

Qu1 Will the Government's proposed changes meet the aim of making the process "kinder and more straightforward"?

Whilst I welcome the proposed changes to cost of the application for gender recognition, in fact it will be of little benefit to the trans and non-binary (T/NB) community. I cannot see how a fee reduction could be considered kinder unless it is a reduction to a very nominal set amount, such as £30 or less.

However, though the current cost of application, is often complained about, in reality, costs would not be considered excessive by most but for:

- a. the lack of transparency around fees in the guidance to application documents, and
- b. the extra deterrence of the complex process of applying for remission of tribunal fees.

The Tribunals move to a remission of fees (RoF) process for those on a low income means applicants cannot discover, in advance, the fee they will be required to pay for gender recognition. A person must be very numerate to determine any likely benefit from the RoF process. Many potential applicants will be on a low income, few are aware of the RoF process, or if they are, they discover an overly complex, intrusive and challenging process.

The 'off-line' RoF application form EX160 has recently been improved, but is still intrusive. The online application process appears even more complex because of the lack of 'in advance' guidance as to what information will be required of the applicant. Both application methods require far too much time and effort of anyone who is not living alone on universal credit, with no dependants and no savings. The effort is disproportionate for the for gender recognition applicant who will gain at most remission of £140, as opposed to those applying for remission of court fees of hundreds of pounds.

The announcement by the Minister that the process will become "kinder and more straightforward" was in itself, unkind. Kindness would have meant announcing the amount of reduced fee and a specific date. Instead applicants are left in abeyance, not knowing whether to apply or not. Like so many other intentions of this government, it is suspected that it could vanish or be u-turned.

Qu 2 Should a fee for obtaining a Gender Recognition Certificate be removed or retained? Are there other financial burdens on applicants that could be removed or retained?

I would prefer the fees to be removed. Retaining the fee for the gender recognition process might be reasonable but only if individuals were able to see in advance how much they are required to pay (see previous answer) and the cost was nominal, reasonable and fair.

Applicants will incur other costs during the gender recognition application process; for example; the costs of their formal change of name, the Gender Identity clinical experts diagnostic statement and their GP's medical report. Applicants whose birth registration was outside of the UK also pay further considerable costs to have records translated and notarised. These costs are on top of the considerable costs incurred during the gender reassignment process. For most trans people in the UK who wish to transition, a large part of any income they make will go on treatments which are not available on the NHS, or for which the NHS waiting list is just far too long.

Trans women will pay thousands of pounds for hair removal and trans men will pay our hundreds for chest binders, as neither are available through the NHS but are essential to ensure personal safety in public spaces. Many trans people will incur considerable travel costs to attend a clinic. Many are paying overseas pharmacies for hormone therapy for the first 12 to 24 months of their transition as waiting lists for assessment for cross-sex hormone are a year or more at most GI clinics. There will be a further 6 to 12 months after first appointment before their GP will receive a decision to provide hormone therapy. Waiting lists for gender reassignment surgical procedures are even longer, often many years, as the UK's NHS services have failed to invest in training sufficient surgeons to work in this field. Increasingly trans men who are paying thousands of pounds for chest reconstruction as the alternative wait for NHS treatment is 3 or 4 years.

The cost of applying for a core human right; recognition of one's gender identity adds insult to injury for most, even more so when a diagnostic statement of a non-existent mental illness is also required (see answer below). Trans people are already one of the most marginalised and disadvantaged groups in society. Prejudice and discrimination continue to make finding and retaining employment difficult. Promotion in employment is particularly difficult; people who are known to be trans or non-binary will discover there is concrete ceiling in almost all workplaces.

Qu3 Should the requirement for a diagnosis of Gender Dysphoria be removed?

There is no doubt in my mind that this must be removed. Understandings have evolved considerably since 2004. In 2011, The World Professional Association for Transgender Health (WPATH) stated in the Standards of Care that

Being transsexual, transgender, or gender nonconforming is a matter of diversity, not pathology.¹

In 2018, the World Health Organisation (WHO) recently removed the condition of gender dysphoria from the International Classification of Diseases ICD-11, in the process re-categorising 'being trans' now as the sexual health (rather than a mental health) disorder of gender incongruence. To retain the diagnostic requirement requires clinicians to engage in a complex lie, as they have to diagnose a condition that from 2022, due to the UK's membership of the WHO, can no longer exist in the UK's medical lexicon.

An increasing awareness of the voices of non-binary people, and of the ongoing prejudice and discrimination trans people experience was evidenced by the 2016 report on Transgender Equality of the House of Commons Women's and Equality Committee.² The report was particularly important in creating the momentum for the government to revisit the Gender Recognition Act 2004, with a view to simplifying the process to create a more inclusive, accessible law. The report acknowledged the diagnostic requirement was an intrusive, ham-fisted gatekeeping process. Since the WHO's decision in 2019, it has become even more outdated and fundamentally unjust. In October 2017 Theresa May said:

We've set out plans to reform the Gender Recognition Act, streamlining and de-medicalising the process for changing gender, because being trans is not an illness and it shouldn't be treated as such.³

¹ E. Coleman and others, 'Standards Of Care For The Health Of Transsexual, Transgender, And Gender-Nonconforming People, Version 7' (2012) 13 International Journal of Transgenderism

² House of Commons Women and Equalities Committee, 'Transgender Equality' (House of Commons 2016) <<https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>> accessed 12 February 2016.

³ Benjamin Butterworth, 'British Prime Minister Theresa May: 'Being Trans Is Not An Illness'' Pink News (2017) <<https://www.pinknews.co.uk/2017/10/19/british-prime-minister-theresa-may-being-trans-is-not-an-illness/>> accessed 5 January 2019.

Most trans people couldn't have agreed with her more – at least over that. The proposals were not far removed from the system that since 2015 had been working well in Ireland.⁴

Furthermore, it is clear from the experience of states including Ireland, Argentina, California, Columbia, Portugal, Denmark, Norway, Malta and Luxemburg that not requiring a diagnostic statement before affording legal gender recognition causes no harm, and instead provides an unquantifiably large set of benefits to a group of people who are otherwise excluded from many of the benefits that others take for granted.

Trans people do not lightly take the decisions to seek treatment, to transition, or to apply for gender recognition. They are more than aware of the economic and social penalties they will face. Evidencing their life in their acquired gender for a period of time (much shorter than the current two years) and making a statutory declaration of the intention that their transition will be permanent should be more than enough. The government can ensure the genuineness of a person's gender transition, and meet the concerns of the women who are worried that predatory men may take advantage of any system without a diagnostic requirement, then making a false application for gender recognition a crime with a significant penalty would be the appropriate response. Whilst reassuring women of the punishment of predatory men abusing the Act, it would not harm the trans applicants.

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

Yes. The two-year period was introduced in the Gender Recognition Act 2004 so as to ensure that those people who discovered transition was a mistake would not have advanced to obtaining gender recognition, and to make it almost impossible for journalists from tabloid outlets to forge the requirements. At the time, it was considered likely that journalists from outlets like the Daily Mail or the News of the World, who sold copy by attacking the lives of trans people, would have set out to destroy the Act's credibility. Fifteen years later, such attacks are still possible but less likely. However, the potential misbehaviour of journalists, or unlikely false application by predatory men, should not result in punishing innocent T/NB people.

⁴ Department for Employment Affairs and Social Protection, 'Review Of The Gender Recognition Act 2015 Report To The Minister For Employment Affairs And Social Protection' (Department for Employment Affairs and Social Protection 2018)
<<http://www.welfare.ie/en/downloads/GRA%20Review%20Report.pdf>> accessed 7 December 2018.

However, I do believe there should be a period of time, say 6 months, to allow trans individuals to concentrate on their transition and treatment decisions. Whilst less than two percent of trans and non-binary people will go on to regret their decision to transition, two percent of the now considerable numbers of people seeking medical support for their gender incongruence, and possible gender transition, would mean between 60 and 100 people making a mistake they may regret for a long time to come.

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

The statutory declarations are currently too complex for those people in pre-existing marriages. However, with amendment, I think the statutory declaration and appropriate proof of gender transition for a period of 3 to 6 months should be all that is required for a person to obtain legal gender recognition.

Qu 6 Does the spousal consent provision in the act need reforming? If it needs reforming or removal is anything else needed to protect any rights of the spouse or civil partner?

When a couple is in a legal relationship, consideration must be given to the rights of both parties. The spousal consent provision was a compromise arrangement to ensure the non T/NB party to a legal partnership or marriage will know of the intention to change the nature of that legal relationship. The use of the term spousal consent has damaged the understanding of the provision; a spouse is signing merely to acknowledge awareness of the application not to consent to the application.

I recognise that some spouses may refuse to sign, whilst others may use it to coerce their T/NB spouses into making unwanted agreements, for example changes to financial settlements or child access arrangements if separated. Whilst such behaviours are unacceptable, it would perhaps be easier on both parties if it was clarified in guidance that that spouses are not consenting to the gender reassignment or gender recognition, but merely acknowledging their awareness of the application and what it means for their legal partnership. There could also be created the provision as used in Scotland to make it possible to apply for exemption of the need for spousal signature if a spouse persistently refuses to acknowledge the gender recognition application.

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

Increasingly younger people are seeking to transition. It would greatly reduce complications for gender incongruent adolescents who are transitioning, if they are able to obtain gender recognition prior to moving from school to college, an apprenticeship or university. If young people can get married or form a civil partnership at the age of 16, then it would seem only appropriate they should be able to obtain a Gender Recognition certificate and birth certificate alongside a new driving licence and passport.

There needs to be an interim measure For young people under the age of 16 who have transitioned. At minimum this would acknowledge their intention to live permanently in their acquired gender, and facilitate recognition of that gender for some purposes in other areas of their lives, for example by their school, sports club, religious organisation, or other youth organisations such as the Scouts and Guides.

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

The impact of the changes proposed by the government would be minimal. The fee, per se, is not a problem. The fee, whilst irritating because trans people are merely asserting their human rights, only became a real problem when the new remission of fees process created a complete lack of transparency in the fee to be paid.

But what is proposed – to be kinder – has no meaning at all to the community. The tribunals service operating the gender recognition system have always been extremely helpful and kind to applicants, their service requires no improvement.

The proposals will not benefit those people who transition but have a non-binary gender identity as they will afford no recognition of their identities. They will not benefit those waiting a year or more for an initial appointment for a further year of assessment and diagnosis. They will not improve the position of those whose spouses refuse to sign the spousal acknowledgement. They will not help those trans men who have given birth and who find their children will be burdened with having a father who is their mother on their birth certificate for the remainder of their life. They will not help those who are having to pay for large parts of their gender reassignment

treatments themselves. They will not stop transphobic hate crime, nor the vicious attacks undermining our identities by those claiming to be gender critical feminists.

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

The proposals should have included, as a minimum:

- the removal from the Gender Recognition Act 2004 of the requirement for a medical diagnosis of any sort for legal gender recognition, but especially gender dysphoria as it is no longer acknowledged as a valid condition by the medical community.,
- the removal from the Gender Recognition Act 2004 of the requirement for a person applying for gender recognition to not have an intersex condition,
- the reduction of the requirement for living in the acquired gender from two years to 6 months, inclusive of a period of 3 months for reflection after acknowledgment of a person's gender recognition application.
- the reduction of the application fee for gender recognition to a nominal amount, or zero,
- the changing the format of the gender recognition application's statutory declaration so that what is being asked of the applicant for gender recognition is clearer,
- the changing the format of the statutory declaration for spousal acknowledgment, so spouses are aware that they are merely acknowledging service, not consenting to treatment or legal gender recognition,
- the creation of a statutory criminal offence of making a dishonest or fraudulent application for gender recognition.

The government should have also announced a commitment to developing a mechanism for recognition of the gender identities of those with a non-binary gender identity, whether they undergo transition or not, Finally, the government should have confirmed its belief that T/NB people do not have a gender identity that amounts to a mental health disorder, and that they do have gender identities which are valid, and which will be recognised as such by all branches of government.

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

The Scottish Government proposals are a huge improvement on the current Act but could go further. I agree with the removal of the requirement for a medical diagnosis of gender dysphoria and the reduction in age for the granting of gender recognition to 16. I also welcome the proposals for a reduction in the period of living in the acquired gender from 2 years to 3 months with a reflection period of 3 months, and feel it reaches a sensible and cautionary period of time.

There are still areas of considerable concern which are overlooked, for example the need to afford recognition of non-binary or non-gendered identities, the need to remove the exclusion of people with an intersex condition,

Qu11 Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

Trans people tend not apply for legal gender recognition until they need it; for example for their state pension claim, to get married or form a civil partnership, to become an adoptive step-parent of the children of their partner, or to become the parent of children born to a partner using fertility treatment.

There are myths that the application process is too complex, expensive and intrusive, or that spouses will not sign the spousal consent form. These myths have risen in the failure of government to explain the ease of application for most people, to properly outline costs, and to clarify exactly what documentation is needed by the Gender Recognition panel to demonstrate two years of living in the acquired gender. Potential applicants feel defeated before they start, they worry as to whether they will be able to complete the form, they will be concerned about costs, and they are frightened that they will not obtain the diagnosis of gender dysphoria. It is clear to me that many in the community are struggling in low paid jobs, in multi-occupancy accommodation where the privacy of their post may be compromised, and few have home computers. I have watched young adults attempting to complete the application forms using a smart phone – which is nigh on impossible.

Furthermore by the time a person has reached an NHS clinic for assessment and diagnosis, most have already been living in their acquired gender role for 3 or 4 years, and they have discovered

that a passport or driving licence, a bank statement and utility bills are all that are required to prove one's identity in almost all circumstances, other than those outlined above.

Qu12 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.

The lack of coherent language and terminology is a potential problem. The Gender Recognition Act 2004 refers to gender and acquired gender identity and the medical term, gender dysphoria. The Equality Act 2010 refers to gender reassignment and used the medical terminology of transsexual people, despite in the guidance making it clear that gender reassignment is a social and not a medical process. This lack of consistency has led to problems with the community often not sure if or when they can apply for gender recognition, and uncertain as to if and when they fall under the protected characteristic of gender reassignment.

The Gender Recognition Act 2004 needs to have the diagnostic requirement removed, and the Equality Act 2010 needs to have the term transsexual removed. These, if accompanied by using the term gender identity, rather than gender reassignment in the Equality Act 2010 would reduce much of the misunderstandings that exist, and would facilitate non-binary people to know they are accommodated by the Equality Act 2010.

Qu13 Are the provisions in the Equality Act for the provision of single sex and separate spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?

I personally think the exemptions under the Equality Act 2010 have worked well, as they make the providers of single sex services properly address whether excluding a trans person would be a legitimate and proportionate response. In practice, many women-only organisations deal with this issue sensitively and have been inclusive of trans people in almost all circumstances, having found that exclusion would be disproportionate.

However, I recognise that there is an important lack of clarity as to whether a person with a Gender Recognition certificate can or cannot be excluded, from a single sex service. Clearly I believe that gender recognition should afford as per the words of the Act, recognition for all legal purposes. I believe the notion that a person with a Gender Recognition certificate could be

excluded from an appropriately 'gendered' single sex service a legal abhorrence which runs counter to the provisions of the European Convention on Human Rights, the Human Rights Act 1998, and the Gender Recognition Act 2004. There is a need for important clarification on this point.

Qu14 Does the Equality Act adequately protect trans people? If not what reforms, if any are required?

The Equality Act 2010 has been inadequate since its inception. The narrow, protected characteristic of 'gender reassignment' should be replaced with the wider characteristic of 'gender identity'. Definition could be used to ensure that where protection is provided, it is to those people with a gender identity which is different from the gender identity expected of someone of their natal sex. This would ensure protection to those people with non-binary gender identities.

The Act would also protect children or adolescents without requiring them to choose to move towards having gender reassignment at a stage where their identities are still flexible and forming. The Act will be in line with the international human rights, equality and diversity statements, recommendations etc. of the UN, the Yogyakarta Principles, and the Council of Europe,.

Qu15 What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services.

As to domestic violence and sexual violence services I personally think the exemptions under the Equality Act 2010 for single sex services have worked well, as they make the providers take the time to properly address whether excluding a particular trans person would be a legitimate and proportionate response. In practice, many women-only organisations deal with this issue sensitively and have been inclusive of trans people in almost all circumstances, having found service users willing to have the service afforded to all who need it, and that exclusion would therefore be disproportionate.

Between 2005 and 2017 I saw an inexorable, but crippling slow improvement in the responses of health services to trans people. NHS organisations now at least acknowledge I have something of a right to privacy as a patient. Yet, despite being able, educated, a professional, and articulate I

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am still regularly refused appropriate healthcare because I am trans. In 2002, I was diagnosed as having a life-long disabling illness only after being sent for a brain and spine scan by a new house officer. I had been seeking help for symptoms for almost 20 years. My partner and I were constantly waiting for the day when I might feel well. When I commented to the consultant that an earlier scan might have enabled treatment to prevent the progression of the condition, he told me that I had had many previous scans. I think I might have remembered them.

In 2016, I finally had surgery on a shoulder I had broken forty years earlier. I was repeatedly told it was healed and I just had a frozen shoulder. It was a physiotherapist who finally x-rayed it, and then managed to get a surgeon to consider the matter. The more than two hours of (successful) surgery involved removing a slice of broken bone about to penetrate my skin, 3 screws, 4 tubes of superglue and 78 stitches. The surgeon was stunned to hear that I had worked full time often in manual jobs throughout that time. In December 2019 after three years of asking, I received treatment for a condition which was likely to lead to early retirement. The treatment was extremely effective. I asked the new, young, GP why she was the first of a long line of clinicians to be willing to provide treatment. She reviewed my notes and then answered that she hadn't assumed my well documented health problems were psychosomatic, as others had. I wasn't surprised to hear this. As I said I am articulate and able, I cannot imagine how other trans people cope. More recently I have paid privately to have carpal tunnel surgery on both of my hands as I was told the NHS no longer provided it, and I did not wish to take ill health retirement.

I have considerable concerns about the gender incongruent adolescents who are placed in secure mental health services, often hundreds of miles away from their home, because their untreated gender incongruence has resulted in self-harming or anorexic behaviours. Some of these young adults have been kept in these units for year after year, In all cases, I see (mostly male) nursing staff refusing to acknowledge the young person's chosen names or preferred pronouns. They are completely disempowered by a system which refuses to acknowledge their requests for their rights. If they respond in any way negatively, they discover themselves being given a more serious diagnosis long after the initial concerns have been resolved. In one case, a young trans person sectioned as a consequence of self-harming 'due to anxiety', was reassessed as having a bipolar disorder after they tried invoking their right to change their name. In a second case, long after commencing eating and gaining a normal weight, a young trans man's anorexia was newly diagnosed as schizophrenia after he had thrown his own mobile phone at a wall when a male

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staff nurse refused to use the name on his statutory declaration of name change. During the last 10 years, I have supported five of these young people to have their sections ended. But in two cases, as their family background was complex and dysfunctional, they were unable to leave their units for more than another year because of a shortage of safe accommodation. One was told by a doctor that he was so institutionalised he would never leave. Another was told he would be allowed to leave if stopped complaining and accepted staff using his 'proper' (as opposed to chosen) name for at least a week.

In the same fifteen years, I have seen little if any improvement in the response of social care services, partly I suspect because few social care organisations can afford to pay their staff well, and many staff are experiential learners who learn by doing rather than listening, watching or reading. As such they skim through online learning packages provided as diversity training by many employers, and until they have a trans colleague or a trans client to care for they will not think to address any potential questions. Yet, in the last 4 years, social care employers have been the employers in 8 out of 10 requests for help with employment discrimination that I have received. All of the social care providers sell themselves as being LGBT inclusive, but few have any awareness of what that might look like in practice. There are good reasons why trans people say they will commit suicide rather than end up in social care.

Qu16. Are legal reforms needed to better support the rights of gender fluid and non binary people? If so, how?

Yes. See the answer to question 14 above.

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