

## SUMMARY

- 1) The requirement for a diagnosis of gender dysphoria should be retained, in order to provide some element of objective verification and for safeguarding purposes.
- 2) The age limit at which people can apply for a GRC should not be lowered. Reducing it would increase the pressure on adolescents to transition when this may not be in their best long-term interests.
- 3) The terminology used in the GRA and the Equality Act needs to be clarified. The conflation of sex and gender needs to be addressed so that the two are used consistently and with precision.
- 4) The provisions in the Equality Act for the provision of single-sex and separate-space services and facilities in some circumstances need to be clarified, and illustrative guidance made available to service providers. Both the protected characteristics of sex and gender reassignment need to be fully considered, and clarification that the single-sex exemptions can be applied on a scenario-by-scenario basis should be provided.

My name is Shereen Benjamin. I have campaigned for women's<sup>1</sup> rights and lesbian and gay rights since the 1980s. I am a former teacher, now lecturing in teacher education, with research and teaching interests in gender and education. I am accordingly broadly interested in how best to balance women's rights pertaining to biological sex and transgender people's rights pertaining to gender identity (recognising that both may be significant in people's lives), and in the safeguarding of young people. I have focused on just four of the questions asked by the committee.

### **1. Should the requirement for a diagnosis of gender dysphoria be removed?**

No. There are many reasons why a diagnosis of gender dysphoria should continue to be a requirement for a GRC. These include, but are not limited to:

- a) Biological sex is objectively verifiable. Gender identity is entirely subjective and unverifiable, and the requirement for a diagnosis of gender dysphoria introduces some measure of objectivity into the process. It is problematic to enshrine in law provisions that can be accessed solely on subjective and unverifiable grounds, so further alternatives to provide objective verification should be sought.
- b) This is especially significant for transwomen, who by gaining a GRC, also gain access to some of the rights and provisions that apply to women. In this respect it should be noted that what is often referred to by media outlets as 'the trans debate' is actually a debate over who should access women's rights, and on what basis.
- c) Following on from (b), if a GRC enables male-bodied individuals to be given access to any spaces where women are vulnerable, there should be a requirement for such individuals demonstrate that they do not present a threat to women. A medical diagnosis provides part (though only part) of the necessary safeguarding.
- d) I am not transgender myself, but my transgender friends tell me that transitioning is enormously demanding psychologically and socially. The need for a diagnosis provides an incentive for an individual undergoing transition to seek professional support.

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<sup>1</sup> Throughout this submission I use the term 'women' to apply to natal women, who are biologically female and overwhelmingly socialised as such. I use the term 'transwomen' in respect of male-bodied people who wish to live as, and be perceived as, women.

e) The proposed removal of a diagnosis of gender dysphoria is underscored by a profound conceptual change in the purpose of the GRA: it changes it from a pragmatic solution for a relatively small population with a recognised medical condition, to enshrining in law the right to obtain a legal change of sex based on an individual's self-description. Such a profound change requires much more open discussion of the many potential consequences than has been the case.

## 2. Should the age limit at which people can apply for a GRC be lowered?

No. There are complex social and psychological reasons why young people may believe they are of the opposite sex. The recent exponential rise in adolescent girls presenting as trans-identifying is currently the subject of a government investigation. Writing in BJPsych Bulletin (2020), Marcus Evans notes that "Understanding the reasons for this increase, and how to respond, is hampered by a politically charged debate regarding gender identity"<sup>2</sup>. He goes on to note that:

"Children's sexual orientation and gender identity are formed out of a complex developmental process that involves an interaction between their body, their mind and society at large. Sexual identity and gender identity are developmental processes that evolve as the individual goes through the different life stages... A political, rights-based approach to the treatment of children is at risk of forcing these complex psychological needs into the background. Pro-transitioning websites encourage children to view anyone who puts a different view, including parents, as suspect/the enemy; to self-diagnose and view the taking on of a trans identity as a wide-ranging solution to all their problems... [This] so-called 'affirmative approach' persuades schools and others to accept unquestioningly the child's claims."

It is important that the Committee understand the proposal to lower the age at which an adolescent can apply for a GRC is borne out of the 'affirmative approach' critiqued here by Evans. It is underscored by the notion that each individual has an essential, innate, gender identity which exists independently of social context, that an individual might discover that gender identity at any age (including very young children who are pre-verbal), and that an individual of any age claiming a transgender identity is always correct. Such a belief does not take account of the fact that childhood and adolescent gender dysphoria resolves naturally as part of maturation in most cases<sup>3</sup>.

The 'affirmative approach' is being promoted to schools and teachers as the only compassionate way to respond to children and young people experiencing difficulties associated with gender. It is increasingly hard for teachers, parents and others to hold a non-judgemental and compassionate space open for young people to question their gender identity as part of a set of complex and intersecting factors, and many teachers have told

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<sup>2</sup> Evans, M (2020) **Freedom to Think: the need for thorough assessment and treatment of gender dysphoric children**. In BJPsych Bulletin July 2020 [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/F4B7F5CAFC0D0BE9FF3C7886BA6E904B/S2056469420000728a.pdf/freedom\\_to\\_think\\_the\\_need\\_for\\_thorough\\_assessment\\_and\\_treatment\\_of\\_gender\\_dysphoric\\_children.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/F4B7F5CAFC0D0BE9FF3C7886BA6E904B/S2056469420000728a.pdf/freedom_to_think_the_need_for_thorough_assessment_and_treatment_of_gender_dysphoric_children.pdf)

<sup>3</sup> See, for example, Butler, G., De Graaf, N., Wren, B. & Carmichael, P. (2018) **Assessment and Support of Children and Young People with Gender Dysphoria**. *Disease in Childhood* 103, p631-636

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me that they feel under pressure to affirm the perceived gender identity of troubled adolescents for whom transition may not be the best eventual outcome.

Whilst lowering the age limit at which a person (in reality an adolescent) can apply for a GRC does not directly impact what happens in schools, it is at the very least plausible that the pressures on adolescents to socially and then medically transition rather than explore alternatives will increase<sup>4</sup> should the age for application for a GRC be reduced to 16. We now have evidence from growing numbers of 'detransitioners'<sup>5</sup>, mostly young women, who consider that they were fast-tracked onto a transition pathway with insufficient consideration given to the range of social and psychological factors that contributed to their gender dysphoria or other sense of profound discomfort with their female bodies. For instance, Charlie Evans, reflecting on her experiences as a 17-year-old, recounts<sup>6</sup>:

"I recognise now that trans ideology sold me on the idea that I could identify into the powerful group. I was hurt knowing I couldn't marry a woman at that time, hurt that I couldn't have a family that looked like the only families I had seen until then. The idea that I could 'identify' out of oppression, and be a straight man instead, felt liberating.

There are few studies behind detransition rates, but I can tell you there are thousands of us – our voices are hidden because we are seen by the queer community as an inconvenient consequence of their movement. We are just collateral damage for the 'greater good'.

Many – maybe most – are gender non conforming lesbians, who are raised in gendered homes where the roles of girls and boys were strictly defined. No wonder they felt like boys. Most desisted at the same age as me – around age 25. This is not a coincidence...

I could not have predicted that ten years into the future, I wouldn't have the same feelings of self loathing as I did as a teen. I could not have predicted that by allowing my brain to mature, I would grow out of the idea that there is such a thing as a 'boy' brain or a 'girl' brain and I had been born with the wrong one."

Before lowering the age for application for a GRC, we need to know far more about how best to support gender-diverse and transgender-identifying children and young people. Simply making it possible for young people to apply for a further certificate to reverse a GRC if they later regret their transition will not address the core problem, which is that the possibility of obtaining a GRC in adolescence is likely to exacerbate the pressures on gender non-conforming and trans-identifying young people to transition, and reduce the likelihood that they, and the adults working with and caring for them, will properly consider

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<sup>4</sup> I have written in more detail about schools and transgender-identifying children in Benjamin, S. (2020) **Sexuality, Sex and Gender: respect and recognition**. In Arshad, R., Wrigley, T. & Pratt, L. "Social Justice Re-Examined: dilemmas and solutions for the classroom teacher" Stoke-On-Trent: Trentham

<sup>5</sup> See the resources available on the Detransition Advocacy Network: <https://www.detransadv.com>

<sup>6</sup> <https://medium.com/@charlie.evans/the-medicalization-of-gender-non-conforming-children-and-the-vulnerability-of-lesbian-youth-10d4ac517e8e>

alternatives. Whilst transition may be the best eventual outcome for some, it should not be assumed that it will be the best outcome for all, and given the prevailing political climate, no additional steps that encourage young people in what may prove to be a mistaken belief about themselves should be taken.

**3. 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.**

Yes. There is slippage in the terminology of 'sex' and 'gender' as used in both pieces of legislation. It is important for the law to be unambiguous and readily understandable. It is therefore vital that, throughout both pieces of legislation, 'sex' is used unambiguously to refer to biological sex and to the consequences of being born male or female, and that 'gender' is used to refer to socially-constructed roles, characteristics and behaviours. Both pieces of legislation need to state clearly that a GRC does not change an individual's sex.

**4. Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and usable for service providers and service users? If not, is reform or further guidance needed?**

There is a growing body of evidence, across sectors, that provisions for single-sex and separate-sex spaces and facilities are poorly understood or misunderstood.

a) In its 2019 report on progress the UK Government is making towards meeting the recommendations of the CEDAW committee<sup>7</sup> the Women's Resource centre notes:

"It was perceived that there was a lack of awareness and/or correct understanding of the EA (2010) and the single-sex exemption across all levels, including amongst some Local Authorities, commissioners and other funding bodies, to large, medium and small organisations and service providers... Moreover, it was felt that this lack of awareness, understanding and adherence to the equality duty and the single-sex exemption, was further compounded by long-term austerity and cuts to public spending.

Furthermore, focus group discussions raised the issue of an increasing conflict between the sex-based rights of women and girls as a sex class, and the rights of members of the male sex who identify as women/girls. Whilst both the characteristics of 'sex' and 'gender reassignment' are protected characteristics under the EA (2010), it was reported that there was a conflict, in terms of the application and reinforcement of the single sex exemption and the inclusion of members of the opposite sex under 'gender reassignment'. It was felt that this conflict was creating increasing tensions and divisiveness within the voluntary and women's sector...

In addition it was considered that this conflict had been further exacerbated and confused by the conflation of 'sex' and 'gender', at national and local government, institutional and organisational levels.

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<sup>7</sup> Women's Resource Centre (2019) Are the Equality Act (2010) and CEDAW working for the women's voluntary and community sector in England? <https://www.wrc.org.uk/Handlers/Download.ashx?IDMF=d059f31c-78e5-45df-9e3e-7a59f869b19a>

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Furthermore, it was reported that debate and discussion on issues concerned with the conflict between the protected characteristics of sex and gender reassignment and the impact of single-sex exemptions on services, provisions and roles for women and girls, was being closed down at institutional, organisational, community, group and personal levels, via a number of mechanisms, including fear of loss of employment, reputation and relationships, and activism.

b) Many institutions and organisations have adopted 'trans inclusive' policies which demonstrate disregard for the single-sex exemptions in scenarios where people (and especially women) might reasonably expect them to be upheld. One such organisation is the Youth Hostels Association (YHA) which states<sup>8</sup>: "Transgender guests are welcome to stay in the dormitory which corresponds with the gender with which they identify". Later in their policy they nod to the single-sex exemptions:

"We acknowledge the exemptions in the Equality Act 2010 which relate to communal accommodation and single sex services; specifically, sleeping facilities. These exemptions allow for the provision of different services to transgender guests in certain circumstances, so long as it is a proportionate means of achieving a legitimate aim.

In certain circumstances we may choose to invoke these exemptions; however, this is not as a rule. In such situations we would work with all parties to provide a solution while still ensuring everyone has access to our services."

In other words, the YHA is failing to properly apply the single-sex exemption. I am a (now formerly) keen youth hosteller, and I am aware of the following implications of the YHA policy for women:

- i) Where women might reasonably expect that dormitory accommodation be provided on a single-sex basis (as set out in the Equality Act), that expectation no longer applies in respect of the YHA.
- ii) It is impossible for women to know whether a visibly male-bodied person in a women's dormitory is a harmless transgender woman who simply wishes to get a good night's sleep, or a predatory man.
- iii) It is impossible for women to know, in advance, whether they will be required to share a dormitory with a visibly male-bodied person.
- iv) Even where women's safety may not be at risk from a visibly male-bodied transwoman in a shared dormitory, some women will feel uncomfortable. These feelings of discomfort should not lightly be dismissed, or viewed as bigotry. Women are socialised from a young age to be vigilant in relation to boundaries, and should not be placed in a situation where those boundaries have to be disregarded to protect the feelings of a transwoman.
- v) Women who are survivors of male violence, especially sexual violence, are typically hyper-vigilant in the presence of a visibly male person in a space in which they are

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<sup>8</sup> YHA Transgender Guest Equality Policy

[https://www.yha.org.uk/sites/default/files/uploads/Policies/Transgender%20Guest%20Equality%20Policy%20V3%20\(OLV%20\).pdf](https://www.yha.org.uk/sites/default/files/uploads/Policies/Transgender%20Guest%20Equality%20Policy%20V3%20(OLV%20).pdf)

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vulnerable. Such women should not have to explain their situation and background to an untrained receptionist or similar, or be required to justify their need for single-sex dormitory accommodation.

vi) Women have felt unable to complain about a visibly male-bodied person in their YHA dormitory for fear of being labelled transphobic.

vii) Some women (and I include myself) have stopped using YHA hostels: we cannot know in advance whether single-sex accommodation will be available so have to assume that it will not, and we do not want to be in the situation of having any concerns we might raise dismissed as bigotry.

It is impossible to provide documented evidence of the effect of the YHA's failure to properly implement the single-sex exemption because women do not speak up; some simply vote with their feet. The same is likely to be true of the many institutions and organisations who have similarly failed. The onus for evidence should be on the provider to show that the single-sex exemption is *not* needed in those situations where women might reasonably expect it to be observed.

c) It is important for service providers to ensure the safety, privacy and comfort of all service users, including women and transgender people. Where there are conflicts or potential conflicts these must be addressed sensitively, including through the provision of third spaces where there is need for protection of both groups. Allowing the protected characteristic of gender reassignment to override the protected characteristic of sex is not an acceptable solution.

To that effect, there needs to be clear and workable guidance, with detailed examples, to clarify how the single-sex exemptions should work. This guidance should clarify that a GRC does not change a person's sex, and that the exemptions are made on the basis of sex. It should clarify that, in most settings, single-sex exemptions work on a scenario-by-scenario basis, not person-by-person: taking the YHA example, it is invidious that a YHA worker could be put in the position of having to make assessments as to whether a particular male-bodied individual can be accommodated in a female dormitory, and could be put in the position of having to 'arbitrate' between a transwoman who has the right to sleep in a female dormitory and a woman abuse survivor who would be clinically re-traumatised by sharing a dormitory on that basis.

With so many organisations and institutions misunderstanding the basis on which single-sex and separate-sex spaces and facilities can be provided, clear guidance with illustrative examples is only a first step towards reversing what has become a trend. When such guidance becomes available it should be very widely publicised, and service providers encouraged or required (depending on sector) to review their provisions to ensure they are properly applying the single-sex exemption.

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