Commons Library Research Paper 04/15 <https://commonslibrary.parliament.uk/research-briefings/rp04-15/> .

- 5.4 A much larger number of people are likely covered by the broader characteristic of “gender reassignment”, estimated at 200,000-500,000. Most of these people have not had, and do not intend to have, surgery.
- 5.5 Doctors note that amongst men, a fetish (or ‘paraphilia’) for cross-dressing and fixation on having breasts is far more common than people seeking to have genital surgery to overcome dysphoria. Dr James Barrett, Consultant Psychiatrist at the Charing Cross Gender Identity Clinic, notes that “dual role transvestism” (cross dressing for significant periods) is much more common than transsexualism and can represent a stable way of life for many men. While these, largely heterosexual, men may have breast augmentation, they continue to view their genitals as valuable, but may decide to “live in the female role full time”.<sup>31</sup>
- 5.6 The much larger numbers now quoted in relation to potential unmet demand for GRCs is likely to be made up in large part by men who would previously have been referred to as transvestites or crossdressers (explicitly excluded from the GRA), who now may be referred to as “transgender” or “non-binary”.
- 5.7 In addition, there has been a recent rapid rise in the number of teenagers identifying as transgender, a phenomenon that has been termed “rapid onset gender dysphoria”.<sup>32</sup> This new presentation, which physicians have not seen until recently, is particularly common amongst post-pubertal girls in peer-group clusters, and is associated with social media/internet use.
- 5.8 The question of what is the most beneficial course of action for these young people is one for clinicians and medical researchers (and is currently the subject of an Independent review for the government by Dr Hillary Cass). A rush to make it easier for them to legally change their sex, rather than to access psychological support to explore the reasons for their dysphoria, is not supported by evidence.
- 5.9 It is thus not clear that there *are* large numbers of people within the original population intended by the legislators of the GRA who are unable to get a certificate, or that there is public benefit in changing the eligibility criteria in order to accommodate transvestites or teenagers experiencing traumatic mental health episodes.

## 6 **Question: Should the requirement for a diagnosis of gender dysphoria be removed?**

**Answer: No. Allowing people to change legal sex without any medical oversight or treatment would lead to greater numbers of people misdiagnosing themselves as transsexuals, or may inadvertently create the opportunity for opportunists to exploit legal sex change and impose public sexual fetishes as a human right.**

### **Evidence:**

- 6.1 A common topic of discussion in the Gender Recognition Panel User Group is the level of medical evidence required. The GRA requires that an applicant must provide two medical

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<sup>30</sup> Whittle, S (2007). The Gender Recognition Act 2004. In Barrett, S (Ed.) Transsexual and other disorders of sexual identity: a practical guide to management. CRC Press.

<sup>31</sup> Barrett, James (2007) “Transsexual and Other Disorders of Gender Identity: A Practical Guide to Management”. Radcliffe Publishing Limited.

<sup>32</sup> Littman, Lisa (2018) Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria <https://doi.org/10.1371/journal.pone.0202330>

reports. One must give details of their diagnosis of gender dysphoria, and a second must give details of surgical or medical treatment undergone or to be undergone by the applicant to change their sexual characteristics (or explanation of why none will be sought).

*“Medical members are there not to make a diagnosis; they are there to ensure that the diagnosis stands up. Often there is other evidence that contradicts so their role is to piece together evidence to ensure that a full diagnosis is visible. If there is ever any doubt both the legal and medical members will make the decision to seek further medical evidence from applicants.”* (London, 2006)

- 6.2 Clinicians recognise that not everyone who presents at a gender identity clinic or who identifies under the broad “trans” umbrella has gender dysphoria/ transsexualism. Dr James Barrett, Consultant Psychiatrist at the Charing Cross Gender Identity Clinic and one of the User Group members, writes in the journal *Advances in Psychiatric Treatment*:

*“The least certain diagnosis is that made by the patient, made as it is without any training or objectivity. This uncertainty is not lessened by the patient’s frequently high degree of conviction. Neither does the support of others with gender dysphoria help, since conviction leads people to associate with the like-minded and to discount or fail to seek out disharmonious views.”*<sup>33</sup>

- 6.3 In his 2007 book *Transsexual and Other Disorders of Gender Identity: A Practical Guide to Management*, Dr Barrett sets out some other diagnoses for patients presenting at the Charing Cross Clinic including fetishistic cross dressing, autogynephilia, psychosis, depression, borderline personality disorder and abnormal grief reaction.<sup>34</sup> Autogynephilia (AGP) is particularly common and defined as a male's propensity to be sexually aroused by the thought of himself as a female.<sup>35</sup> For example Dr Barrett recounts one case:

*“SM presented in his mid-40s. He had a stated desire to change gender role, and aggressively pressed for hormone treatment. SM’s demeanour was unequivocally male. He had no history of childhood unmasculinity, let alone femininity. ... He became annoyed when hormones were not prescribed, arguing that he had been attending the gender identity clinic for longer than others who had been prescribed hormones. ... at a third appointment SM presented in an aggressive male manner. He wore jeans and a t-shirt in combination with 3-inch heels, large false breasts and nail varnish. ... SM became very angry and freely admitted that all he wanted from the gender identity clinic was treatment that would allow him to grow breasts.”*

- 6.4 As detailed in section 5 clinics are now also seeing an increasing number of younger people. A large proportion of teens developing cross sex-identifications are same-sex attracted adolescents. Research shows that a high number of homosexual adults have experienced periods of “cross-sex” behaviours and cross-gender identification in childhood and adolescence, often to a degree that is severe enough to warrant the diagnosis of gender dysphoria. Roberto de Angelo et al, (2020) writing in the *Archives of Sexual Behaviour*, note that:

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<sup>33</sup> Barrett, James (2011) *Advances in psychiatric treatment* vol. 17, 381–388 doi: 10.1192/apt.bp.109.007484

<sup>34</sup> Barrett, James (2007) “*Transsexual and Other Disorders of Gender Identity: A Practical Guide to Management*”. Radcliffe Publishing Limited.

<sup>35</sup> Lawrence, A. (2011). Autogynephilia: An underappreciated paraphilia. *Advances in Psychosomatic Medicine*, 31, 135-148. doi: 10.1159/000328921

*“Gender dysphoria can present as a transient symptom that resolves spontaneously or in the context of developmentally informed psychotherapeutic treatment. Some common examples of transient gender-dysphoric states include adolescents girls, often on the autism spectrum, experiencing distress around the physical and social changes of puberty or gender-non-conforming young women struggling with shame about being seen as “butch.”<sup>36</sup>*

- 6.5 Self-diagnosis thus risks other mental health issues such as depression and psychosis going undiagnosed, and other behaviours such as autogynephilia and fetishistic cross dressing, which should more properly be thought of as the domain of a person’s private life with consensual partners, being imposed on others through a legal “sex change”. It also risks dysphoric same-sex attracted young people, who may be struggling with their own development, internalized homophobia and homophobic societies, seeing transition as a way to “solve” the problem of homosexuality – a form of “conversion therapy”.
- 6.6 Recent surveys of the British public have found that while people are generally supportive of the idea of “self ID” (people should be able to live as they chose, dress as they wish, change their name and refer to themselves as they wish), when asked about legal sex change there is not support for making this on the basis of self identification. A Yougov poll in 2020 found 47% of people said no to the question “do you think it should or should not be made easier for transgender people to change their legal gender?”, only 28% said yes and 25% said they didn’t know. 63% of people say a person should have to obtain a doctors approval (16% say they shouldn’t and 21% don’t know). 61% say that someone should have to show evidence of having lived in their new gender for two years (16% say they shouldn’t and 14% don’t know).<sup>37</sup>

**7 Question: 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?**

**Answer: No the spousal consent provision (or spousal exit clause) should remain as it a critical protection for the rights of the non-transitioning partner and any children in the marriage.**

**Evidence:**

- 7.1 The reason for the spousal consent provision was explained by The Government Equality Office to this Committee:

*“Marriage is a contract between two individuals and it is right that both spouses should have an equal say in their future when there is a fundamental change.”<sup>38</sup>*

- 7.2 The non-transitioning spouse should have the option to end the marriage either by divorce or annulment, *before* a full Gender Recognition Certificate can be issued. When a person legally changes sex, their marriage changes from an opposite sex partnership to a same-sex

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<sup>36</sup> Roberto D’Angelo, Ema Syrulnik, Sasha Ayad, Lisa Marchiano, Dianna Theadora Kenny & Patrick Clarke (2020) One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria, Archives of Sexual Behaviour. <https://link.springer.com/article/10.1007/s10508-020-01844-2>

<sup>37</sup> Yougov (2020) YouGov Survey Results GB Fieldwork: 22nd - 23rd June 2020 <https://docs.cdn.yougov.com/ai3h3xvf7o/Transgender%20data%202020.pdf>

<sup>38</sup> Government Equalities Office (2015) – Evidence to the Transgender Equality Inquiry (TRA 245)

partnership (or vice-versa) in law. This is a contract which is different to the marriage they first agreed. If both parties want the marriage to continue on this basis it can.

- 7.3 This provision is often presented as a “spousal veto”. This is a misrepresentation; just as the requirement for a person to end their existing marriage before embarking on another one is not a “veto” on remarriage. A transitioning person may be excited about starting their “new life” as a new person, but their responsibility to their partner and any children in the marriage must be resolved first.
- 7.4 The provision for annulment in particular is important as it enables those spouses who cannot get divorced for religious or cultural reasons to exit the marriage. The spousal consent clause is particularly important for wives whose husbands transition (as they are likely to be financially impacted, and have child maintenance and joint responsibility issues to be addressed).
- 7.5 There is emerging evidence that many ex-wives and partners experience the revelation and demand that their partner be seen as the opposite sex as a form of “coercive control”.<sup>39</sup> Several of the people who responded to the “gender dissidents” survey were ex-wives of transitioners (“trans widows”) who explained their experience.<sup>40</sup>

*“I had the experience of finding myself married to a severely AGP man who had deceived me about his behaviour for many years of our ‘relationship’. Those years of duplicity were in no way happy ones. I experienced the full force of his gaslighting and narcissism. I just could not understand where it was coming from. I believed he was depressed and tried to support him but he deceived me on every level with a web of glittering lies. He was a man who lied for fun, a sexual predator, a sexual exhibitionist, a man who was having sex behind my back with multiple men and women across at least three counties. He had spent thousands of pounds on his obsession with ‘passing’ while telling me his businesses were failing and thus leaving me to pay the household bills. I would not wish those years of my life on my worst enemy.”*

*“For 14 years I was married to a man who did everything to destroy my love and in the last 4 years taunted me mercilessly. He wanted me to hit him so that he could go to the police and prosecute me for domestic violence. I did not. Finally he left some very large women’s clothes in a cupboard where I was bound to find them and when I asked he said: ‘It’s true. I’m a transsexual’. Four months later he left us.”*

*“My ex had autogynephilic tendencies and used this as part of decades of domestic abuse including sexual. After being told that he was most likely a malignant narcissist with psychopathic tendencies I started to see parallels with TRA attacks that I’d started to see happen. He had enforced language change etc from very early on in the relationship.”*

*“My husband moved out to live his new life as a woman. Those twelve months were a hell of lies and insults. I was told that I should be okay with him transitioning because I ‘had too much testosterone to be a woman, so should be happy for him to take the female role.’ And there was a myriad of other examples of misogyny that peppered his arguments... When this first happened, I watched friends turn themselves inside out to*

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<sup>39</sup> Dr Em (2020) Domestic Abuse Related to Late-Transitioning Partners, Part I: Coercive Control

<https://uncommongroundmedia.com/domestic-abuse-related-to-late-transitioning-partners-part-i-coercive-control/>

<sup>40</sup> <https://gender-dissidents.net/stories/families-of-transitioners/>

*be understanding and to not be seen as transphobic (though my good friends didn't take long to decide he was a git – thank god!)"*

7.6 While a minority of marriages survive one partner transitioning, most do not. In these unhappy marriages, allowing one partner to force the other to rewrite history, redefine their sexuality and enter into a same-sex or opposite-sex marriage against their will is certainly a form of coercive control.

8 **Question: 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.**

**Answer: Yes. A key challenge is that the protected characteristic of sex has become confused, firstly by the interaction of the Equality Act and the GRA, secondly by guidance produced by the Government Equalities Office and The Equality and Human Rights Commission, and finally by private organisations such as Stonewall, whose standards are adopted by government departments and public bodies as well as the private sector.**

**Evidence:**

8.1 S.11(a) Equality Act 2010 provides that "In relation to the protected characteristic of sex... a reference to a person who has a particular protected characteristic is a reference to a man or to a woman" (s.11). "Man" and "woman" mean respectively a "male" or "female" of any age (s 212(1)).

8.2 The Equality Act 2010 also provides protection from discrimination for people with the protected characteristic of "gender reassignment" (s.7). This covers anyone who has proposed, started or completed a process "for the purpose of reassigning the person's sex by changing physiological or other attributes of sex". It does not have to involve medical treatment. The Act establishes that a person must not be discriminated against or harassed because of gender reassignment (such as being excluded from employment, housing or public services); it does not state that a person should be allowed to use services provided for the opposite sex.

8.3 However, ambiguity about the meaning of sex in the Equality Act has been introduced: firstly by the interaction with the Gender Recognition Act; secondly by guidance produced by the Government Equalities Office and The Equality and Human Rights Commission, which goes beyond the Gender Recognition Act; and finally by private organisations such as Stonewall, whose standards are adopted by government departments and public bodies as well as the private sector. This has introduced ambiguity in the meaning of "sex" and "man" and "woman", "male" and "female", and made it fraught for any woman or girl to try to protect her rights in law, or for service providers to give clarity about whether they are offering a single sex or mixed sex situation.

8.4 Legal scholars remain uncertain as to whether the Gender Recognition Act changes a person's sex for the purposes of the Equality Act. Julius Komorowski, writing in the *Scottish Law Journal*, considers the interaction between the two laws and concludes that

*"there are two real possibilities. First, that sex [in the Equality Act] is meant in the immutable, common law sense. Alternatively, it is meant in the common law sense except for those who hold a GRC. I do not think either possibility can be dismissed."*<sup>41</sup>



- 8.5 It is clearer that having the protected characteristic “gender reassignment” in the Equality Act without a GRC does not mean a person’s legal sex has changed. This was confirmed by the EHRC in 2018. The Equality Act does not define the term “trans woman” or “transwoman”. A male person who identifies as a woman but does not have a GRC remains legally male and thus a man in the terms of the Equality Act.<sup>42</sup>
- 8.6 Nevertheless, many male people covered by the broad protected characteristic “gender reassignment” consider themselves to be women (even without having any surgery or treatment, and in some cases they consider themselves to be part time women) as expressed by the slogan “trans women are women”. And they consider that this self-identity means that they should be treated as women, including access to services provided for the dignity and security of women and girls. Many organisations have adopted policies, out of line with the Equality Act, which tell staff to allow people to use opposite-sex facilities based on self-identification.
- 8.7 Section 22 of the Gender Recognition Act, in particular, is problematic for organisations seeking to apply straightforward sex based rules in general, because it makes organisations afraid to ask, record or act on anyone’s sex, in case they might have a GRC, which makes this information fraught and introduces a criminal liability for frontline staff. The confidentiality afforded by Section 22 was intended to be limited, and not to impose unreasonable confidentiality about someone’s sex when it is incompatible with doing a job, but organisations are interpreting it expansively and refusing to record or consider anyone’s sex.

**9 Question: Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities clear and useable for service providers and service users?**

**Answer:** The provisions for single and separate sex spaces and facilities in the Act are wide ranging and reasonably clear. But they have been made unusable by guidance that is not in line with the Equality Act.

**Evidence:**

- 9.1 While most parts of public life are open to both men and women equally, the Equality Act allows for single sex services where this is justified. In relation to services and public functions, it establishes situations where discrimination on the grounds of sex (i.e. the use of sex based rules such as “female only”) can be justified.<sup>43</sup> These single-sex exceptions are important, particularly to the inclusion of women and girls in public life, and to the avoidance of situations enabling sexual harassment. These protections and rules cannot operate without a clear notion of sex. One common reason for single sex services is ordinary bodily privacy:

*“where it would be reasonable for a person of one sex to object to the presence of a person of the opposite sex” (Schedule 3 Paragraph 27 (6)).*

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<sup>41</sup> Komorowski, Julius (2020) “Sex and the Equality Act” (2020) 65(1) Law Society of Scotland Journal <https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-01/sex-and-the-equality-act>

<sup>42</sup> EHRC (2018) Our Statement on Sex and Gender Reassignment <https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>

<sup>43</sup> Separate and single sex services (Schedule 3 Sections 26, 27 and 28), Occupational requirement (Schedule 9), Communal accommodation (Schedule 23), Charities (Section 193), Associations (Schedule 16) and Single sex schools (Schedule 11). In addition there is provision for sport (Section 195).

- 9.2 The single sex exceptions in the Equality Act are generally permissive (organisations are allowed but not required to provide single or separate sex services), and some advocates of “trans inclusion” in opposite sex spaces make the argument that they are rarely used, or that there is a high bar for using them. This is not true. Single sex spaces are common, ranging from everyday privacy, such as in toilets, changing rooms, showers, dormitories and hospital wards, to specialist women’s services, such as rape crisis and refuges. Furthermore workplace regulations, school building and licensing regulations make requirements for male and female toilets and changing rooms. Whenever an organisation provides a facility which excludes one or other sex (for example by putting a male or female sign on the door) they are relying on one or more of the exceptions in the Equality Act.<sup>44</sup>
- 9.3 From the point of view of a woman using a single sex space, it is reasonable to expect that she won’t be forced or surprised into sharing with a member of the opposite sex, nor that she should have to worry, wonder or guess whether a person she can identify as male has the right to be there. Clear rules are needed so that everyone understands who can use particular spaces or services, so that no one is humiliated or forced into conflict. Providing unisex (“gender neutral”) facilities as well would help to ensure that people experiencing gender dysphoria are also accommodated.
- 9.4 There is little case law about transgender people and single sex services, but what little there is supports the view that neither s.7 of the Equality Act (which defines gender reassignment), nor the Gender Recognition Act gives a people the right to access spaces or services provided for members of the opposite sex. In the case of *Croft v Royal Mail* [2003] it was noted that “acquiring the status of a transsexual does not carry with it the right to choose which toilets to use”.<sup>45</sup> The most commonly cited recent case, which is said to justify allowing people to use opposite sex facilities, is that of *Brook v Tasker*, a county court case involving a pub in Halifax on which the reason for the judgement was not recorded. This is sometimes called a “landmark” case, but in fact no legal arguments were heard as it was undefended, and as a first instance case it would set no precedent anyway.<sup>46</sup>
- 9.5 Julius Komorowski writing in the Law Society of Scotland argues:

*“If persons of the other sex are admitted, they cease to be services segregated or exclusive on the basis of sex, and thus lose their exception from the obligations not to discriminate because of sex. ... the exclusion of trans persons legally of the opposite sex is not simply permissible but a necessary part of the statutory scheme.”<sup>47</sup>*

- 9.6 Writing in the *Modern Law Review*, Rebecca Bull and Alessandra Asteriti note

*“We have seen no evidence in Hansard to show that Parliament addressed the issue of women-only spaces in relation to whether males with the protected characteristic of gender reassignment should be granted access to female-only spaces. There is in short,*

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<sup>44</sup> See for example Hunter Blackburn, Lucy, Kath Murray and Lisa Mackenzie (2020) Losing Sight of Women's Rights (again): A Response to Cowan et al, *Scottish Affairs*, Vol 28, Issue 1  
<https://eupublishing.com/doi/abs/10.3366/scot.2020.0348>

<sup>45</sup> Forstater, Maya (2020) *Croft v Royal Mail: between a Rock and Hard Place* <https://a-question-of-consent.net/2020/08/16/croft-v-royal-mail-between-a-rock-and-a-hard-place/>

<sup>46</sup> Forstater, Maya (2020) *Revisiting the Brook case* <https://a-question-of-consent.net/2020/05/29/the-case-of-sb/>

<sup>47</sup> Komorowski, Julius (2020) “Sex and the Equality Act” (2020) 65(1) *Law Society of Scotland Journal*  
<https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-01/sex-and-the-equality-act>

*no evidence, neither as a matter of statutory interpretation, nor of parliamentary record, that the EA was designed to give as the 'default position' transwomen right to access to female only spaces."*<sup>48</sup>

9.7 Guidance produced by the EHRC and the GEO is not in line with the Equality Act. It tells service providers to allow people to use single sex services on the basis of, variously, "the gender role in which they present" (EHRC Code of Practice (2011) "acquired gender", (EHRC online guidance, 2019) or "the sex in which the transsexual person presents" (EHRC, 2018) -- all of these various formulations mean that organisations following the guidance cannot have unambiguous rules and have no basis for turning any male away from women's facilities. As recent guidance from the Scottish government (in relation to women on Public Boards) states:

*"[Living as a woman] would not require the person to dress, look or behave in any particular way."*<sup>49</sup>

9.8 Organisations such as Stonewall, GILES and Gendered Intelligence promote the idea that service providers and employers should allow the use of single sex services on the basis of gender self ID. This is not in line with the Equality Act. Roughly 250 Government departments and public bodies, including police forces, local councils and NHS trusts are members of the scheme at a cost of some £600,000. Members include GCHQ, MI5, the Ministry of Defence, the Cabinet Office, the Department for Education and the Ministry of Justice, 57 local authorities, 47 emergency service providers, almost 30 police forces, and more than 50 NHS organisations<sup>50</sup>

9.9 The result is that organisations are not applying the single sex exceptions simply and clearly to offer single sex services and spaces, and instead are adopting policies which tell people they can use opposite sex facilities based on self-determined gender or gender presentation (i.e. clothing) on that day.

- a. **Schools are being pressured to allow male children to use female changing rooms and showers.** Guidance from voluntary organisations, and a leaked draft of guidance from EHRC, tell schools they must allow male children who self-identify as girls to use girls toilets, showers and changing rooms.<sup>51</sup>
- b. **There are male staff at rape crisis centres, and nurses in women's locked mental health wards, based on their self-identified gender as women.** Women at their most distressed and traumatised are forced to pretend they cannot perceive a person's sex.<sup>52</sup>

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<sup>48</sup> Bull, Rebecca and Alesandra Asteriti (2020) Gender Self-Declaration and Women's Rights: How Self Identification Undermines Women's Rights and Will Lead to an Increase in Harms: A Reply to Alex Sharpe, Modern Law Review, <https://www.modernlawreview.co.uk/asteriti-bull-sharpe/>

<sup>49</sup> Scottish Government Guidance on the Gender Representation on Public Boards Act. <https://www.gov.scot/publications/gender-representation-public-boards-scotland-act-2018-statutory-guidance/pages/2/>

<sup>50</sup> Dixon, Hayley (2020) Government agencies paying thousands to become "Diversity Champions" for gay-rights charity. The Daily Telegraph, 31 October 2020. <https://www.telegraph.co.uk/news/2020/10/31/government-agencies-paying-thousands-become-diversitychampions/>

<sup>51</sup> Fairplay for Women (2019) Could do better. The EHRC should rewrite its draft guidance [https://fairplayforwomen.com/draft\\_ehrc\\_schools/](https://fairplayforwomen.com/draft_ehrc_schools/)

- c. **NHS policies on single sex wards** are that people should be placed in a ward based on their self-declared gender, and those who are “non-binary” can choose which ward to be placed in.<sup>53</sup> This has resulted in a woman whose bipolar disorder means she believes men may murder her being locked on a psychiatric ward with a male bodied patient, causing her complaints to be dismissed as transphobia and sever distress and to relapse.<sup>54</sup>
- d. **NHS policy of patients being able to request a GP appointment with a male or female doctor are not being fulfilled** where “sex” is replaced by “gender identity”. Muslim women asking to see a female GP for an intimate examination in an East London clinic are being seen by a doctor who for the past 30 years was practicing medicine as a man. They are encouraged not to request a chaperone, as this is seen as invalidating to the male doctor’s feminine persona.<sup>55</sup>
- e. **Care providers are concerned that they will not be able to offer same-sex care for elderly women** if they are unable to turn down males who identify as women for employment.
- f. **The Care Quality Commission** only records and considers a person’s self-identified gender, not their sex, when considering safeguarding and risk assessment systems.
- g. **The Security Industry Authority**, which regulates security guards and bouncers, issues guidance to venue owners and staff. It tells them that they should not assume that they can identify anyone’s sex on sight, and should allow anyone of either sex and any appearance into women’s toilets in nightclubs.<sup>56</sup>
- h. **Private businesses** such as Virgin Gyms have changed their communal changing rooms from single sex to single gender, because they believe this is what the Equality Act demands.
- i. **Employers are adopting policies** that allow males who identify as women (on a full or part time basis) to use women’s toilets, changing rooms and showers. Some are avoiding the question altogether by converting all facilities to “gender neutral”. They are not considering the impacts of this on female staff, including ethnic minorities, disabled women and religious women who may be particularly disadvantaged by lack of female only facilities for changing and washing.<sup>57</sup>
- j. **Police officers** are told that they must search people based on their self-identified gender, meaning that female officers have to search fully intact males who say that they are female. A male police officer who identifies as a woman would be allowed to intimately search female suspects.

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<sup>52</sup> For insight into how women using these services feel about this see <https://fovas.wordpress.com/>

<sup>53</sup> [https://improvement.nhs.uk/documents/6005/Delivering\\_same\\_sex\\_accommodation\\_sep2019.pdf](https://improvement.nhs.uk/documents/6005/Delivering_same_sex_accommodation_sep2019.pdf)

<sup>54</sup> <https://www.lancasterguardian.co.uk/news/lancaster-mum-fear-men-locked-hospital-ward-transgender-patient-653048>

<sup>55</sup> Forstater, M (2020) Trans healthcare professionals and patient consent <https://a-question-of-consent.net/2020/09/16/doctors/>

<sup>56</sup> <https://www.sia.homeoffice.gov.uk/Documents/sia-ds-trans-guide.pdf> and see Cunningham, N (2020) “Trans customers: A guide for door supervisors” <https://legalfeminist.org.uk/2020/08/30/trans-customers-a-guide-for-door-supervisors/>

<sup>57</sup> See for example <https://www.lawsociety.org.uk/en/topics/lgbt-lawyers/transition-and-change-to-gender-expression-template>

- k. **Male prisoners** are housed in female prisons based on gender identity - most notoriously Stephen Wood/Karen White, a convicted paedophile on remand for grievous bodily harm, multiple rapes and other sexual offences against women. White sexually assaulted female prisoners. As a result of cases such as this, the Ministry of Justice reviewed its guidance regarding the treatment of transgender prisoners, but continues to house male prisoners in female prisons, causing trauma and risk to vulnerable women.
- l. **The Equal Treatment Benchbook** tells judges that they must require witnesses to use preferred pronouns, even when their experience of the other person was as their actual sex. This could mean rape survivors having to talk about “her penis”. There has been a case recently of a sex offender being tried for the use of multiple false names breaking a sexual harm reduction notice changing their name and pronouns halfway through the day of a hearing.<sup>58</sup>
- m. **Many organisations fail to collect data on sex** in their equal opportunities monitoring, forcing people to declare that they have a gender identity, and undermining their ability to undertake equality impact assessments when considering policies.<sup>59</sup>
- n. **There are no clear crime statistics** collected based on sex, since police forces now generally record crimes according to self-reported gender identity.<sup>60</sup>

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

**Answer:** No. No specific legal reforms have been proposed and no legal reforms should be made which further confuse the matter of sex.

**Evidence:**

- 10.1 The Government defines a non-binary person as someone who identifies as in some way outside of the man-woman gender binary. They may regard themselves as neither exclusively a man nor a woman, or as both, or take another approach to gender entirely. Different people may use different words to describe their individual gender identity, such as genderfluid, agender, genderqueer, neutrois. This will encompass many of the people described as “transvestite” at the time of the GRC.
- 10.2 It is not obvious what, if any, legal reforms are needed to support the rights of such people. They are already protected against sex discrimination by the Equality Act and against discrimination by perception if they are perceived as being transsexual.
- 10.3 Measures in general which seek to reduce sex discrimination and discrimination against people with the protected characteristic “gender reassignment” – such as avoiding imposing sexist social norms on girls and boys at school, and where possible provision of

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<sup>58</sup> Newman, M (2020) Warning over transgender guidance to judges, Law Gazette  
<https://www.lawgazette.co.uk/news/warning-over-transgender-guidance-to-judges/5103196.article>

<sup>59</sup> <https://www.sexnotgender.info/equality-monitoring/the-list/>

<sup>60</sup> See for example, N. Hellen, “Police forces let rapists record their gender as female”, The Times, 20 October 2019, at <https://www.thetimes.co.uk/article/police-forces-let-rapists-record-their-gender-as-female-d7qtb7953>

unisex/gender neutral alternatives to single sex , will also tend to support inclusion of those who consider themselves genderfluid, genderqueer, non-binary etc., without undermining clarity and legal protections based on sex.

## 11. Recommendations

1. **The Government Equalities Office should publish clear guidance on single and separate sex services in the Equality Act.** This is a commitment it has already made following the Women and Equality Select Committee Inquiry on the Equality Act in 2019.<sup>61</sup>
2. **The Department for Education should publish specific guidance for schools** on what the protected characteristics of “sex” and “gender reassignment” mean and how they can ensure that they meet their responsibilities both in line with the Equality Act and also safeguarding.
3. **The government should require all departments to ensure that they say sex (instead of gender) in their policies,** equal opportunities monitoring and Equality Impact Assessment Frameworks. They should be clear that sex and “gender reassignment” are two separate protected characteristics. EHRC should provide clear guidance on this.
4. **The government should introduce into legislation a simple amendment to exclude any effect of s.9 of the GRA 2004 (which changes a person’s sex “for all purposes”) from the Equality Act 2010.** This would mean that for the purposes of the 2010 Act, “sex” always means biological sex. The reason for this is that the law in its present form is confusing. There are single-sex exceptions that make it lawful to exclude trans women from female-only spaces and services, but the rules appear to include subtle differences depending on whether those trans women have a GRC or not (although in most cases a service provider could not know whether someone has or hasn’t). Those differences are difficult to interpret, and consequently there is no legal consensus on their practical impact creating jeopardy for service providers. The single-sex exceptions are only necessary when biology matters; but when biology matters, it will always matter: the certificate make no difference.
5. **The EHRC should commission a review of charter schemes offered by private bodies to employers, schools and other institutions focused on particular equality strands.** It should develop principles for charter schemes to ensure they are in line with the Equality Act and recognise all 9 protected characteristics. No government departments or public bodies should subscribe to charter schemes which don’t comply with Equality Act.
6. **The government should commission a review of the application of S 22 of the Gender Recognition Act** in public services (such as the NHS and schools and

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<sup>61</sup> Recommendation 14 “We recommend that the Government Equalities Office issue a clear statement of the law on single-sex services to all Departments, including the requirement under the public sector equality duty for commissioners of services to actively consider commissioning specialist and single-sex services to meet particular needs.” The Government responded “We agree that clarity is needed on the question of single-sex services and plan to publish guidance to provide this. Earlier this year, the Government committed to develop and publish best practice guidance for commissioners and service providers on their legal obligations under the Equality Act 2010, including how and when to commission specialist and single sex services to meet particular needs. This guidance will fulfil the same role as a statement of law, clarifying how the law works and organisations’ responsibilities under it, including for compliance with the Public Sector Equality Duty.” <https://publications.parliament.uk/pa/cm201919/cmselect/cmwomeq/96/9602.htm>

guidance, to consider how “sex secrecy” impacts on other public interests. Guidance should be developed for how organisations can safely collect information about sex and respect consent and safeguarding while making reasonable accommodation for people who do not want to discuss their sex and who may or may not have a GRC.

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