

Written evidence submitted by A Vince [GRA1942]

WILL THE GOVERNMENT'S PROPOSED CHANGES MEET ITS AIM OF MAKING THE PROCESS "KINDER AND MORE STRAIGHT FORWARD"?

The proposed changes do not go far enough in making this process kinder or more straightforward. The amount of evidence required is still grossly unrealistic and burdensome for most trans people, and there are many many cases of trans people being rejected for spurious reasons such as documents from many years ago (eg name change documents from childhood due to divorce/parent separation) being missing or not being quite as expected by the panel. The types and quantities of documents required have no bearing on whether someone is trans and these types of documents are not required for other official purposes such as opening bank accounts, renewing passports, etc.

The burden of documentation is especially prohibitive for trans people (vs similar requirements for cis people in other areas of life) who often experience abuse, housing scarcity/unstable housing, homelessness and other avenues of marginalisation which make creating a solid "paper trail" of their existence and identity very difficult.

Additionally, the documents are often reviewed according to a normative perspective of what a man or woman "should" look and act like, which is both discriminatory to those who cannot afford extensive physical reinvention (surgeries, clothes, voice coaching etc) and those who are affected by the unacceptable waiting lists for trans healthcare, which are in most cases several years long. It is also discriminatory to those who can't or don't wish to "pass" according to outdated social gender expectations.

The documents are also typically reviewed by a panel who have never met the applicant and to whom the applicant has no right of reply or appeal, and who may never give feedback as to why the application was unsuccessful leading to years wasted attempting to meet arbitrary and unreasonable evidentiary expectations. This is cruel and inhumane.

Any fee at all is effectively a tax on legal recognition, and will be an unacceptable and prohibitive burden on low income/poor trans people while being a minor inconvenience to those with more income. As trans people are disproportionately affected by poverty, job discrimination, etc, this is especially unreasonable and punitive. There should be no fee for legal recognition. This is something that should and could easily be covered by taxes as a public good.

As it stands, the process is also over medicalised, treating gender variance as a disease to be smoothed away and hidden from public view. It is historically difficult for trans people to even access appropriate healthcare because the very doctors trained to treat them have outdated training and views about how someone must "perform" their gender in order to be given a diagnosis of gender dysphoria, and thus have healthcare options made available to them. This is already burdensome, medically outdated and unkind. For this problem to be compounded by that diagnosis not being sufficient to obtain a GRC could be viewed as a form of intentional gatekeeping and erasure of trans people and their experiences.

The process must be fast, free and requiring minimal evidence, certainly no more evidence than would be required to obtain a driving licence, passport and other legal documentation. A lack of GRC does not affect whether someone can move through the world as their true

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gender, does not prevent someone accessing gendered spaces, does not prevent someone changing their name or even changing the gender the NHS records them as. And nor should it! But it is nonetheless a vital piece of recognition that allows trans people a level of privacy and legal mobility that cis people already have, and should be widely, quickly and easily available.

The process still does not recognise non-binary people which is completely unacceptable and unkind.

The process still includes a spousal veto which is completely unacceptable and unkind. That is a matter between the spouses in question and not something that should be baked into a legal process!

3 new GICs is something that was already on the table and feels like an attempt to repackage policy to appease critics. We need more GICs, more doctors and nurses trained in trans healthcare, ubiquitous and thorough training on trans people for all medical professionals. This will not be “kinder and more straight forward” until all trans people can receive treatment (not just a first assessment which punts the issue down the road) within the NHS waiting list guidelines and until there is parity with other waiting lists on the NHS (many of which are also unacceptably long due to a decade of underfunding and undermining of the NHS)

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?

As above:

Any fee at all is effectively a tax on legal recognition, and will be an unacceptable and prohibitive burden on low income/poor trans people while being a minor inconvenience to those with more income. As trans people are disproportionately affected by poverty, job discrimination, etc, this is especially unreasonable and punitive. There should be no fee for legal recognition. This is something that should and could easily be covered by taxes as a public good.

Additionally:

Obtaining copies of documents to meet the current evidentiary burden can also lead to significant additional costs (“admin fees”) or be impossible. There are also considerable costs in changing ones presentation and body to meet outdated standards of gender expression, such as the costs that surround NHS treatment (travel, prescriptions, overnight stays in hotels near far away hospitals, etc), clothing, hair and body treatments, vocal and mannerism training etc. Many trans people are rejected for their GRC application because they do not seem to have invested enough in “becoming” or “embodying” their gender. Not to mention those who seek private healthcare due to the inhumanely long NHS waiting lists, who have to make awful choices between mental and physical safety, and financial security.

This is unkind and far from straight forward.

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SHOULD THE REQUIREMENT FOR A DIAGNOSIS OF GENDER DYSPHORIA BE REMOVED?

Yes.

As above:

As it stands, the process is also over medicalised, treating gender variance as a disease to be smoothed away and hidden from public view. It is historically difficult for trans people to even access appropriate healthcare because the very doctors trained to treat them have outdated training and views about how someone must “perform” their gender in order to be given a diagnosis of gender dysphoria, and thus have healthcare options made available to them. This is already burdensome, medically outdated and unkind. For this problem to be compounded by that diagnosis not being sufficient to obtain a GRC could be viewed as a form of intentional gatekeeping and erasure of trans people and their experiences.

Additionally:

The UK should aspire to being a leader in trans healthcare and social support, rather than trailing behind other countries. Gender dysphoria is not a universal experience for trans people. One should not have to prove one is in distress in order to have their experience of gender recognised. We should not expect any human experience or any standard for the treatment of humans to be based around distress. Do we refuse to heal a broken leg if the patient is not in distress? Do we refuse to allow people to marry, have children, etc unless not doing so causes distress? Also, for those who do experience dysphoria, there is no single, definable thing that can be identified as the universal experience of dysphoria. It is a highly personal and subjective thing and as such as not place being necessary for legal gender recognition.

SHOULD THERE BE CHANGES TO THE REQUIREMENT FOR INDIVIDUALS TO HAVE LIVED IN THEIR ACQUIRED GENDER FOR AT LEAST TWO YEARS?

It is not unacceptable to expect people to be sincere in their expressed desire or need for a GRC. It is, however, unacceptable to require trans people to somehow document that they have lived a certain way for an arbitrary amount of time. There are considerable barriers to both living full time as one’s true gender and also providing such documentation of a quantity and quality that might be accepted to obtain a GRC. Trans people are at considerable risk of abuse, marginalisation, discrimination, bigotry and violence. Many do not feel safe engaging with medical professionals, many are not out at work or in education (instead choosing to mask as their assigned gender at birth), many do not meet outdated gender expectations and should not be required to change their presentation to look “womanly enough” or “manly enough” according to some ever shifting standard. Some trans people feel and materially are safer waiting for their documentation to conform to their gender before they attempt social or medical transition. There are also the aforementioned barriers to obtaining and/or preserving documentation, due to housing insecurity, high rates of relationship abuse, lack of finances, etc.

Additionally, if GRCs became available for non-binary people (which they should), requirements to live in a way that is widely identifiable as a certain gender discriminate

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against non-binary people who may never conform to how other people believe their gender should look or be performed.

Requiring that a trans person lives for two years as their gender before being able to apply for legal recognition places trans people in a state of social and legal limbo in which they are particularly vulnerable to abuse, hostility and violence.

Such requirements are not a measure of sincerity but instead a measure of conformity, and unfairly burden those who are unsafe in their homes and jobs, who do not meet out of date ideas of “passing” and who do not wish to conform to strict gender norms that their cis peers are less affected by.

WHAT IS YOUR VIEW OF THE STATUTORY DECLARATION AND SHOULD ANY CHANGES HAVE BEEN MADE TO IT?

A statutory declaration is considered sufficient for many legal processes and should be sufficient to receive a GRC. A statutory declaration demonstrates intent and sincerity on the part of the applicant. If a statutory declaration process is not fit for purpose, that is a legal question that goes far far beyond trans identities and the GRA. If they are fit for purpose (which we assume it is, given their wide use) this is an appropriate use for them.

DOES THE SPOUSAL CONSENT PROVISION IN THE ACT NEED REFORMING? IF SO, HOW? IF IT NEEDS REFORMING OR REMOVAL, IS ANYTHING ELSE NEEDED TO PROTECT ANY RIGHTS OF THE SPOUSE OR CIVIL PARTNER?

The spousal consent provision must be removed. It is unkind and inhumane to allow another private adult control over one’s legal recognition. Spousal consent provision can also be a vehicle for relationship abuse. How the involved parties feel about each other and their marriage is entirely between them and should have no impact on the process of obtaining a GRC. We already have annulment, dissolution and divorce proceedings available to partners who feel their marriage or civil partnership is no longer tenable. Whether those proceedings are fit for purpose is not within the remit of this consultation (though, a lack of “no fault” divorce and a need to demonstrate irreparable differences is a major failing in the UK system).

SHOULD THE AGE LIMIT AT WHICH PEOPLE CAN APPLY FOR A GENDER RECOGNITION CERTIFICATE (GRC) BE LOWERED?

Application for a GRC should be on par with other rights and responsibilities, such as voting, marriage, independent living, joining the military, age of sexual consent, etc. 16 is a reasonable lower age.

WHAT IMPACT WILL THESE PROPOSED CHANGES HAVE ON THOSE PEOPLE APPLYING FOR A GENDER RECOGNITION CERTIFICATE, AND ON TRANS PEOPLE MORE GENERALLY?

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These are largely inconsequential reforms that do not make the process kinder or more straight forward except in the most minor and unimpactful ways. The process remains unacceptably arduous, burdensome and unreasonable, not to mention unkind.

The proposed changes fly in the face of the overwhelming demands for reform of this process and smack an attempt to throw scraps to appease critics while making no true reforms. It has been suggested that the overwhelming demands for making the process easier and more humane were some kind of tipping of the scales, but one might ask why ignore the results of a consultation simply because those most affected by it spoke up so clearly? It is unremarkable that those with a vested interest would be moved to respond and would have discussed the matter with friends, family, social networks, and the like, and thus should have come as no surprise, and should not have been reframed as a “skewing” of the data. That trans people and their allies campaigned to increase awareness of and education around trans issues in the run up to the original consultation deadline is no more “skewing” than any other social issue awareness raising or indeed party campaigning in the run up to an election. It also indicates greater acceptance of trans rights in the wider population and greater appetite for reform to make the lives of trans people less marginalised than the government perhaps expected.

WHAT ELSE SHOULD THE GOVERNMENT HAVE INCLUDED IN ITS PROPOSALS, IF ANYTHING?

The government should have proposed to make non-binary identities legally valid, at the very least by allowing for an “X” gender marker or the option to remove a gender marker entirely. Non-binary trans people should be able to see a GRC to give them legal parity with binary trans people and cis people. The government should also have sought to integrate non-binary people further into public and legal life. For example, at present, it is not possible for non-binary people to marry or seek civil partnership -at all- without being legally misgendered which not only misrepresents them and causes significant distress but also misrepresents their relationship with their proposed spouse. As the government seems keen to increase family units with married partners/parents, it is in conflict with that aim to so effectively discourage non-binary people from seeking the currently offered legal unions.

The stipulation that a GRC must be a lifelong commitment is unkind and at odds with the lived experience of many trans people, who experience changes in gender and/or gender presentation throughout their life. Far from liberating people, such stipulations instead trap them in another set of gender norms and expectations lest they be found “guilty” of failing to live according to how others expect them to perform their gender. A cis person is not expected to conform to stereotypes in order to be legally recognised as their gender and indeed to avoid legal repercussions if accused of failing to meet those stereotypes. There is also no credible reason to suggest that being trans, or that being a particular trans gender, should be biologically or psychologically lifelong. It should be enough for the GRC to be obtained with a truthful statutory declaration. If perhaps years later, a formerly trans man realises their gender has shifted into a non-binary state, or a trans woman seeks to detransition or for another reason (perhaps personal safety) seeks to return to living publically as a man, then it should be possible to legally reverse or revise a GRC. This is not unduly burdensome for public services to facilitate, especially once a more simple, streamlined and kind GRC process is enacted. If a cis person can come to realise they are

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trans and obtain a GRC, so should a trans person be able to realise they are now cis or another trans identity, and be able to obtain accurate legal records of themselves. Suggestions that such things are not possible or not credible are ideological and do not represent lived human reality.

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 is a greater step in the right direction, though there are areas that are still particularly troubling and unduly burdensome for trans people.

Of particular concern are the following:

- The unreasonable requirement that the applicant live permanently as their "acquired" gender (see further up)
- The unreasonable requirement for the applicant to have lived as their "acquired" gender in advance of applying (see further up)
- The lack of provision for non-binary people (see further up)

The proposed 3 month waiting or cooling off period is an additional administrative burden on trans people but combined with the statutory declaration may be an acceptable compromise for those who are concerned about frivolous or deceitful applications. It should always be remembered that the stigma and marginalisation of existing as a trans person (and thus the stigma of being believed to be trans, whatever someone's gender is) far outweighs any advantage one might get from a fraudulent application, and should an application be discovered to be fraudulent the government has recourse under the law, as with all cases where a statutory declaration is fraudulently signed.

WHY IS THE NUMBER OF PEOPLE APPLYING FOR GRCS SO LOW COMPARED TO THE NUMBER OF PEOPLE IDENTIFYING AS TRANSGENDER?

As extensively explained further up, there are considerable legal, evidentiary, financial and practical barriers to obtaining a GRC. And a significant proportion of trans people are excluded by virtue of having a non-binary identity. The relative lack of uptake is entirely unsurprising.

There is also concern about effectively becoming part of a government register of trans people. There is considerable mistrust of the government by marginalised people, including trans people, and that extends to fears about data security or how governments now or in the future might choose to use such data. There have been many high profile data breaches in recent times, including of data held by governments, so there are fears that such data could be obtained and misused by those who seek to harm trans people. For many trans people, removing gender and sex from the question of legal recognition entirely would be a far preferable step. It is an outdated holdover and not necessary to determine someone's identity for legal purposes where such identification may be absolutely essential. We have many ways to identify people where needed, from legal names and national insurance numbers to photographic ID and biometrics. This is true of both cis and trans people.

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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.

ARE THE PROVISIONS IN THE EQUALITY ACT FOR THE PROVISION OF SINGLE-SEX AND SEPARATE-SEX SPACES AND FACILITIES IN SOME CIRCUMSTANCES CLEAR AND USEABLE FOR SERVICE PROVIDERS AND SERVICE USERS? IF NOT, IS REFORM OR FURTHER GUIDANCE NEEDED?

DOES THE EQUALITY ACT ADEQUATELY PROTECT TRANS PEOPLE? IF NOT, WHAT REFORMS, IF ANY, ARE NEEDED?

There are discrepancies in the language between the two acts and the Equality Act 2010 could be reformed to better protect trans people. Any changes to the Equality Act must create better protection for all people and present no loss of rights, protection or safety to trans people. There is well founded fear that in the current political and social atmosphere, when the lives and experiences of trans people are routinely weaponised by some sectors to demonstrate a false danger to others, that consulting on or revising the Equality Act would lead to at the very least greater danger for trans people in the form of hostility and violence, and may lead to legal changes that are to the detriment of trans people. We can all exist together, fully and safely, if we are protected in doing so. Trans people are not a threat. They are not a threat when sharing single sex spaces, they are not a threat when using single sex services. They are not a threat to women and there is no data that shows any such threat. A storm of panic is being whipped up by those with an interest in not just further marginalising trans people, but who are using attacks on the rights and legal status of trans people as a back door to attacking the wider LGBT population and enforcing strict gender roles.

WHAT ISSUES DO TRANS PEOPLE HAVE IN ACCESSING SUPPORT SERVICES, INCLUDING HEALTH AND SOCIAL CARE SERVICES, DOMESTIC VIOLENCE AND SEXUAL VIOLENCE SERVICES?

Many services for trans people are either under staffed and under funded, or are not available in a given area. The voluntary and charitable sector picks up as much slack as it can, but faces the same limitations of funding and staffing, and it is not reasonable to place the support and safety of the population in the hands of volunteers and charities. These limitations mean that many services are over subscribed for their capacity. Many trans people face considerable waits to access services, including trans healthcare, and find they are not able to be fully supported even once a space opens up.

Additionally, due to the marginalisation, misunderstanding and stigma faced by trans people, they struggle to access (and be safe in) other services, such as family support, drugs and alcohol support, housing support, etc. The problems are also rife in the private sector, with trans people at particular risk of homelessness and job discrimination, not to mention facing challenges in family courts and the wider legal system. Many harmful stereotypes are believed about trans people that make it hard for them to be taken seriously, respected and supported in their endeavours. This can only partially be combated by training and awareness raising (which are nonetheless both essential) - it is also vital that the

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government be firmly on the side of trans people and progressing with legal changes that help protect them.

However, it should be noted that a great many services do successfully support trans people and do so without making other people less safe. There is currently considerable misinformation being spread about the dangers of sharing support services with trans people, based on no evidence and a lot of scaremongering.

ARE LEGAL REFORMS NEEDED TO BETTER SUPPORT THE RIGHTS OF GENDER-FLUID AND NON-BINARY PEOPLE? IF SO, HOW?

- Non-binary people need legal gender recognition to bring parity with cis and binary trans people, which would be achieved at the very least by an “X” (or similar) marker instead of male/female.
- Non-binary people need the ability to marry as their gender, as currently they are prohibited from marrying unless willing to be legally misgendered (which also has implications for the kind of legal union open to them).
- Non-binary people need the ability to give birth without being forced to register as a “mother” (which is currently an unavoidably gendered term) and to register as simply a ‘birth parent’. (Trans men and women also need the ability to give birth and register as parents using their correct (“acquired”) gender, which should be unaffected by whether they carried the child).
- All trans people need the ability to revise or reverse an existing GRC with a further statutory declaration
- Non-binary people need the option of a non-gendered, gender neutral or non-binary gender marker for all legal purposes, or to remove the issue of legal gender entirely.

- A. Vince, York

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