



House of Commons  
Women and Equalities  
Committee

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# Transgender Equality

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## First Report of Session 2015–16

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to the report*

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## The Women and Equalities Committee

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Government Equalities Office and associated public bodies.

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### Committee staff

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## Summary

Fairness and equality are basic British values. A litmus test for any society that upholds those values is how far it protects even the most marginalised groups. Britain has been among the countries going furthest in recognising lesbian, gay and bisexual rights, but we are still failing this test in respect of trans people, despite welcome progress.

High levels of transphobia are experienced by individuals on a daily basis (including in the provision of public services)—with serious results. About half of young trans people and a third of trans adults attempt suicide. The recent deaths in custody of two trans women, and the case of a trans woman who was placed in a men’s prison, are particularly stark illustrations of the issues.

The Gender Recognition Act 2004 was pioneering but is now dated. Its medicalised approach pathologises trans identities and runs contrary to the dignity and personal autonomy of applicants. The Government must update the Act, in line with the principle of gender self-declaration.

Trans people feel strongly that the provision on spousal consent under the Marriage (Same Sex Couples) Act 2013 gives spouses an effective “veto” on gender recognition. However, marriage is a legal contract between two consenting parties, the terms of which cannot be changed without the consent of both. We do, though, take very seriously the possibility that this provision may be used by spouses with malicious intent.

Protection for trans people under the Equality Act 2010 was a huge step forward. However, the terms “gender reassignment” and “transsexual” in the Act are outdated and misleading; and may not cover wider members of the trans community. The protected characteristic should be amended to that of “gender identity”.

The NHS is letting down trans people: it is failing in its legal duty under the Equality Act. Trans people encounter significant problems in using general NHS services, due to the attitude of some clinicians and other staff who lack knowledge and understanding—and in some cases are prejudiced. The NHS is failing to ensure zero tolerance of transphobic behaviour. GPs too often lack understanding and in some cases this leads to appropriate care not being provided. A root-and-branch review must be conducted, completed and published by the NHS.

We agree with the Chair of the NHS National Clinical Reference Group for Gender Identity Services that: “not treating people [for gender dysphoria] is not a neutral act—it will do harm.” We strongly welcome the trend towards depathologising trans identities. There is a clear and strong case that delaying treatment for young people risks more harm than providing it. We are also concerned that Gender Identity Services continue to be provided as part of mental-health services, giving the impression that trans identity is a disease or disorder of the mind.

There are serious concerns about treatment protocols in Gender Identity Services, particularly regarding “Real-Life Experience” prior to genital surgery. However, we are unconvinced by the argument that the NHS should simply grant on demand whatever treatment patients request.

It is also important to build trans people's confidence in the criminal justice system. We welcome the Government's willingness to strengthen hate-crime legislation. The existing provisions on aggravated offences and stirring up hatred should be extended to all protected characteristics. The Government's new hate-crime action plan must include mandatory training for police officers on transphobic hate crime; and the promotion of third-party reporting. The Government must also work with the courts to tackle the issue of trans people being "outed" inappropriately in court.

Across the board, government departments are struggling to support trans people effectively, with the 2011 *Advancing Transgender Equality* action plan remaining largely unimplemented. The Government must agree a new strategy which it can deliver with full cross-departmental support.

# 1 Introduction

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1. This report, our first, is concerned with equality issues affecting transgender (or “trans”)<sup>1</sup> people, an umbrella term describing a diverse minority group whose members often experience very stark inequality.

## Terminology

2. Each of us is at birth assigned a sex (male or female), based on our physical characteristics. Most people’s gender identity (the gender with which they associate themselves) and gender presentation (how they outwardly show their gender) will not differ from that typically associated with their assigned sex. Trans people, however, have a gender identity which differs from that of their (assigned) birth sex. Trans identities take a wide diversity of forms.<sup>2</sup>

3. Trans identity can be “non-binary” in character, located at a (fixed or variable) point along a continuum between male and female; or “non-gendered”, i.e. involving identification as neither male nor female. While issues relating to these particular trans identities do feature in this report, it was not possible within the scope of our inquiry to undertake an in-depth consideration of the position of all non-binary and non-gendered people. However, we note that increasing numbers of trans people do identify as non-binary or non-gendered and many of our recommendations will address some of the problems faced by people with these identities. But there is a need for Government policy to address their specific needs.

4. In addition, we are aware that intersex<sup>3</sup> people face a number of difficult equalities issues and that some members of this group identify as trans. However, the issues concerned are very distinctive and we decided it would not be possible to do justice to them in the context of an inquiry focused primarily on trans issues. We are aware that for those intersex people who undergo gender reassignment as adults much of what we comment on will be relevant. However, the Government should also consider how best to address the needs of intersex children and adults, including those who identify as transgender.

5. Many trans people change their gender presentation to bring it into alignment with their gender identity. This process is known as “transition”.<sup>4</sup> Transitioning may involve various types of medical treatment,<sup>5</sup> to bring a person’s physical characteristics more into conformity with their gender identity and presentation. The NHS uses a (mental-health)

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1 The term “gender variance” is also used (often in respect of children or adolescents) to refer to behaviour and interests that are outside what is considered “normal” for a person’s assigned (biological) sex. The abbreviation “trans\*” is sometimes adopted, to emphasise that the full spectrum of gender variant, gender non-conforming, gender diverse or gender atypical identities is being referred to.

2 A person who is assigned male at birth but identifies as female may be described as a “trans woman”, while someone who is assigned female at birth but identifies as male may be described as a “trans man”. The term “cisgender”—abbreviated as “cis”—is used in the trans community to refer to people who are not transgender.

3 Intersex people are born with ambiguous primary physical sexual characteristics. Until recently they would usually undergo genital surgery at a young age to given them characteristics which are clearly either male or female. Medical professionals are now more likely to advise waiting until the child is older and able to provide informed consent to surgery, because of the implications surgery can have on future health and function.

4 A trans person’s gender after transitioning is often referred to as their “acquired gender”, but the term “affirmed gender” is now preferred by many people.

5 This is usually referred to as “gender reassignment”, although trans people increasingly prefer the term “gender confirmation”.

diagnosis of “gender dysphoria”, which is defined as the experiencing of discomfort or distress because there is a mismatch between one’s biological sex and one’s gender identity. However, transitioning need not involve any form of medical intervention.

6. We are aware that trans people themselves refer to their diverse identities and experiences in many different ways and that use of some terms is contested. We have tried in this report to use terms which are generally accepted and in wide use within the trans community. We ask for understanding if we have not always got this right.

## Our inquiry

**7. Fairness and equality are basic British values. Parliament established this Committee to provide the opportunity for on-going focused scrutiny of where fairness and equality are not yet a reality of day-to-day life. A litmus test for any society that upholds the principles of fairness and equality is the extent to which it supports and protects the rights and interests of every citizen, even the most marginalised groups. Whilst Britain has been among the countries that have gone furthest in recognising lesbian, gay and bisexual rights, our society is still failing this test in respect of trans people, despite welcome progress in recent years.**

8. It is telling that there is a lack of good quality statistical data regarding trans people in the UK. Current estimates indicate that some 650,000 people are “likely to be gender incongruent to some degree”.<sup>6</sup>

9. Trans people have long endured high levels of prejudice (referred to as “transphobia”) and misunderstanding. This is manifested in numerous forms, including discrimination in a wide range of settings (including public services), hostile portrayal in the media, abuse and violence (including, in some cases, sexual assault and murder). This can undermine trans people’s career opportunities, incomes, living standards, access to social capital, quality of life, and physical and mental health. It is a sobering and distressing fact that in UK surveys of trans people about half of young people<sup>7</sup> and a third of adults<sup>8</sup> report that they have attempted suicide. During the course of our inquiry, the deaths in custody of two trans women, and the case of a trans woman who was placed in a men’s prison, illustrated with particular starkness the issues we were considering.

10. At the same time, there appears to be gathering momentum for change to bring about greater equality for trans people. Issues affecting the trans community are now more widely debated than in the past; and there are growing voices in support of changing how trans people are viewed, portrayed and treated by society.

11. It was with this background in mind that we decided soon after the election of the Committee to conduct an inquiry into trans equality as our first piece of work. Before commencing the inquiry, we consulted informally with representatives of two key stakeholder organisations, Press for Change and Stonewall.

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6 Terry Reed (TRA 019); Gender Identity Research and Education Service (TRA 058). In May 2009 the Office for National Statistics published a *Trans Data Position Paper* which noted the lack of robust data, methodological issues associated with seeking such data and the need for “those more closely associated with the trans community” to explore “alternative measures” of the number of trans people.

7 “Nearly half of young transgender people have attempted suicide – UK survey”, *Guardian*, 19 November 2015

8 Gender Identity Research and Education Service, *Trans Mental Health Study 2012* (September 2012)



12. In our terms of reference (see Annex), agreed in July 2015, we decided to look at how far, and in what ways, trans people still have yet to achieve full equality; and how the outstanding issues can most effectively be addressed.

13. Our inquiry covered a wide range of policy areas, which are affected in different ways by the current devolution arrangements. We looked at health services, schools and social care in relation only to England, since these are devolved matters in the other countries of the UK. Our comments on the criminal justice system (courts, prisons and probation) relate to England and Wales only, these being devolved matters in Scotland and Northern Ireland. As we note in our chapter on gender recognition, this is affected by the different equal-marriage law which obtains in Scotland.

14. We received over 250 written evidence submissions. Many of these came from individual trans people who wanted to tell us about their own experiences; to them, we are especially grateful. Much of this information was highly personal and sensitive; in making decisions about the publication of evidence, we have been mindful of our duty of care towards people who have entrusted us with such information. We sought to ascertain in all cases the wishes of those who made submissions and we have tried to respect scrupulously all requests for confidentiality or the redaction of information.

15. During the course of the inquiry, we held five oral evidence sessions. Witnesses included: a panel of trans people speaking frankly about their own experiences (whom we thank particularly); organisations conducting representative and advocacy work within and for the trans community; service-providers, of various kinds; academic experts; and six ministers, from a range of government departments, including the Minister for Women and Equalities, Rt Hon Nicky Morgan MP.

16. We have also sought to engage with the wider trans community during the inquiry, through organisations representing trans people, the LGBT press and social media. Where members of the trans community brought issues to our attention during the course of the inquiry, we sought to take account of these in our deliberations.

17. It became apparent during the inquiry that there is a complex and extensive hierarchy of issues that need to be addressed. We have attempted to reflect in this report the relative urgency and importance of these issues, as articulated by the trans community. Of necessity, that has meant that some of the issues raised in the course of this inquiry have not been directly addressed (as well as some topics referred to in our terms of reference).<sup>9</sup> The Government will need, in its response, to demonstrate how it will ensure that a comprehensive plan is put in place to address all the issues raised.

18. We are very grateful to our Specialist Advisor, Stephen Whittle OBE, Professor of Equalities Law at Manchester Metropolitan University, for his help and guidance throughout the inquiry. We are also grateful to Claire McCann, of Cloisters Chambers, for giving us her expert legal opinion.

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<sup>9</sup> For instance, although we called for submissions on trans people in the Armed Forces, we only received two relevant submissions: Sarah Cooper ([TRA 037](#)); Caroline Paige ([TRA 151](#)).

## 2 Cross-government strategy

19. The Government Equalities Office (GEO) is responsible across government for equalities strategy and legislation, and takes the lead on transgender equality issues.<sup>10</sup> In December 2011 it published *Advancing transgender equality: a plan for action*,<sup>11</sup> following engagement with a significant number of trans organisations. In the *Plan*, government departments and other government bodies committed to a broad range of detailed actions, with target dates, which aimed to “improve the lives of transgender people and support businesses and public bodies so they have the right tools to support transgender people”.<sup>12</sup>

20. Stonewall told us that it had welcomed the *Plan*:

We believe that cross-government working is vital, particularly given that data and expertise on trans issues is limited and that key issues cut across different remits, particularly health, education and justice.<sup>13</sup>

21. However, witnesses also expressed concern that the plan remained largely unimplemented. Christie Elan-Cane told us that the *Plan* was, from per<sup>14</sup> point of view as a non-gendered person, “all plan and no action, because nothing resulted from it”.<sup>15</sup>

22. The Minister for Women and Equalities pointed out that a significant number of actions had been taken forward,<sup>16</sup> but acknowledged that:

There are some things that have not yet been done [...] these are issues that have not been widely discussed in society or in [the House of Commons]. I think it is fair to say that, just because there is an action plan, that does not mean there is change or cultural change or necessarily a dialogue. That is what we would very much like to see happening in this Parliament.<sup>17</sup>

23. The Equality and Human Rights Commission (EHRC)<sup>18</sup> emphasised the importance of “a single, strong and clear strategy to lever progress”.<sup>19</sup> Stonewall told us that “establishing a transparent mechanism for cross-government working, with a specific ‘trans equality’ remit, would provide a way to focus expertise and to consult with trans communities”.<sup>20</sup>

10 The GEO also leads on issues relating to women and sexual orientation. In relation to its remit in respect of trans equality, in November 2015 the GEO published (in association with Gendered Intelligence) [Providing services for transgender customers](#) and [The recruitment and retention of transgender staff](#).

11 HM Government, [Advancing transgender equality: a plan for action](#), December 2011

12 The areas covered by the *Plan* were: early years; education and social mobility; a fair and flexible labour market; opening up public services and empowering individuals and communities (health and social care, identity and privacy, civil society and the Public Sector Equality Duty); changing culture and attitudes; safety and support; equal civil marriage; and promoting rights internationally.

13 Stonewall ([TRA 243](#))

14 Christie Elan-Cane asked us to use the non-gendered pronoun “per”.

15 [Q182](#)

16 The Minister included the Government’s 2012 hate-crime action plan (see Chapter Six) when auditing progress made, arguing that of the 103 points in both plans, only 12 had not been started in any way.

17 [Q255](#)

18 The EHRC is a non-departmental public body, established under the Equality Act 2006, with responsibility for promoting and enforcing equality and non-discrimination laws in Great Britain. Its publications include [Provision of goods, facilities and services to trans people: Guidance for public authorities in meeting your equality duties and human rights obligations](#), February 2010.

19 Equality and Human Rights Commission ([TRA 078](#))

20 Stonewall ([TRA 243](#))

We also heard from various quarters the view that the UK government should adopt the overarching principles on trans equality embodied in two international declarations:<sup>21</sup>

- the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, adopted by the International Commission of Jurists in 2007;<sup>22</sup> and
- Resolution 2048: Discrimination against transgender people in Europe, adopted by the Parliamentary Assembly of the Council of Europe in April 2015.<sup>23</sup>

These set out an overarching framework for trans equality in law, based on the principle of a universal right for individuals to determine their own gender identity and to have this respected and recognised.

24. There are also certain areas where consistent, general policy lines could be drawn, for instance in relation to the recording of changes of name and trans identities. As we have already mentioned, there is scope for the Government to develop a coherent overall approach to the emerging issue of the position of non-binary and non-gendered people. One aspect of this might be a general “non-gendered” approach to the official recording of information on individuals (see Chapter Six). Another area where an overarching approach would be possible is the incorporation of trans issues into the regulation, education, training and continuing professional development of groups such as healthcare staff (see Chapter Five), prison staff, teachers and social workers (see Chapter Six).

25. The Minister for Women and Equalities told us that she saw her role as follows:

First, it is very much to come up with the priorities for the Government Equalities Office for this Parliament. I have already said, shortly after the election when I was reappointed, that issues for transgender people would be a part of that [...] It is also about holding other Government Departments’ feet to the fire [...] [I]t is about making sure that the Government Equalities Office’s expertise and that of those from outside is available to help other Government Departments develop the right policies.<sup>24</sup>

**26. The Minister for Women and Equalities and the Government Equalities Office have a cross-government role in respect of trans equality. The 2011 Advancing Transgender Equality action plan remains largely unimplemented. Within the next six months, the Government must agree a new strategy which it can deliver, with full cross-departmental support. It must also draw up a balance sheet of the previous transgender action plan, confirm those actions which have been completed and agree a new strategy to tackle those issues which remain unaddressed. This must be done within the next six months. It should set out clearly the areas of responsibility and lines of accountability in the public sector regarding trans equality issues. It should also include a wholesale review of issues facing non-binary and non-gendered people.**

21 [Qq135](#), [142](#), [155](#); National LGB&T Partnership ([TRA 077](#)); LGBT Consortium ([TRA 083](#)); UNISON ([TRA 116](#)); UK Trans Info [TRA 138](#); Centre for Law & Social Justice, University of Leeds, and Intersex UK ([TRA 167](#)); Scottish Transgender Alliance ([TRA 225](#))

22 “[The Yogyakarta Principles](#)”, accessed 2 December 2015

23 Parliamentary Assembly of the Council of Europe, “[Discrimination against transgender people in Europe](#)” accessed 2 December 2015

24 [Q256](#); cf. Government Equalities Office ([TRA 245](#))

***27. The Government must also make a clear commitment to abide by the Yogyakarta Principles and Resolution 2048 of the Parliamentary Assembly of the Council of Europe. This would provide trans equality policy with a clear set of overall guiding principles which are in keeping with current international best practice.***

28. In the rest of our report we address a range of specific policy areas relating to trans equality issues.

### 3 Gender Recognition Act 2004

29. The Gender Recognition Act (GRA) 2004, which came into force in April 2005, allowed, for the first time, trans people whose birth was registered in the UK<sup>25</sup> to have their acquired / affirmed<sup>26</sup> gender (either male or female) recorded on their birth certificate.<sup>27</sup> Under the Act, application may be made to the Gender Recognition Panel (GRP)<sup>28</sup> for gender recognition. If successful, the applicant will be issued with a Gender Recognition Certificate (GRC), which permits the holder to be recognised for all legal purposes (including marriage) as belonging to their acquired gender.<sup>29</sup>

30. When the GRA was drafted it was the first gender-recognition legislation in the world not to require individuals to have undergone surgical sterilisation prior to recognition in their acquired gender.<sup>30</sup> At the time, it was thus considered to be world-leading. However, we were told by witnesses that it was now “outdated” and “in need of significant revision”.<sup>31</sup> More recent gender-recognition legislation in several countries is widely regarded as providing a more enlightened model for the UK to follow.

31. In this chapter we review the key issues that have arisen in our inquiry in this respect. As we have already stated, the position of people with non-binary and non-gendered identities was beyond the scope of our inquiry, and in particular we note that the Gender Recognition Act makes no provision for this group. ***The Government must look into the need to create a legal category for those people with a gender identity outside that which is binary and the full implications of this.***

#### Providing proof

32. Under the current law, applicants for a GRC are required to prove that they:

- are aged over 18;
- have, or have had, a documented mental-health diagnosis of gender dysphoria (by producing a statement by a doctor—usually a psychiatrist or sexual-health specialist—or a psychologist on the GRP’s list of experts.);

25 Trans people whose birth was registered outside the UK can still use the provisions of the GRA to have their acquired gender recognised in the UK, where that acquired gender has been recognised in the relevant jurisdiction.

26 The Act itself only uses the term “acquired gender”.

27 The GRA was passed in response to a 2002 ruling by the European Court of Human Rights that the UK Government was in violation of Article 8 (regarding the right to privacy) and Article 12 (regarding the right to marriage) of the European Convention on Human Rights by not allowing trans people to change their gender in law. The Convention was incorporated into UK law through the Human Rights Act 1998.

28 The GRP is a branch of HM Courts and Tribunal Service under the presidency of a judge. It consists of an administrative team and a judicial panel, the latter being made up of legal and medical members. There is no provision for an applicant to appear in person before the judicial panel when it is considering their case.

29 Following the issue of a GRC, the record of the holder’s birth is effectively amended to reflect their acquired gender (if the person’s birth was registered in the UK). This is done by means of an entry in the Gender Recognition Register (which is maintained by the Registrars General for the different countries of the UK, separate from the registers of births). A certificate drawn from this Register is indistinguishable from any other birth certificate. As at the end of June 2015, since the GRA came into force (in April 2005): 4,631 GRC applications had been received; 3,999 full GRCs had been issued; 183 interim GRCs had been issued (67% of which have been converted to full GRCs); 193 applications had been declined; and 110 applications had been received which were still pending – Gires, “[Gender Recognition Panel](#)”, accessed 4 January 2016; Ministry of Justice, [Tribunals and Gender Recognition Certificate Statistics Quarterly, April to June 2015](#), September 2015.

30 As at 2015, 12 countries in the European Union still require sterilisation as a precondition of legal gender recognition.

31 [Q132](#); Michael Toze ([TRA 001](#)); Charlie Attenborough ([TRA 068](#)); Peyton Knight ([TRA 128](#)); UK Trans Info ([TRA 138](#))

- are not married (unless their spouse has given consent to changing the marriage from different-sex to same-sex or *vice versa*, as appropriate);
- are not in a civil partnership;
- have lived fully for the last two years in their acquired gender (by producing a selection of items of documentary evidence showing change of name and gender, such as a passport, rent book, wages slip or benefits documentation); and
- intend to live permanently in their acquired gender.<sup>32</sup>

33. The current process of applying for a GRC was described to us as “bureaucratic”, “expensive” and “humiliating”. Witnesses told us that it required the collection and submission of substantial quantities of evidence of a type which ought to have no bearing on the granting of gender recognition.<sup>33</sup>

34. The Government has justified the £140 fee for GRC applications on the grounds that: charging for a range of official services is normal; the fee helps to cover the administrative cost of the service; and that a large proportion of applicants are exempt from paying.<sup>34</sup>

35. Although the Act makes no requirement for medical treatment to have taken place, such treatment will be accepted as part of the supporting evidence for a GRC application. It can be proved by means of a letter from the applicant’s GP giving details of treatment. Where no evidence of treatment is provided, the Panel may ask for evidence regarding why treatment has not been commenced.

36. The requirement to provide documentation regarding a diagnosis of gender dysphoria was particularly contentious. Mr Dunne noted that “the continued ‘pathologisation’ of transgender identities [i.e. treating them as a disease or disorder] through the 2004 Act causes significant offence and distress”.<sup>35</sup>

37. James Morton, of the Scottish Transgender Alliance, explained how distressing the Panel’s approach can be for applicants. His organisation had supported:

a number of trans people who have been really traumatised and humiliated by the process where they have [had to say whether they have] undergone various medical treatments. The Act says you should be able to access your gender recognition without necessarily having those, and yet the gender recognition panel has insisted on really intrusive levels of detail about the surgeries that people have undergone or their intentions for future surgery. We have had, for example, a young person in their early 20s who has not yet had any sexual relationships being forced to decide and state categorically whether or not they want genital surgery and being questioned over the fact that initially they wanted breast augmentation but then grew breasts through hormone treatment. Panels have been incredibly pedantic about any perceived inconsistencies in

32 The Act also provides for the recognition of an acquired gender which has already been recognised in a legal jurisdiction outside the UK.

33 Michael Toze ([TRA 001](#)); Adrienne Macartney ([TRA 046](#)); Anonymised ([TRA 055](#)); Zac Snape ([TRA 089](#)); National Union of Students ([TRA 187](#)); LGBT Liberal Democrats ([TRA 197](#)); Steph Farnham ([TRA 240](#))

34 [Q273](#)

35 Peter Dunne ([TRA 251](#))

the medical reports, which means that people end up extremely upset and feel really invalidated.<sup>36</sup>

38. The requirement for a minimum of two years living “in role” was also seen as arbitrary and unreasonable, and we were told that this caused problems with identity documents (given that this must be done before legal gender recognition has been granted).

39. In a series of countries, gender recognition now takes place on the basis of gender self-declaration by the applicant, without the onerous requirements that exist under the GRA. Mr Dunne explained this to us:

In the decade since the 2004 Act was first introduced [...] a seismic shift has occurred at the interface between gender identity advocacy and human rights law. Many transgender individuals now view “self-declaration” as the most appropriate vehicle through which the State can recognise preferred gender. In the United Kingdom, advocates support their claim to self-declaration by reference to recent reforms in the Netherlands, Argentina, Denmark, Malta, Columbia and Ireland. Moving away from the pathologisation of transgender identities, these jurisdictions (soon to be joined by Sweden, Norway and Belgium) have embraced a wholly non-medicalised model of legal gender recognition. [...] [T]he new Argentine, Danish, Maltese and Irish rules focus exclusively on an applicant’s self-identification.<sup>37</sup>

40. Mr Dunne further told us that “a model of self-declaration [...] really is now the gold standard” for the law on gender recognition in western European jurisdictions. He also drew to our attention the fact that the Council of Europe’s Resolution 2048 on Discrimination against transgender people in Europe calls on member states to “Develop quick, transparent and accessible procedures, based on self determination”.<sup>38</sup>

41. In July 2015, Ashley Reed initiated a petition on the UK Government and Parliament petitions website advocating that trans people should be able to define their own gender for the purposes of obtaining a GRC, along the lines of the Irish Gender Recognition Act 2015.<sup>39</sup> To date, this petition has been signed by more than 30,000 people. We invited Ashley to give evidence to us. She told us:

it is humiliating to have your gender assessed by someone else. You are the only person who can come to that realisation, not a panel. It is an outdated system. The current system just does not provide for what is the majority of trans people nowadays. In terms of expense, there is a £140 fee, which can be subsidised or paid for, but it is a system that puts a lot of people off applying. It certainly put me off applying, because I do not feel it necessary to have my gender looked at by a group of people.<sup>40</sup>

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36 [Q132](#)

37 Peter Dunne ([TRA 251](#))

38 [Q135](#)

39 Petitions, UK Government and Parliament, “[Allow transgender people to self-define their legal gender](#)”, accessed 2 December 2015

40 [Q132](#)

42. Ashley Reed's petition received a Government reply,<sup>41</sup> provided by the Ministry of Justice (MoJ). This gave no indication that the Government intends to change the GRA in any respect.

43. Caroline Dinenage MP, Parliamentary Under Secretary of State at the MoJ, appeared open to the idea of change when she appeared before us:

We were quite ground breaking internationally in introducing this form of legislation. Because of that, we had very little international basis for comparison when drawing this up [...] Since then, we have seen other countries around the world—most recently Ireland—come up with legislation that differs from ours [...] These are all really important experiences for us to learn from, to see how that works in countries like Ireland, Malta and Argentina, where [...] it is different. We are very much on a journey [...] and trying to learn from the best practice around the world, from those who did not start off with this legislation as early as we did but have now done things slightly differently based on the learned information they now have and based on the fact that in the last five years we have moved on such a long way in understanding trans issues.<sup>42</sup>

44. **While we recognise the importance of the Gender Recognition Act as pioneering legislation when it was passed, it is clear that the Act is now dated. The medicalised approach regarding mental-health diagnosis pathologises trans identities; as such, it runs contrary to the dignity and personal autonomy of applicants.**

45. *Within the current Parliament, the Government must bring forward proposals to update the Gender Recognition Act, in line with the principles of gender self-declaration that have been developed in other jurisdictions. In place of the present medicalised, quasi-judicial application process, an administrative process must be developed, centred on the wishes of the individual applicant, rather than on intensive analysis by doctors and lawyers.*

## Spousal consent

46. During the inquiry, we considered evidence and sought specialist legal advice regarding the issue of spousal consent. Since the passing of the Marriage (Same Sex Couples) Act 2013, marriage in the law of England and Wales takes the form of a contract between two people of different sexes or two people of the same sex. Therefore, the law as it currently stands requires both parties to agree to the status of a marriage being changed.

47. Consequently, where one party transitions, the non-trans party must give their consent to the change of marriage status before a full GRC can be issued. If such consent is withheld, the marriage must be dissolved by divorce or annulled<sup>43</sup> before a full GRC can be issued. In this circumstance, an interim GRC can be issued, on the basis of which either party to the marriage can apply to have it annulled.

48. Data from HM Courts and Tribunals Service show that 38 full GRCs were issued to married people between 10 December 2014 (when the spousal consent provision came

41 All petitions on the website which receive 10,000 signatures or more must receive a Government response.

42 [Q273](#)

43 Where divorce / dissolution occurs, the marriage is ended but its previous existence is still recognised in law. Where annulment occurs, the marriage is rendered null and void; hence it is treated in law as if it had never existed.



into effect) and the end of June 2015—ten up to the end of March 2015 and a further 28 during April to June 2015.<sup>44</sup>

49. Evidence demonstrated widespread hostility to the need for spousal consent (referred to as the “spousal veto”), which some trans people feel affects their human rights. A trustee of the Gender Identity Research and Education Service (GIREs) told us:

Trans people are the only group that can have their civil rights delayed by another [...] What is clear is that the effect of the veto is that the “feelings” of the non trans spouse are given more importance than the rights of the trans person to gain full civil participation. This is a clear indication that government considers trans people as less than equal.<sup>45</sup>

50. Dr Karl Rutledge pointed out that:

This clause gives partners of transgender people power over them that they do not have at any other stage of the process; for example, they cannot stop someone being prescribed hormone therapy or undergoing surgery.<sup>46</sup>

51. UK Trans Info told us that lack of consent “can delay gender recognition for years if the divorce is a difficult one, and delay it forever if the spouse is in a coma or otherwise unable to consent”.<sup>47</sup>

52. We further heard that the requirement for consent could lead to domestic abuse. RISE (which supports survivors of domestic violence in Brighton and Hove, and North Sussex) stated that:

The spousal veto is extremely concerning and potentially dangerous for trans people who are experiencing domestic abuse. It is known that abusers will commonly try and prevent a trans partner from transitioning, and trans people may experience honour-based violence in response to their wish to transition. Abusive partners will typically be highly controlling and have a sense of entitlement. The spousal veto gives abusive partners a tool to foster the sense that they have ownership and authority over their partner’s body and identity.<sup>48</sup>

53. We also heard from Galop (which undertakes casework and advocacy for trans people in London) that the consent provision:

can be dangerous for transgender people in abusive relationships [...] The level of power and control it gives someone over their transgender partner is very concerning. If their partner is abusive, they may use this legislation to further ridicule, deny, and disempower.<sup>49</sup>

54. Another view expressed in respect of the spousal-consent provision was that it is homophobic.<sup>50</sup> It should be noted that spousal consent applies to same-sex marriages

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44 Ministry of Justice ([TRA 272](#)); Government Equalities Office ([TRA 245](#))

45 Anonymised ([TRA 066](#))

46 Dr Karl Rutledge ([TRA 143](#))

47 UK Trans Info ([TRA 138](#))

48 RISE ([TRA 159](#))

49 Galop ([TRA 183](#))

50 Anonymised ([TRA 066](#))

where one partner transitions, just as it does to different-sex marriages. Moreover, consent from the non-trans partner is also required where a civil partnership is converted to a same-sex marriage and then to a different-sex marriage.

55. The GEO explained to us as follows the Government's position on the spousal consent provision:

[The requirement for consent] does not mean anyone will have a right to prevent their wife or husband obtaining a legal gender change; simply that they will be allowed to decide whether they want their marriage to continue before gender recognition is granted. 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 [...] The Ministry of Justice has committed to monitor issues arising from the spousal declaration of consent. Since the gender recognition provisions of the 2013 Act were only introduced in December 2014, there is not yet enough evidence to review the impact of these changes.<sup>51</sup>

56. The MoJ Minister Ms Dinenage also told us:

If we look at how this system works, nobody has the right to prevent their wife or husband from obtaining a legal gender change [...] This is a really careful balancing act between making sure we understand that any marriage contract is a contract between two people and a spouse's transition can fundamentally change their relationship. For some people, that will not make any difference. For some people, they married a person; they did not marry a man or a woman [...] For others, that might make a difference, particularly because the law allows the new marriage certificate to show the name of the trans spouse, so it is important that they have given their indication that they are happy for that to go ahead.<sup>52</sup>

57. Mr Dunne told us that, while he was in favour of changing the law in England and Wales regarding spousal consent:

I do not think the English system is open to challenge [...] I think the English law does stand up to review under the UK's obligations under the European Convention on Human Rights [ECHR]. I do not think there is an issue there.<sup>53</sup>

58. It was emphasised to us in evidence that the marriage law in Scotland is different and more easily accommodates the needs of married trans people who wish to have legal recognition of their acquired gender. Under the Marriage and Civil Partnership (Scotland) Act 2014, which came into force on 16 December 2014, a married trans person whose spouse does not consent to the granting of a full GRC is able to apply to a Sheriff Court for a full GRC, on the basis of an interim GRC, without divorce or annulment having taken place. The process of obtaining a full GRC is thus expedited. The spouse of a trans person is entitled to be notified of the issuing of a GRC and can initiate divorce proceedings on that basis. Data from HM Courts and Tribunals Service show that no full GRC has yet

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51 Government Equalities Office ([TRA 245](#))

52 [Q278](#)

53 [Q165](#)

been issued to an applicant in Scotland who has applied to a Sheriff Court having failed to secure spousal consent.<sup>54</sup>

59. Ms Dinenage did not rule out considering the Scottish approach to this issue: “I am not saying that we will not be listening to how things are done in Scotland and keeping that in mind”.<sup>55</sup>

60. The question does arise, given the nature of marriage as a legal contract, whether the Scottish law might be subject to challenge by the courts although Mr Morton, of the Scottish Transgender Alliance, told us that “there has been no sign of any legal challenge being considered by anyone”.<sup>56</sup>

61. **We are very aware of the widespread and strongly felt opposition within the trans community to the provision on spousal consent which was introduced by the Marriage (Same Sex Couples) Act 2013. We understand that trans people feel this gives their spouses an effective “veto” on the acquisition of a full Gender Recognition Certificate.**

62. **The nature of marriage (whether same-sex or different-sex) is that of a legal contract between two consenting parties, the terms of which cannot be changed without the consent of both parties. This means that in a marriage where one party transitions, the non-trans spouse does have a legal right to be consulted if it is proposed to change the terms of the marriage contract in consequence—and this right must also be given due weight.**

63. **We do take very seriously the evidence that we have heard regarding the scope that the spousal-consent provision gives for married trans people to be victimised by spouses with malicious intent. Where this occurs, it is, of course, deplorable and inexcusable. *The Government must ensure that it is informed about the extent of this and ways of addressing the problem.***

## Age limit

64. Under the GRA as it currently stands, the minimum age limit for GRC applications is 18.<sup>57</sup> We heard in evidence that there is growing support for the reduction of this lower age limit.<sup>58</sup> The Scottish Transgender Alliance told us that the current limit does not reflect the fact that many people now transition at younger ages. Younger trans people:

often experience significant difficulties with official student records and violations of their right to privacy due to the sex on their birth certificate not reflecting their gender identity. With growing social acceptance, the annual number of children and adolescents coming out as transgender has increased five-fold over four years. We estimate over one thousand transgender young people have now transitioned with the full support of their parents and now require access to legal gender recognition. We call for the GRA standard application route to be opened to 16- and 17-year-olds and a GRA youth

54 Ministry of Justice ([TRA 272](#))

55 [Q279](#)

56 [Q164](#)

57 Section 1, Gender Recognition Act 2004

58 [Qq143–4](#); Anonymised ([TRA 053](#)); Focus: The Identity Trust ([TRA 100](#)); LGBT Youth Scotland ([TRA 175](#)); Scottish Transgender Alliance ([TRA 225](#)); Peter Dunne ([TRA 251](#))

application route with the additional requirement of parental agreement to be created for those under 16 years.<sup>59</sup>

65. Mr Morton of the Alliance further explained:

In Scotland, people get married and make all kinds of important life decisions from 16 onwards<sup>60</sup> and, for under-16s, we believe that with parental support people should be able to take forward a change of their legal documents.<sup>61</sup>

66. Mr Dunne told us:

Recent evidence suggests that young individuals hold a stable gender identity from early childhood. Adolescents in the United Kingdom can consent to medical treatment in the United Kingdom from the age of 16 years. Through youth-focused services, such as London's Tavistock Clinic,<sup>62</sup> transgender adolescents are accessing appropriate, supervised healthcare pathways before the age of majority<sup>63</sup> and practitioners now understand how these interventions can substantially improve both mental and physical well-being. Transgender young persons are also engaging in earlier social transitions, developing important networks of peer-support and enjoying formative experiences in their preferred gender.<sup>64</sup>

67. Mr Dunne also summarised for us the trends in legislation in other countries:

Eighteen is, I think, the general standard, but [...] we have to look at what the reasoning was behind that. If you look at the recent jurisprudence, in Argentina there is no limit but there is a court procedure; in Malta there is an administrative procedure, which involves the parents; Sweden is going to move to a 15-and-over self-declaration, and for 12-to-15 it is going to be with parental consent; and in Norway a similar procedure, but from the age of seven, will exist. I would tend to agree, in terms of 16- and 17-year-olds, on self-declaration, and under that age parental consent.<sup>65</sup>

68. Mr Dunne explained that, in some jurisdictions, where parental consent was not forthcoming in respect of an application for gender recognition regarding a minor, “a court advocate” was provided. The advocate could “act almost in loco parentis”, appearing before the relevant authority to “provide an objective, professional account, which just means that parental support does not become an ultimate hurdle”.<sup>66</sup>

69. We received evidence from Focus: The Identity Trust advocating a more radical step, namely:

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59 Scottish Transgender Alliance ([TRA 225](#))

60 Scottish law allows a person to marry from the age of 16 without parental consent. In England, Wales and Northern Ireland, marriage between the ages of 16 and 18 requires parental consent.

61 [Q143](#)

62 The NHS Gender Identity Development Service. This service now provides cross-sex hormone treatment to adolescents from the age of 16 – see Chapter Five.

63 The “age of majority” refers to the point at which a child legally becomes an adult and thereby assumes full control over their own person, actions and decisions.

64 Peter Dunne ([TRA 251](#))

65 [Q144](#); cf. Peter Dunne ([TRA 251](#))

66 [Q144](#)

The right of Gender Non-conforming Children and Transgender and Intersex Adolescents [...] to have their true gender recognised and respected on the same basis of self-determination without regard to age restrictions based on the Gillick principle of informed consent[.]<sup>67</sup>

70. **Forsomeyoungpeoplethedecisionregardinggenderrecognitionisstraightforward; for some it is not. It is important that clear safeguards are in place to ensure that long-term decisions about gender recognition are made at an appropriate time. Subject to this caveat, a persuasive case has been made to us in favour of reducing the minimum age at which application can be made for gender recognition. We recommend that provision should be made to allow 16- and 17-year-olds, with appropriate support, to apply for gender recognition, on the basis of self-declaration.**

71. *We are very cautious about recommending gender recognition in respect of children aged under 16 (subject to parental consent or self-declaration on the basis of Gillick competence), and believe the Government should further consider the possible risks and benefits.*

## Data protection

### *Inappropriate requests to produce a Gender Recognition Certificate*

72. It was reported in evidence to us that various bodies and authorities make inappropriate requests for the production of a GRC. The LGBT Consortium told us:

there are instances where there is misuse of the Gender Recognition Act. Local Authorities, schools and employers for example request a Gender Recognition Certificate from trans individuals [...] in circumstances where the person either does not qualify (e.g. being under 18 for instance) or where for genuine reasons, the individual feels they cannot obtain a Gender Recognition Certificate.<sup>68</sup>

73. It is not unlawful under the GRA to ask a person to produce a GRC,<sup>69</sup> but it is in almost all circumstances unnecessary. There are very few situations in which it would be appropriate to ask for proof of legal gender (see Chapter Six).

74. In those circumstances where it is necessary to prove legal gender, it is inappropriate to request production of a GRC, as it is the new birth certificate (issued after the granting of a GRC) that provides evidence of a person's legally recognised gender. (A trans person whose birth was registered in the UK can actually destroy their GRC as soon as they receive it, if they wish.) The EHRC Statutory Code of Practice in respect of the Equality Act 2010 states:

Transsexual people should not be routinely asked to produce their Gender Recognition Certificate as evidence of their legal gender. Such a request would

67 Focus: The Identity Trust ([TRA 100](#)). In medical law, "Gillick competence" is a principle used to determine whether a child (aged under 16 years) has the ability to consent to his or her own medical treatment without parental permission or knowledge. It stems from a decision by the House of Lords in the case of *Gillick v West Norfolk and Wisbech Area Health Authority* (1985), which constitutes a binding legal precedent in England and Wales. Separate legislation applies in Northern Ireland, but the Lords' decision in the *Gillick* case is likely to be followed by the Northern Ireland Courts. In Scotland, similar provision exists under the Age of Legal Capacity (Scotland) Act 1991.

68 LGBT Consortium ([TRA 083](#))

69 It was suggested to us that it might be so in the context of the Equality Act 2010 – Jane Fae ([TRA 121](#))

compromise a transsexual person’s right to privacy. If a service provider requires proof of a person’s legal gender, then their (new) birth certificate should be sufficient confirmation.<sup>70</sup>

75. It may be necessary to produce a GRC in certain very rare instances in order to establish continuity with a former identity, for example:

- to claim an inheritance where a person is named in a will in their former identity; or
- where a person was not born in the UK, has been unable to obtain gender recognition in their birth-registration country and needs to demonstrate that they are the same person as that shown on their passport or visa, in order to demonstrate that they are able to work in the UK.

### **Section 22 of the Gender Recognition Act**

76. Section 22 of the GRA safeguards the privacy of people with GRCs by defining information in relation to the gender recognition process as “protected information” for the purposes of the Data Protection Act 1998. In this way the Act is intended to protect the privacy rights of trans people under Article 8 of the ECHR.<sup>71</sup>

77. Under the GRA, anyone who acquires information relating to a person’s gender history in an official capacity is breaking the law if they disclose it without the consent of the person concerned (the “data subject”)—except in certain specific circumstances. Exceptions are set out in Subsection 22(4) and have been expanded and clarified in secondary legislation.<sup>72</sup>

78. One such exemption relates to “the purposes of the social security system or a pension scheme”. National Insurance and tax records maintained by HM Revenue and Customs (HMRC), as well as benefit records kept by the Department for Work and Pensions (DWP), record changes in legal gender automatically on the issuing of a GRC. Information about customers’ original name and legal gender is retained for a period of 50 years and one day after the death of the customer.<sup>73</sup>

79. A particular area of concern relates to the provision in Section 22 which allows the disclosure of trans status in court. GIRES stated in evidence to us that:

Trans people are frequently “outed” in court situations to create, deliberately, a negative view of them, whether their trans history is relevant or not. The Gender Recognition Act s22(4)(e) has been misused to achieve this.

80. Sir James Munby (President of the Family Division of the High Court) has issued the following statement on this point in respect of family proceedings:

The facts of the individual cases in which the disclosure question will arise are likely to vary widely. In some instances it will be relevant to the issues to

70 Equality and Human Rights Commission, *Equality Act 2010 Code of Practice: Services, public functions and associations*, 2011, para 2.27

71 Gender Identity Research and Education Service, “[Gender Recognition Act 2004](#)”, accessed 2 December 2015

72 [The Gender Recognition \(Disclosure of Information\) \(England, Wales and Northern Ireland\) Order 2005](#) (SI 2005 No.635)

73 [The Queen \(on the application of C\) v Secretary of State for Work and Pensions \[2014\] EWHC 2403 \(Admin\)](#), July 2014. This issue is further discussed in Chapter Six.

know that an individual has a transgender history. In others it will be entirely irrelevant. Disclosure should not [be] permitted in those cases where it is unnecessary and irrelevant to the issues. There is a need for judges to be aware of and astute to the issues.<sup>74</sup>

81. There are also concerns that misunderstanding of the data protection aspects of the Act inhibits the collection of data on trans people for the legitimate purpose of monitoring inequalities. trans\*formation told us:

The Gender Recognition Act (2004) s22 has had the effect of discouraging companies from holding information related to a person as trans\*. This means many organizations will not, as policy, hold this information, they do not hold this information in their HR systems and do not ask for this information during employee surveys. This lack of information leads to a paucity of data. This allows organizations to ignore the issue.<sup>75</sup>

Collection of data for this purpose is in fact clearly permitted under the Act, provided that the data subject has given explicit consent or the data is anonymised.

82. Not a single prosecution has yet been brought for breach of Section 22. There is a six-month time limit (from the date the disclosure was made) on bringing a prosecution.<sup>76</sup> It is argued that trans people are frequently not aware of the unlawful disclosure having been made until towards the end of, or even after, this six-month period. Although the evidence of unlawful disclosure is generally straightforward, it is said that police officers often do not realise the seriousness of the offence for the victim and are reticent to pursue a prosecution.<sup>77</sup>

83. Sussex Police told us that they:

would welcome a consideration to the 6 month timeframe commencing from the point at which the “victim” first becomes aware of the disclosure/transgression. The current situation relies on the “victim” acquiring knowledge within a set time period, as opposed to making a decision based on already known information, meaning that if they found out about the disclosure 7 months later—this would be too late to raise a challenge.<sup>78</sup>

84. Mr Morton, of the Scottish Transgender Alliance, explained that there may also be problems discerning when disclosure actually entails a breach of Section 22:

What tends to happen in a service provision or employment is that the person in the official capacity sees that you have changed your name and gender on a document, like your employment records or your DWP file, but they do not necessarily know for sure whether you have a gender recognition certificate or not. Therefore, it is much less clear whether they have or have not violated the gender recognition act Section 22 if they reveal that data.

74 Gender Identity Research and Education Service ([TRA 058](#))

75 trans\*formation ([TRA 040](#))

76 Section 127 of the Magistrates’ Court Act 1980 states that for all summary offences (which includes offences under Section 22 of the GRA) the information for a prosecution must be laid before the court within six calendar months of the commission of the offence.

77 Press for Change, “[The Gender Recognition Act 2004 and s.22 Privacy](#)”

78 Sussex Police ([TRA 174](#))

He suggested a provision prohibiting the disclosure of any documented information regarding a person's change of gender.<sup>79</sup>

85. When we asked Ms Dinenage about this part of the Act, she told us:

Section 22 of the Gender Recognition Act defines any information relating to a person's application for a gender recognition certificate or to a successful applicant's gender history as protected information and therefore a trans person's gender history, regardless of whether they have a gender recognition certificate, can also constitute sensitive personal data as defined by the Data Protection Act 1998. There should be a massive onus on organisations, if requiring trans people to disclose their gender history in any way, to undertake measures to ensure that this information is protected, because there are fines of up to £5,000 for those who do not.<sup>80</sup>

86. As regards the lack of prosecutions under Section 22, Ms Dinenage responded:

I do not really have any evidence to suggest that the reason there have not been any successful prosecutions is because the legislation is not working, but, again, these are things that it is very difficult to get evidence on. If this Committee can produce anything like that, I would be very keen to have a look at it.<sup>81</sup>

**87. Evidence we received demonstrates abuse of confidential information about people's trans status, contrary to Section 22 of the Gender Recognition Act, which is intended to protect trans people against "outing". However, we note that not a single prosecution has yet been brought under this Section. There is a grave danger that this provision will become (if it has not already become) a "dead letter". *The Ministry of Justice must investigate why there have not been any prosecutions and take action to address this. It must also work with the courts to tackle the issue of trans people being inappropriately "outed" in court proceedings.***

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79 [Q150](#)

80 [Q275](#)

81 [Q277](#)



## 4 Equality Act 2010

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### Gender reassignment as a protected characteristic

88. The Equality Act 2010 for the first time gave trans people explicit protection in their own right (in Great Britain) against discrimination.<sup>82</sup> The UK thereby became one of a small group of countries to have passed such legislation. Protection for trans people was achieved by means of Section 7 of the Act, which refers to the “protected characteristic” of “gender reassignment”.<sup>83</sup> A person has this characteristic if he or she:

is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.

Such a person is referred to in the statute as a “transsexual person”.

89. Under the Act, discrimination against people covered by Section 7 can take the following forms:<sup>84</sup>

- indirect discrimination (where a rule, practice or procedure is applied to everyone, but disadvantages people who have the protected characteristic);<sup>85</sup> or
- direct discrimination on the grounds that a person:
  - has the protected characteristic; or
  - is perceived to have the protected characteristic (regardless of whether that perception is correct); or
  - is associated with someone who has the protected characteristic.<sup>86</sup>

The Act also provides those people covered by Section 7 with protection from harassment,<sup>87</sup> and victimisation.<sup>88</sup>

90. The inclusion of gender reassignment in the Act as a protected characteristic was widely welcomed and seen as having made an appreciable difference to the lives of trans people. James Morton, the Manager of the Scottish Transgender Alliance, told us:

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82 A landmark case in 1996 before the European Court of Justice (concerning employment discrimination) effectively extended the scope of legal provisions regarding sex discrimination so that discrimination in employment and vocational training on grounds of “gender reassignment” also became illegal. Subsequently, in 1999, secondary legislation extended the Sex Discrimination Act 1975 to cover discrimination on grounds of gender reassignment in employment and vocational training. Secondary legislation in 2008 which extended the law on gender discrimination to cover access to and supply of goods and services also effectively protected people with the characteristic of “gender reassignment”. The legal meaning of “gender reassignment” under these provisions included explicit reference to being under “medical supervision” as part of transition.

83 The use of this term in the Act follows its use in the 1996 ruling by the European Court of Justice.

84 Redress for such discrimination can be sought in a County Court (in England and Wales), Sheriff Court (in Scotland) or Employment Tribunal (Section 113, Equality Act 2010). The Act also creates a “general equality duty” (the Public Sector Equality Duty) for public-sector bodies in respect of all the protected characteristics (Section 149, Equality Act 2010). In addition, the enforcement powers vested in the EHRC can be used by the Commission in respect of discrimination under the Act.

85 Section 19, Equality Act 2010

86 Section 13, Equality Act 2010

87 Section 26, Equality Act 2010

88 Section 27, Equality Act 2010

pulling the trans protected characteristic out from underneath the sex discrimination protected characteristic was really, really helpful in the Equality Act. Although we would like the definition slightly tweaked, it has been really effective in terms of encouraging employers and also service providers to take into account the needs of trans people.<sup>89</sup>

91. Evidence, and legal opinion, that we received indicate that the protections are not universally seen as legally complete and many trans people still face discrimination in employment and in other aspects of their lives.

92. A major criticism was that, as regards trans equality, the Act is couched in terms that are seen as outdated and confusing, with its references to “gender reassignment” and “transsexual” persons.<sup>90</sup>

93. And there is a consequent, apparently widespread, misapprehension that the Act only provides protection to those trans people whose transition involves medical “gender-reassignment” treatment.<sup>91</sup> (Likewise, “transsexual”, being primarily a medical categorisation, can be seen as referring specifically to someone who intends to undergo, is undergoing or has undergone such a medical intervention.)

94. It also seems to be widely believed by employers and service providers (as well as some trans people) that the Act only protects trans people who have been granted a GRC.<sup>92</sup>

95. Our evidence also called into question the extent to which the Act protects people with broader kinds of trans identities, who may not be seeking, or may not have sought, gender reassignment, medical or otherwise.<sup>93</sup> We obtained a legal opinion on this point from expert barrister Claire McCann, who told us that people falling within such a broader definition of trans identity could have “no certainty” of being protected from discrimination.<sup>94</sup>

96. Ms McCann explained that when the Equality Bill was going through Parliament the then Solicitor General had clearly indicated that it was only the provision in respect of discrimination by perception which would protect those members of “the wider transgender community” who did not come under the protected characteristic of gender reassignment.<sup>95</sup> That is, they would only be protected if they were discriminated against because they were *perceived* to be proposing to undergo, to be undergoing or to have undergone gender reassignment. The difficulty with this provision is that there are likely to be cases where an individual from the wider trans community, is discriminated against

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89 [Q170](#)

90 Gender Identity Research and Education Service ([TRA 058](#)); Discrimination Law Association ([TRA 165](#))

91 Unpublished evidence (TRA 263). The Explanatory Notes for the Act make clear that the “process” referred to in Section 7 need not include medical treatment. The following example is given: “A person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully ‘passes’ as a man without the need for any medical intervention. He would have the protected characteristic of gender reassignment for the purposes of the Act” – [Equality Act 2010: Explanatory Notes](#), August 2010, para 43. The Act thus, while using the term “gender reassignment” (in line with the EU Equal Treatment Directive 2006/54/EC), in recognising the possibility of transition being just a social process gave it a broader legal meaning than had hitherto been the case, effectively removing the necessity of demonstrating that “medical supervision” is underway – Government Equalities Office ([TRA 245](#)).

92 Unpublished evidence (TRA 008); unpublished evidence (TRA 048). On GRCs, see Chapter Three.

93 Such as non-binary people, people who do not live full time in their preferred gender and gender-variant young people with a less well-developed or self-understood gender identity than that of an adult.

94 Claire McCann ([TRA 273](#)) para 49

95 Claire McCann ([TRA 273](#)) para 10. See Equality Bill Committee, 16 June 2009, [col 205](#).

*because of who they are* and not because they are perceived to be transsexual. Mr Morton gave us an example: “if they have come out as non-binary, they are being perceived as non-binary, not as transsexual”.<sup>96</sup>

97. In its response to the online petition on gender self-declaration (see Chapter Three) the MoJ said:

The Equality Act 2010 protects people from discrimination if it arises from their being perceived as either male or female. We recognise that a very small number of people consider themselves to be of neither gender. We are not aware that that results in any specific detriment [...]<sup>97</sup>

98. This statement, which reflects policy that has been current since the Coalition government was in office,<sup>98</sup> was very distressing to many non-binary people, who felt that it did not reflect the reality of their day-to-day experience. Mr Morton told us:

We are aware that the Ministry of Justice said there is no specific detriment faced by non-binary people. In our survey of 895 non binary people in the UK, within the last five years, 11% said they had been refused services and one third had experienced harassment in services. In employment within the last five years, one fifth had experienced workplace harassment and 95% were worried about disclosing themselves as non-binary in the workplace and being discriminated against if they came out.<sup>99</sup>

99. Ms Dinenage responded to these criticisms as follows:

This was probably a very regrettable example of MoJ officials trying to answer a petition factually and swiftly without really being necessarily as aware of things like understanding and tone as they should be. What they said was that they felt that there was no specific detriment experienced by people who identify as non-binary. What they meant to say was that there is no specific detriment experienced by people who identify as non-binary that is not already covered by existing legislation [...]

100. The Minister indicated non-binary people were protected under the discrimination-by-perception provisions of the Equality Act<sup>100</sup> and “They may also be protected by other forms of laws, such as employment legislation and hate crime and human rights laws”.<sup>101</sup>

101. Terry Reed, of GIRES, told us that the GEO believed a legal test case was necessary in order to verify the application of the Act in this respect.<sup>102</sup> Peter Dunne, who is conducting doctoral research on gender-identity law, spoke to us about the lack of relevant case law in this respect. He explained that people might be reluctant to initiate test cases for fear

96 [Q142](#)

97 Petitions, UK Government and Parliament, “[Allow transgender people to self-define their legal gender](#)”, accessed 2 December 2015

98 See, for instance, HC Deb, 30 January 2014, [col 1003](#) [Commons Chamber].

99 [Q171](#)

100 It is noteworthy that the form of words used in the MoJ’s response to Ashley Reed’s petition actually appear to indicate that non-binary people are effectively protected under the discrimination-by-perception provisions as they relate to *gender discrimination* (“The Equality Act 2010 protects people from discrimination if it arises from their being perceived as either male or female”).

101 [Q259](#)

102 Terry Reed ([TRA 019](#)); cf. Gender Identity Research and Education Service ([TRA 058](#))

that they would lose: “Ambiguity is sometimes better than having a bad precedent”.<sup>103</sup> Mr Morton added that it was very difficult to persuade people to pursue test cases:

It is incredibly emotionally demanding. You would be scrutinised by the press; your identity may well end up mocked. You do not have a guarantee that there would be reporting restrictions [...]

In addition, undertaking a test case would entail a huge sacrifice of time: “we cannot make someone give up years of their life to that process”.<sup>104</sup>

102. Many witnesses proposed that, rather than relying on a test case, the Government should instead amend the Equality Act to replace the “gender reassignment” characteristic with a broader definition. The EHRC told us that:

a broader definition of who is protected from transgender discrimination would provide more clarity and certainty for those with responsibilities and rights under the Act.<sup>105</sup>

103. Several witnesses proposed that the protected characteristic in Section 7 of the Equality Act should be changed to “gender identity”—as defined in the Yogyakarta Principles:<sup>106</sup>

each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.<sup>107</sup>

We were told that this would also be in accordance with Council of Europe Resolution 2048.<sup>108</sup>

104. We took detailed advice from Ms McCann on how best to amend the Act. She told us:

Clearly, in my view, the addition of “gender identity”—if defined as referring to each person’s internal and individual experience of gender, which may or may not correspond with the sex assigned at birth—will widen the protected characteristic within s.7 of [the Equality Act] to include elements of the “transgender” community more widely.<sup>109</sup>

105. When we asked the Minister for Women and Equalities about the application, and possible revision of, Section 7, she indicated her willingness to reconsider the wording of the Act, if a case for change were made:

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<sup>103</sup> [Q141](#)

<sup>104</sup> [Q142](#)

<sup>105</sup> Equality and Human Rights Commission ([TRA 078](#))

<sup>106</sup> [Q142](#); UNISON ([TRA 116](#)); UK Trans Info ([TRA 138](#)); Scottish Transgender Alliance ([TRA 225](#))

<sup>107</sup> Scottish Transgender Alliance ([TRA 225](#))

<sup>108</sup> Scottish Transgender Alliance ([TRA 225](#))

<sup>109</sup> Claire McCann ([TRA 273](#)) para 51. Ms McCann added that further amendments might also be needed to cover groups such as intersex people and cross-dressers, i.e. people whose gender identity is not variant but who express gender in ways that do not conform to conventional male and female forms of gender expression. However, these groups fall outside of the category of trans people as we defined it for the purposes of our inquiry.

The Act is only five years old and [...] the world moves on very swiftly [...] The issues of non-binary certainly, as I understand it, were discussed when the Act was debated in both Houses of Parliament and Parliament decided to go with the wording that was put forward by the then Government. I also understand that some of that relates to the Equal Treatment Directive<sup>110</sup> and its implementation. What is in the Act does reflect that, but, again, life clearly does move on apace.<sup>111</sup>

106. Another issue raised with us was the current inability of the EHRC to pursue a complaint by a person aged under 18 without their parents' consent (see Chapter Six).<sup>112</sup>

**107. The inclusion of “gender reassignment” as a protected characteristic in the Equality Act 2010 was a huge step forward and has clearly improved the position of trans people. However, it is clear to us that the use of the terms “gender reassignment” and “transsexual” in the Act is outdated and misleading; and may not cover wider members of the trans community.**

*108. The protected characteristic in respect of trans people under the Equality Act should be amended to that of “gender identity”. This would improve the law by bringing the language in the Act up to date, making it compliant with Council of Europe Resolution 2048; and make it significantly clearer that protection is afforded to anyone who might experience discrimination because of their gender identity.*

**109. The protections afforded by the Equality Act 2010 are intended to be available to all, including children and adolescents. The Equality and Human Rights Commission must be able to investigate complaints of discrimination raised by children and adolescents without the requirement to have their parents' consent.**

## Exemptions in respect of trans people

### *Separate-sex and single-sex services*

110. The Equality Act 2010 allows for the provision of separate-sex<sup>113</sup> and single-sex services<sup>114</sup> where this is “a proportionate means of achieving a legitimate aim” (a form of words intended to require the application of an objective standard of justification). The Act also effectively permits service providers not to allow a trans person to access separate-sex or single-sex services—on a case-by-case basis, where exclusion is “a proportionate means of achieving a legitimate aim”.<sup>115</sup>

111. We heard a range of views on this difficult and sensitive issue. Some voices were raised in support of the law as it stands. Women Analysing Policy on Women told us:

There are situations such as women-only domestic and sexual violence services where vulnerable women surviving in crisis find it very difficult to feel safe.

110 The Equal Treatment Directive of 1976 (76/207/EEC) required that there should be “no discrimination whatsoever on grounds of sex” and that there should also be no discrimination on grounds of “gender reassignment”. In 2006 it was recast as Equal Treatment Directive 2006/54/EC.

111 [Q258](#)

112 Mermaids ([TRA 156](#))

113 Paragraph 26, Schedule 3, Part 7, Equality Act 2010

114 Paragraph 27, Schedule 3, Part 7, Equality Act 2010

115 Paragraph 28, Schedule 3, Part 7, Equality Act 2010

Some of these women may feel unable to access services provided by or offered jointly to all women including transwomen; this produces a clash with the rights of transwomen to be treated exactly the same as other women. In such cases when the safety, wellbeing and recovery of women are reliant upon their ability to access services the law has created exemptions to allow for women only services that do not include some transwomen, in some circumstances.<sup>116</sup>

112. Similarly, we heard from the Prison Reform Trust that:

Some organisations working with female prisoners, such as those providing support for women who have experienced domestic violence or sexual assault may decide not to provide services to transwomen as long as the decision is legitimate and proportionate. We support the current position.<sup>117</sup>

113. Providers of services for domestic-abuse survivors were concerned to emphasise their commitment to including trans women as far as possible. One told us:

Women’s Aid is committed to ensuring that transgender people are treated with respect and do not experience discrimination and/or harassment on the basis of their gender identity.<sup>118</sup>

114. However, we also heard from those who see the current legislation as allowing discrimination against trans people and wish to see it repealed. One person who submitted evidence thought the Statutory Code of Practice was in this regard “a disgrace”:

Treatment process based on appearance reminds one of apartheid. Trans people are again singled out for special negative treatment. The [Equality Act] has introduced “passing privilege”.<sup>119</sup> Indeed, it is the trans folk (with or without a GRC) who do not “pass” that should be especially protected from the excesses of transphobic service providers.<sup>120</sup>

115. Similarly, the Scottish Transgender Alliance thought the provision:

allows wide scope for service providers to identify service users they “suspect” to be trans people, intrusively question them about their gender identity, physical sex characteristics and gender history, and then discriminate against them. We believe this breaches trans people’s right to privacy under Article 8 of the European Convention on Human Rights. The provision can result in exclusion of vulnerable trans people from vital services such as homeless accommodation, emergency sexual health services and psychological support services. We recommend this single sex services exception be removed.<sup>121</sup>

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116 Women Analysing Policy on Women ([TRA 086](#))

117 Prison Reform Trust ([TRA 198](#))

118 Women’s Aid ([TRA 200](#))

119 The Code of Practice refers (as do the Explanatory Notes) explicitly to trans people being protected by the Act if they can “pass” as the opposite sex.

120 Anonymised ([TRA 066](#))

121 Scottish Transgender Alliance ([TRA 225](#))

116. Mr Morton of the Alliance elaborated as follows:

The exception, as currently drawn, effectively has no limit. You could be decades transitioned, you could be fully integrated and you could still be turned away at your moment of need from a refuge or from a rape crisis service.<sup>122</sup>

117. He added that if other service-users felt uncomfortable sharing a service with a trans woman:

you would not turn [the trans woman] away. You would work to educate, you would work to support and you would work to try to make sure that that service could be accessed by them [...] There are services, such as rape crisis services and women's refuges, that are trans inclusive successfully and have not found it impossible to do. They have done it very successfully, so why can others not? [...] [T]here might be some situations and very limited situations where you might have to treat someone differently, but they should not be treated worse.<sup>123</sup>

118. Others stressed the harm being done by the current arrangements. Galop told us:

Knowledge of a person being trans\* has been used as a basis for exclusion. This can leave people unable to leave violent situations, putting them at risk of serious harm.<sup>124</sup>

119. We heard from Ashley Reed that:

In gendered refuge centres, it is worth noting that trans people will often be turned away from ones that are protected for either gender, so a trans woman could be rejected from a women's shelter but would also be rejected from a men's shelter. Were they to go to a men's shelter, they would be at serious risk of harassment or physical or verbal abuse, and that would be a major onset of dysphoria.<sup>125</sup>

120. One service provider, RISE, thought the problem lay in a lack of clarity in the current wording of the Equality Act:

there has not been [any] opportunity for case law to be developed [...] The lack of clear legislation regarding this issue means that vulnerable trans people may not seek support at all in order to avoid potentially intrusive and inappropriate questions and uncertainty about whether they will be included in sex-specific services [...] [The Code of Practice] is problematic because it can be interpreted to mean that we can reasonably expect women to present as "feminine" and men to present as "masculine". This is restrictive for trans people who wish to develop their own sense of style and presentation [...] The lack of clarity within the Act may lead organisations to make assumptions that other service users will react negatively to trans people accessing sex-specific groups, and therefore exclude them.<sup>126</sup>

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122 [Q175](#)

123 [Q175](#)

124 Galop ([TRA 183](#))

125 [Q176](#)

126 RISE ([TRA 159](#))

121. Mr Dunne told us:

[A]ll of the research seems to be saying that if you are able to put in place robust frameworks that explain to people everyone's presence in the particular shelter and that everyone knows all of the ground rules and has a clear understanding, these facilities work perfectly well and inclusion in no way detracts from the ability of individuals to use the services and their experience.<sup>127</sup>

122. When we asked the Minister for Women and Equalities how far she thought these provisions were being used proportionately, appropriately and fairly, she told us:

I suspect overall they probably are. I am not sure that we have necessarily evidence. There are certainly examples. I have some here: group counselling sessions for female victims of sexual assault; public changing rooms; bathing facilities and toilets, which I know is a huge area; and certain procedures in hospitals where it would be appropriate to have single- and separate-sex services. We should be very clear this is not a green light for discrimination. There is a line between discrimination and legitimately offering single-sex services. We are aware of only one case, which relates to a pub in Halifax, which was heard at Halifax Crown Court last year. That was in relation to the gender reassignment exception. That is the first case that we are aware of.<sup>128</sup>

123. The Explanatory Notes for the Act give an example as follows:

A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.<sup>129</sup>

124. Ms McCann advised us that “this example is drafted too categorically”. While it demonstrates a “legitimate aim”, it gives “insufficient information [...] to show that the exclusion of trans people is appropriate and reasonably necessary (i.e. proportionate) to meet that aim”. She further suggested that in the instance cited it may only be lawful to exclude trans people if they do not hold a GRC:

I would doubt that a service-provider of single-sex or separate services could turn away a trans service-user who holds a GRC because this is unlikely to be proportionate.<sup>130</sup>

### ***Genuine occupational requirement***

125. A further provision in the Act allows employers to stipulate that a post is only open to individuals with a particular protected characteristic, where this constitutes a “genuine occupational requirement”.<sup>131</sup>

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127 [Q176](#)

128 [Q267](#)

129 [Equality Act 2010: Explanatory Notes](#), August 2010, para 740

130 Claire McCann ([TRA 273](#)) para 74

131 Schedule 9, Equality Act 2010



126. Ms McCann noted that this had in effect “reduce[d] the protection afforded to trans people”, as the Gender Recognition Act 2004 had previously ensured employers could no longer rely on an occupational requirement for an employee not to be transsexual where that employee held a GRC.<sup>132</sup>

127. The Explanatory Notes to the Act give the following illustration:

A counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing them further distress.<sup>133</sup>

Women’s Aid told us that:

In recognition of Women’s Aid’s status as the provider of services to, and promoting the welfare of women only, Women’s Aid has chosen to exercise its right under the Equality Act 2010 [...] to apply the Gender Reassignment exception to employment posts within the organisation. This policy is under review.<sup>134</sup>

128. We heard unequivocal opposition to this provision. The Scottish Transgender Alliance told us that they wished to see it repealed:

as well as violating trans people’s article 8 human right to privacy [under the ECHR] about their gender reassignment history, [it] is generally unworkable because the only way anyone could prove beyond doubt that they had not undergone gender reassignment would be to submit to an unacceptably intrusive medical examination.

129. The Alliance also advocated the introduction of a legal provision allowing for certain posts, “perhaps where providing support specifically to trans people”, to be available only to trans people, “as exists for other protected characteristics”.<sup>135</sup>

130. Mridul Wadhwa told us that the provision was:

discriminatory to transsexual people especially trans women. I genuinely believe that there is no space for it in the gender-based violence sector and that it has no place in violence against women work. I was unaware of its existence until a few weeks ago. I have worked in the violence against women sector since 2005 and have never known for it to be used. I am disappointed to think that someone has the right to refuse work to me and others like me in my sector just because they think that I might not be a woman.<sup>136</sup>

131. We asked Ms McCann how the Equality Act might be amended so that single-sex services were no longer able to exclude, on a proportionate and legitimate basis, a transgender or transsexual person with a GRC, from accessing gender-appropriate services and employment. She suggested that the Equality Act might be amended so that:

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132 Claire McCann ([TRA 273](#)) para 70

133 [Equality Act 2010: Explanatory Notes](#), August 2010, para 789

134 Women’s Aid ([TRA 200](#))

135 Scottish Transgender Alliance ([TRA 225](#))

136 Mridul Wadhwa ([TRA 219](#))

the occupational requirements provision and / or the single-sex / separate services provision shall not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004 [...] [With such an amendment,] the [Equality Act] would better align with s.9 of the Gender Recognition Act 2004 (which requires that the acquired gender of an individual with a GRC is recognised “for all purposes”).<sup>137</sup>

**132. Significant concerns have been raised with us regarding the provisions of the Equality Act concerned with separate-sex and single-sex services and the genuine occupational requirement as these relate to trans people. These are sensitive areas, where there does need to be some limited ability to exercise discretion, if this is a proportionate means of achieving a legitimate aim. However, we are not persuaded that this discretion should apply where a trans person has been recognised as of their acquired gender “for all legal purposes” under the Gender Recognition Act. In many instances this is unlikely, in any case, to meet the proportionate test. We recommend that the Equality Act be amended so that the occupational requirements provision and / or the single-sex / separate services provision shall not apply in relation to discrimination against a person whose acquired gender has been recognised under the Gender Recognition Act 2004.**

### **Separate-gender sport**

133. The GRA refers to “a gender-affected sport”, which is defined as one where “the physical strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender as competitors in events involving the sport”. In the case of such a sport, a person whose change of gender has been recognised under the Act may be excluded from playing in their acquired gender where this is necessary to ensure “fair competition” or “the safety of competitors”.<sup>138</sup>

134. The Equality Act 2010:

allows separate sporting competitions to continue to be organised for men and women where physical strength, stamina or physique are major factors in determining success or failure, and in which one sex is generally at a disadvantage in comparison with the other.<sup>139</sup>

135. In addition, the 2010 Act gives effect to the provision in the 2004 Act regarding sport as if it applied to a person with the protected characteristic of gender reassignment, as defined in the 2010 Act.<sup>140</sup>

136. Ms McCann advised us that a sporting association wishing to exclude a trans person from participating in their acquired / affirmed gender would need to demonstrate firstly that the sport concerned was a “gender-affected” one. This might not be the case in respect of, for instance, under-16s football—as acknowledged by the Football Association in its policy on Trans People in Football.<sup>141</sup> Secondly, it must be demonstrated that the exclusion is necessary to secure fair competition or the safety of competitors. Ms McCann noted

<sup>137</sup> Claire McCann ([TRA 273](#)) paras 93, 96

<sup>138</sup> Section 19, Gender Recognition Act 2004

<sup>139</sup> [Equality Act 2010: Explanatory Notes](#), August 2010, para 614

<sup>140</sup> Claire McCann ([TRA 273](#)) para 99

<sup>141</sup> Claire McCann ([TRA 273](#)) para 106

that neither the 2004 Act nor the 2010 Act gave any meaningful guidance as to how this might be assessed.<sup>142</sup> She thought that:

An organiser would need very careful[ly] to review the individual circumstances of (1) the trans competitor who is being considered for exclusion; and (2) the gender-affected competitive event in question; and (3) other competitors in that event; and (4) whether alternatives to exclusion would secure the statutory aims (of fair competition and/or safety of competitors).<sup>143</sup>

137. Whether or not a trans person had been granted a GRC would not be a relevant consideration for this purpose. Ms McCann emphasised that: “This issue raises difficult and complex questions and, as the [Sports Council Equality Group] acknowledges, understanding of the legal and medical issues continues to develop.”<sup>144</sup>

138. We heard there are concerns that the legal provisions concerning trans people in sport are being used inappropriately. Dr Jay Stewart, of Gendered Intelligence, told us:

We have a real problem here and it is a big issue [...] People who only want to have a kick around and who just want to do some sport activity at university are being excluded. They are not allowed to play because there is fear, there is lack of awareness and there is lack of knowledge around being this one thing or the other.<sup>145</sup>

139. Anna Lee, of Lancaster University Students’ Union, informed us that:

[British Universities and Colleges Sport], the governing body for sport for universities and colleges, just defers straight to the national governing bodies and all of those have often unattainable requirements and requirements that just should not be necessary for young trans people.<sup>146</sup>

140. When we asked Ed Vaizey MP, a Minister at the Department for Culture, Media and Sport, about trans people being inappropriately excluded from playing sport in their acquired / affirmed gender, he told us:

It is incumbent on the sporting authorities to call this practice out where they see it happening [...] As far as I am aware, [the legal exemption] is based on a strength and stamina test, from what I have read up about it, but clearly there are many, many sports where both sexes can compete on level terms. I would expect bodies like Sport England, for which we are responsible, and some of the national governing bodies for sport, if it is brought to their attention, to point out that, certainly in terms of informal training, non-competitive sporting activity, even though it might be taking place in terms of a competitive sport, there is no reason for people of different sexes not to be playing together. Where it comes across as a clear case of arbitrary exclusion, they can call them out.

141. The Minister thought that “a body like Sport England and the Government Equalities Office” might fund something such as:

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142 Claire McCann ([TRA 273](#)) para 107

143 Claire McCann ([TRA 273](#)) para 111

144 Claire McCann ([TRA 273](#)) para 113

145 [Q82](#)

146 [Q80](#)

a practical guide, particularly to university sports societies, to say, “You may think, perversely, that if you exclude different sexes from sport you are complying with the law. Actually, you are over-interpreting what this section was designed to do.”<sup>147</sup>

142. We asked the Minister about the issue of trans people’s access to changing rooms. His response seemed to indicate that he was thinking in terms of providing separate changing facilities for trans people.<sup>148</sup> He subsequently wrote to us:

The Sports Councils’ Equality Group recently published ground breaking guidance for National Governing Bodies of Sport (NGBs) on supporting an increase in the number of transsexuals playing sport. The guidance specifically refers to communal changing facilities and provides options for clubs to consider in provision of facilities for transsexual people [...] Following the publication of this guidance, Stonewall and Transsexuals in Sport were recently invited to present at a training day Sport England organised for its Equality Standard advisors, in partnership with UK Sport, so when NGBs are working through the Standard process, they are appropriately supported on LGBT issues.<sup>149</sup>

**143. Trans people are being excluded from the health and social benefits of non-competitive sport because of a misunderstanding of the fairly limited legislative exclusions. We welcome the Minister’s suggestion that a practical guide be produced to better inform sporting groups, including university societies. We recommend that the Government work with Sport England to produce guidance which help sporting groups realise that there are likely to be few occasions where exclusions are justified to ensure fair competition or the safety of competitors.**

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<sup>147</sup> [Q312](#)

<sup>148</sup> [Q314](#)

<sup>149</sup> Department for Culture, Media and Sport ([TRA 270](#))

## 5 NHS services

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144. In this chapter we deal with trans people’s, and gender-variant children’s and adolescents’, experience of NHS services. This subject featured very prominently in our inquiry and is clearly a leading matter of concern for the trans community. **We have found that the NHS is letting down trans people, with too much evidence of an approach that can be said to be discriminatory and in breach of the Equality Act.**

145. Trans people experience worse health (both physical and mental) than the general population, which is likely to be substantially due to the direct and indirect effects of the inequality which trans people experience.<sup>150</sup> Many witnesses told us that trans people face significant difficulties when accessing general NHS services. Jess Bradley, of Action for Trans Health, described a “lack of understanding and lack of cultural competency around trans issues” in the NHS.<sup>151</sup>

146. Trans people also have specific needs regarding Gender Identity Services, which provide: gender reassignment / confirmation treatment through Gender Identity Clinics (GICs); and the GIDS for children and adolescents. Here too, trans people face a range of problems with services as they are currently provided. We received significant evidence of the toll taken (in poor mental health, self-harming and suicide attempts) by untreated gender dysphoria. We agree with Dr John Dean, Chair of the NHS National Clinical Reference Group for Gender Identity Services, that: “not treating people is not a neutral act—it will do harm.”<sup>152</sup>

### General NHS services

147. During our inquiry we heard evidence that trans people face discrimination in accessing general NHS services. Terry Reed, of GIRES, explained that trans people were often nervous about accessing services because they were “not treated sympathetically [or even] politely”.<sup>153</sup> Jess Bradley told us:

we do see a lot of trans people being denied treatment, whether that is on the basis that they present at a mental health clinic and the mental health clinicians think, “Okay, this is too complicated for us. We need to pass this on to somebody else.” You find a lot of trans people are passed from pillar to post.<sup>154</sup>

148. Dr James Barrett, President of the British Association of Gender Identity Specialists (BAGIS) stated that: “The casual, sometimes unthinking trans-phobia of primary care, accident and emergency services and inpatient surgical admissions continue[s] to be striking.”<sup>155</sup>

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150 Suzanna Hopwood ([TRA 031](#)); Equality and Human Rights Commission ([TRA 078](#))

151 [Q4](#)

152 Sky News, “[Demand for Transgender Treatment on NHS Soars](#)”, accessed 9 December 2015

153 [Q25](#)

154 [Q4](#)

155 British Association Of Gender Identity Specialists / Dr James Barrett ([TRA 149](#))

149. According to CliniQ, a specialist sexual health and wellbeing service provider for trans people:

there is at best considerable ignorance and at worst some enduring and mistaken and highly offensive stereotypes about trans people among the public at large, amongst whom we must unfortunately number some health professionals.<sup>156</sup>

Brook, a provider of sexual health and wellbeing services and advice for young people, also told us that “prejudice against trans people among medical staff” was one of the reasons for poor health outcomes in trans people.<sup>157</sup>

150. Dr Dean reminded us that it had not been so long since lesbian, gay and bisexual people regularly reported significant difficulties when accessing the NHS:

I hope it is not going to take 10 years to get to the same situation where being trans or nonbinary does not result in an eyebrow being raised when it is not the most important thing about that person’s life; the person is the most important thing. That societal change needs to be led by the NHS.<sup>158</sup>

151. The Parliamentary Under-Secretary of State for Public Health, Jane Ellison MP, emphasised to us that “the NHS is a needs-driven service”, indicating that the more the needs of trans patients were talked about the better they could be addressed.<sup>159</sup> She also mentioned the creation by NHS England<sup>160</sup> of the Transgender and Non-Binary Network.<sup>161</sup>

152. NHS England itself told us about this in written evidence:

Historically, transgender and non-binary people have reported poor experience of engagement, with the group becoming “hidden”. NHS England has therefore established a Transgender and non-binary network with over 150 members. Five workshops have been held with the network since June 2013 with the next one planned for December 2015. The group is organised and facilitated by the NHS England Public Participation Team with support and contributions from colleagues in Highly Specialised and specialised Commissioning, NHS Clinicians, transgender and non-binary people, organisations that represent them and providers.<sup>162</sup>

### *General Practitioners’ attitudes towards trans patients*

153. There appeared to be particular problems with the attitude of some GPs. This can cause significant difficulties given their role as “gatekeepers” to other NHS services,

<sup>156</sup> CliniQ ([TRA 104](#))

<sup>157</sup> Brook ([TRA 182](#))

<sup>158</sup> [Q25](#)

<sup>159</sup> [Q205](#)

<sup>160</sup> NHS England is the operating name of the NHS Commissioning Board. It is constituted as an executive non-departmental public body. While it is autonomous in operational matters, it works to an overarching “mandate” set by the Secretary of State for Health. In addition to its role as a direct commissioner of some services, it also has a quasi-regulatory function in respect of Clinical Commissioning Groups, the local GP-led bodies which commission other types of NHS services.

<sup>161</sup> [Qq214](#), [218](#), [251](#)

<sup>162</sup> NHS England ([TRA 244](#))

including Gender Identity Services,<sup>163</sup> as well as their role in providing continuing hormone treatment as part of gender reassignment / confirmation treatment. Dr Barrett reported:

A matter of serious day-to-day importance at a primary care level is the persistent refusal of some General Practitioners to even make referrals to gender identity clinics.<sup>164</sup>

154. The trans community organisation the Beaumont Society told us about:

The astonishingly negative reaction by a few GPs when a trans person appears for the first appointment to ask for an assessment to begin. “You’ll be taking money away from more deserving cancer patients” is one quote that we have heard.<sup>165</sup>

155. Joseph Daniell told us about his experience:

The terms “gender dysphoria” and “transgender” are not fully known throughout the NHS services, or the treatment for such issues. When I first went to my GP, in November 2014, I had to explain what both of these terms meant and had to advise him on where to refer me to next. However he never referred my case on and I had to go back and see another GP and ask her to refer me on. This took a while too as she had no clue who she was meant to refer me to. After some waiting she finally found out and referred me onto the local mental health specialist. I received an appointment in March and she was much more helpful, however she did not know the treatment protocol either and I had to explain it to her.<sup>166</sup>

156. Jess Bradley told us that “A lot of GPs deny healthcare to trans people illegally, based on the fact that they do not agree with the choices that they have made.”<sup>167</sup>

157. Michael Toze wrote to us that:

Many GPs and other local health services have not been trained in trans health issues and do not understand the new referral pathways [into Gender Identity Services]. I would estimate that I talk to 40–50 people a year who have had their referral delayed or refused for spurious reasons, typically that the GP believes local funding needs to be arranged or that a mental health assessment needs to be carried out, neither of which is true in England since April 2013.<sup>168</sup>

158. Devi Dunseith likewise told us:

In spite of the fact that gender dysphoria is no longer recognised as a mental health condition, many GPs will not refer to a GIC without assessment from a mental-health team (who are not in any way trained to understand or deal with gender dysphoria and gender issues).<sup>169</sup>

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163 Under the [Interim Gender Dysphoria Protocol and Service Guideline 2013/14](#) the referral pathway into GICs is through primary care, with GPs able to refer patients to whichever clinic the patient chooses – [Q12](#).

164 British Association Of Gender Identity Specialists / Dr James Barrett ([TRA 149](#))

165 The Beaumont Society ([TRA 099](#))

166 Joseph Daniell ([TRA 011](#))

167 [Q4](#)

168 Michael Toze ([TRA 001](#))

169 Devi Dunseith ([TRA 015](#))

159. NHS England, which is responsible for commissioning (i.e. planning and purchasing) primary care (including GP services) and specialist services (including Gender Identity Services), admitted to us that there was an “Unwillingness by some general practitioners to prescribe and monitor hormone therapy”.<sup>170</sup>

160. Dr Barrett, of BAGIS, told us that this unwillingness:

is most disastrous when the General Practitioner concerned sits on an important committee and sets the policy for a wider area. One such General Practitioner sat on the committee covering all of one of the Home Counties and as a consequence not a single General Practitioner across the entire county [of] Buckinghamshire is “allowed” to prescribe for any trans person, ever, including after discharge and into old age.<sup>171</sup>

161. A particular issue is that trans people’s health care needs are too often reduced to a function of their trans status, as Jess Bradley explained:

We call it the “trans cold”: if you go to your doctor’s with a cold, it will be a trans cold.<sup>172</sup>

She also told us:

Trans people, when they are at the end of their pathway, want to be released from a GIC clinic on to being within the GIC’s care, because they know that, when they go to their GP, the GP could easily just turn around and say, “Actually, no, we need to talk to your GIC.” It is like, “Well, I was released from the GIC into your care three years ago. Why do I have to talk to them?”<sup>173</sup>

162. Terry Reed told us that there was “a fixation that [being trans] is the important thing about this person”, and told us that a GP might write a whole page about a person’s gender background even when it was completely unrelated to their treatment. She had even heard of an individual with possible cervical cancer being referred back to a GIC for a further psychiatric assessment before being sent to an oncologist.<sup>174</sup>

163. Dr Dean said:

My experience, working with GPs and secondary care physicians, is that, overall, people working in the service try to be empathic; they are certainly sympathetic, but they lack a great deal of background knowledge about gender incongruence and dysphoria. It is something that is not covered in any detail in medical training [...] medical students are very interested in what we do, but they get very little information about gender identity, gender identity developments and the differences and different developmental experiences people have that sometimes lead them to need to use our services. Overall, they are empathic and try to be helpful, but are hampered by a lack of knowledge about how to do that and about the services that are available.

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170 NHS England ([TRA 244](#))

171 British Association Of Gender Identity Specialists / Dr James Barrett ([TRA 149](#))

172 [Q25](#); cf. Equality and Human Rights Commission ([TRA 078](#))

173 [Q22](#)

174 [Q25](#)



164. Dr Dean thought that patients' perceptions might also be coloured by interacting with:

managers, administrative staff and all of the other important contributors to the NHS overall in hospital and out-patient services, who sometimes lack understanding of and sensitivity to the important issues and need to know more so that they can work with respect and understanding of differences related to gender incongruence.<sup>175</sup>

165. The Royal College of GPs (which sets standards and supervises training for doctors within the specialism) agreed that GPs were “overall empathetic but that their knowledge of how to best support transgender patients could be improved”. To help fill this gap, the College had in July 2015 launched an online training module on Gender Variance. The College in Northern Ireland had also produced guidance (promoted to all members of the College) on caring for trans patients.<sup>176</sup> In addition, the College was working with GIREs to produce e-learning modules.<sup>177</sup>

166. The College also explained to us how GPs might be coming into conflict with trans patients by practising in ways that were entirely appropriate but might be perceived as obstructive or unhelpful by the patient. This might occur, for instance, when a patient who is experiencing a long wait for their first appointment with a GIC asks a GP for interim “bridging” hormones but the GP does not feel able to prescribe under the circumstances.<sup>178</sup> However, the UK Intercollegiate *Good Practice Guidelines for the Assessment and Treatment of Adults with Gender Dysphoria* (developed by the Royal College of Psychiatrists, and endorsed by other Royal Colleges) advise that “bridging” hormones can be prescribed where appropriate “as part of a holding and harm reduction strategy”. It is advised that practitioners “must consider the risks of harm to the patient by not prescribing hormones” where the patient has begun self-medicating.<sup>179</sup>

167. Regarding the specific role of GPs in providing care for trans people, the Minister told us:

we ask a great deal of GPs and realistically we cannot expect every GP to be an expert on everything, particularly on things that they will statistically see far less often. We would expect them to have a good level of awareness, the right approach and attitude and, crucially, understanding of how they can refer people to the right support.<sup>180</sup>

168. We also heard from Will Huxter of NHS England.<sup>181</sup> He stressed that it “is a relatively infrequent thing” for a GP to treat a trans patient.<sup>182</sup>

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175 [Q2](#)

176 Royal College of GPs (Northern Ireland), [Guidelines for the Care of Trans\\* Patients in Primary Care](#), 2015

177 Cf. [Q1](#)

178 Royal College of GPs ([TRA 268](#))

179 Action for Trans Health ([TRA 246](#)); Royal College of Psychiatrists, [Good practice guidelines for the assessment and treatment of adults with gender dysphoria](#), College Report CR181, October 2013, pp 21, 25

180 [Q216](#)

181 NHS England is the operating name of the NHS Commissioning Board. It is constituted as an executive non-departmental public body (a type of arm's-length body). While it is autonomous in operational matters, it works to an overarching “mandate” set by the Secretary of State for Health.

182 [Q216](#)

169. In written evidence, NHS England conceded that there appeared to be a particular problem with some GPs who refused:

to prescribe [hormone therapy] to transgender and non-binary people, and to undertake assessments and investigations, even though they have been advised to do so by physicians in the specialist gender identity clinics.

170. NHS England has responded to this issue by publishing:

a Specialised Services Circular (SSC1417, March 2014) which is consistent with the General Medical Council’s good practice guidance in Prescribing and Managing Medicines and Devices 2013. The circular clarifies that general practitioners are responsible for the prescription of hormone therapy as recommended by the specialist gender identity clinics; for patient safety monitoring procedures; for provision of basic physical examinations within the usual competences of GPs; and for blood tests as recommended by the specialist gender identity clinics.<sup>183</sup>

### ***Education and training of doctors***

171. The General Medical Council (GMC) is the independent statutory body which regulates the medical profession in the UK. The GMC sets standards for the delivery of medical education and training; maintains the register of doctors; and issues licences to practice. As part of its licensing function, it sets requirements for the Continuing Professional Development (CPD) that doctors must undergo as part of revalidating their licence.

172. Dr Dean told us that “the General Medical Council would have significant influence over” the inclusion of trans issues in medical training, “because they provide guidance as to what should be contained within the curriculum”:

Awareness of gender identity and gender identity development—distinguishing it from sexual identity, noting the interactions between the two—should be a fundamental part of medical training. That is going to take a long time to feed through into those who are currently in practice, so it is important that it is incorporated into continuing professional development activities for existing practitioners.

173. Dr Dean acknowledged that trans issues could easily be crowded out by the many other topics that doctors needed to cover in their CPD. It was “difficult to get them to prioritise it until they are confronted with a patient for the first time”—but this was happening with increasing frequency and it was no longer appropriate to say “This is a terribly rare condition. It is very specialised. I do not have to know about it. It is something for specialists.”<sup>184</sup>

174. The GMC itself told us that it sets standards and outcomes for undergraduate and foundation training; and standards and requirements for postgraduate training. Curricula and assessment tools must fulfil these, but their actual content is owned by the medical schools, foundation schools and Medical Royal Colleges or faculties. The

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<sup>183</sup> NHS England ([TRA 244](#))

<sup>184</sup> [Q11](#)

Council is working with the Academy of Medical Royal Colleges to develop a framework for generic professional capabilities, which will “identify, simplify and clarify the core professional values, knowledge, skills and behaviours” for doctors, to reduce variability in the postgraduate curriculum in this regard.<sup>185</sup>

175. On the matter of training for doctors, the Minister and Mr Huxter told us about work with the Medical Royal Colleges, Health Education England,<sup>186</sup> the GMC, the British Medical Association<sup>187</sup> and others around giving guidance and support to primary-care practitioners in caring for trans patients.<sup>188</sup>

### **Professional regulation of doctors**

176. The EHRC further told us about the GMC’s role as a professional regulator in addressing cases of alleged inappropriate practice (including transphobic attitudes and behaviour), on the part of doctors:

Following a survey of problems with healthcare services, resulting in 98 complaints, a dossier of 39 cases warranting further investigation was submitted to the General Medical Council (GMC) in 2013. Those cases involved allegations of sexual abuse, physical abuse, verbal abuse, inappropriate and sometimes damaging treatment, treatment withheld, threats of withholding treatment, poor administration, and acting against patients’ best interests.<sup>189</sup>

177. There is a strong perception in the trans community that the GMC failed in its duty to take these complaints seriously; and it was suggested to us that the Council needed to change its processes accordingly.<sup>190</sup>

178. The GMC explained to us that of the 98 cases that were initially brought to its attention, 42 involved allegations which appeared potentially serious enough to warrant further investigation and the complainants were invited to complain direct to the GMC. Any complaints that were made as a result of this would have been passed direct to the GMC’s triage department and so it is not possible to track all complaints from this group in isolation from others.

179. The GMC has, though, identified three complaints that were submitted as a direct result of the survey, since the complainants specifically referred to the survey in their complaint. One of these was closed as the doctor involved could not be identified. One was closed as the allegations related to incidents occurring too long ago. One was investigated but closed with no further action because it did not meet the GMC’s thresholds for action (which relate to “putting the safety of patients, or the public’s confidence in doctors, at risk”).

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185 General Medical Council ([TRA 267](#))

186 Health Education England is an executive non-departmental public body which provides leadership and coordination for the education and training of the healthcare and public-health workforce in England.

187 The British Medical Association is the professional association and trade union for doctors in the UK.

188 [Qq205, 208](#)

189 Equality and Human Rights Commission ([TRA 078](#))

190 Professor Zoë Playdon ([TRA 098](#)); cf. The Heroines of My Life, “[Interview with Helen Belcher](#)” accessed 1 December 2015

180. The Council also explained that:

For us to pursue a complaint, we will also usually need the patient to identify themselves and to consent to disclosure of their complaint to the doctor. This is an unavoidable part of due legal process, but we acknowledge it may be a disincentive to some to pursue complaints, particularly in sensitive aspects of medical treatment.<sup>191</sup>

**181. We welcome the evidence we received from the Parliamentary Under-Secretary of State for Public Health regarding the importance of understanding and addressing the needs of transgender patients. And the creation for this purpose by NHS England of the Transgender and Non-Binary Network is a commendable step.**

**182. However, it is clear from our inquiry that trans people encounter significant problems in using general NHS services due to the attitude of some clinicians and other staff when providing care for trans patients. This is attributable to lack of knowledge and understanding—and even in some cases to out-and-out prejudice.**

**183. GPs in particular too often lack an understanding of: trans identities; the diagnosis of gender dysphoria; referral pathways into Gender Identity Services; and their own role in prescribing hormone treatment. And it is asserted that in some cases this leads to appropriate care not being provided.**

**184. The NHS is failing in its legal duty under the Equality Act in this regard. There is a lack of Continuing Professional Development and training in this area amongst GPs. There is also a lack of clarity about referral pathways for Gender Identity Services. And the NHS as an employer and commissioner is failing to ensure zero tolerance of transphobic behaviour amongst staff and contractors. *A root-and-branch review of this matter must be conducted, completed and published within the next six months.***

**185. *The General Medical Council must provide clear reassurance that it takes allegations of transphobia every bit as seriously as those concerning other forms of professional misconduct.***

## **Gender Identity Clinics (adults)**

186. As noted above, the commissioning of Gender Identity Services is currently undertaken by NHS England. The providers are seven GICs, of varying sizes, each run by an NHS Mental Health Trust<sup>192</sup>

187. Dr Dean told us:

All seven gender clinics in England arose out of the special interest of an individual a long time in the past. There has not been a lot of planning of their development, and there certainly is no training pathway for medical practitioners or others who work in this field. It is very much learning by apprenticeship, working with other people and observing. People working in

<sup>191</sup> General Medical Council ([TRA 267](#))

<sup>192</sup> These are: Devon Partnership NHS Trust, Leeds and York Partnership NHS Foundation Trust, Nottinghamshire Healthcare NHS Foundation Trust, Northamptonshire Healthcare NHS Foundation Trust, Northumberland, Tyne & Wear NHS Foundation Trust, Sheffield Health & Social Care NHS Foundation Trust and West London Mental Health NHS Trust – NHS England ([TRA 244](#))

this field generally in the past have come primarily from psychiatry, but more recently genitourinary medicine and family medicine as well.<sup>193</sup>

188. Where patients require genital (reassignment / reconstructive) surgery, they are referred on by the GICs to one of three providers who are contracted to provide surgical services.<sup>194</sup>

189. Demand for the GICs' services is growing at a significant rate, with referrals increasing by an average 25–30 per cent a year across all the clinics.<sup>195</sup>

### **Treatment protocols**

190. During our inquiry we heard evidence that there are issues around the treatment protocols which the NHS operates.

191. GIRES explained to us that homosexuality was once classified as a disease, until its removal from the World Health Organization (WHO) International Classification of Diseases (ICD) in 1992. Attitudes in respect of gender identity are now likewise shifting. Under the ICD, “transsexualism” has been, and still is, classified under “Mental and Behavioural Disorders”. Consequently, “treatment in the UK has, typically, been led by psychiatry.” However, the WHO is expected to revise the ICD accordingly. The “psychopathological model” of trans identity will be “abandoned, in favour of a model that reflects current scientific evidence and best practice”. This will accord with the Standards of Care promulgated by the World Professional Association for Transgender Health (WPATH), which describe trans identity as “a common and culturally diverse human phenomenon that should not be judged as inherently pathological or negative”.

192. At the same time, however, GIRES notes that “Removal altogether from the ICD [as occurred with the depathologisation of homosexuality] is not an option, since gender dysphoria frequently requires medical interventions.”<sup>196</sup>

193. The interim *Protocol and Service Guideline* is quite clear that gender dysphoria is not synonymous with having a trans identity as such:

Gender dysphoria refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and / or primary and secondary sex characteristic). Trans and gender variant people are not necessarily gender dysphoric.<sup>197</sup>

194. For a patient to be able to access most forms of gender reassignment / confirmation treatment, two clinicians, one of whom must be medically qualified, have to agree a diagnosis of gender dysphoria. Assessment, diagnosis and confirmation in relation to gender dysphoria “must be by a health professional who specialises in gender dysphoria and has general clinical competence in diagnosis and treatment of mental or emotional

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193 [Q16](#)

194 These are: Imperial College Healthcare NHS Trust (male-to-female surgery), Nuffield Health Hospitals in Brighton (male-to-female surgery) and St Peters Andrology Centre in London (female-to-male surgery).

195 [Q201](#); cf. [Q20](#) [Steve Shrubbs]

196 Gender Identity Research and Education Service ([TRA 058](#))

197 NHS England, [Interim Gender Dysphoria Protocol and Service Guideline 2013/14](#), October 2013, p 7

disorders, for example psychiatrists and psychologists” (in accordance with WPATH standards).<sup>198</sup> Dr Dean further explained to us:

There is a period of assessment, which would normally consist of at least two consultations. There is a huge amount of information to take in from the patient, to understand about their gender identity-relevant health, their networks of support and what their aspirations are, and to communicate to them the risks, benefits and limitations of the various interventions that they want [...] It is difficult to give a standard case, but there will be an assessment process, which would usually involve two clinicians and probably take place over a period of about three months, at the end of which, if they wanted hormone therapy and they were of the age of majority, had the correct etc., then we would recommend it.<sup>199</sup>

195. The Intercollegiate *Good Practice Guidance* explains that the purpose of requiring clinical opinions is to ensure that: there is “persistent and well-documented gender dysphoria”; the patient has the “capacity to make fully informed decisions and to consent to treatment”; and any “significant medical or mental health concerns” are “reasonably well controlled”.<sup>200</sup>

196. However, we heard the view that the requirement for clinical assessment is an unnecessary obstacle to treatment which causes delay and distress—and represents the continuation of outdated attitudes of pathologisation and medical paternalism. Michael Toze told us:

Assessment procedures in clinics are not transparent and not consistent, and patients are aware of this through informal discussion. For example, Nottingham GIC recently sent new patients a form asking them what video games they play. It is not clear why this is relevant to their assessment or care, and if it is relevant, why other clinics are not asking [...] Some clinics ask patients highly personal questions about sex; some ask if patients have gay relatives; some have refused treatment for people who are full-time carers and hence unable to work. Other clinics do none of these things. Because clinics control access to treatment, patients do not feel empowered to challenge being asked irrelevant and highly personal questions, or having judgements made about their lives.<sup>201</sup>

197. A further precondition for genital (reassignment / reconstructive) surgery is that the patient must undergo at least a year (“typically 12 to 24 months”) of “Real-Life Experience”, i.e. living “in role” in their acquired / affirmed gender. The interim *Protocol and Service Guideline* explains the rationale behind this as follows:

The social aspects of changing one’s gender role are usually challenging—often more so than the physical aspects. Changing gender role can have profound personal and social consequences, and the decision to do so should include an awareness of what the familial, interpersonal, educational, vocational,

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198 NHS England, [Interim Gender Dysphoria Protocol and Service Guideline 2013/14](#), October 2013, p 7

199 Q19

200 Royal College of Psychiatrists, [Good practice guidelines for the assessment and treatment of adults with gender dysphoria](#), College Report CR181, October 2013, p 24

201 Michael Toze ([TRA 001](#))

economic, and legal challenges are likely to be, so that people can function successfully in their gender role.<sup>202</sup>

198. Dr Dean told us that the Intercollegiate *Good Practice Guidance* sets out in this regard:

broad guidelines that need to be interpreted on an individual basis, because it should not be one size fits all [...] They were developed by a group of representatives of several professional organisations and medical royal colleges, not just medical organisations, and representatives of the patient community and their supporters. Within that document is the guidance that patients, generally speaking, should have a period of 12 months living in a congruent gender role before they are referred for genital reconstructive surgery, and we follow that, but it does have to be interpreted individually [...] [T]here is quite considerable diversity of opinion between different clinicians and different clinics [...] As there is not a standard approach or a standard training in how the guidelines are interpreted, there is certainly room for variation in interpretation, so, where you go to different clinics, you may get a different answer with respect to Real-Life Experience.<sup>203</sup>

199. We heard strong objections to this requirement. Action for Trans Health told us that it meant “forc[ing] trans people to conform to arguably outdated norms of gender and sexual orientation and behaviour in order to receive treatment”.<sup>204</sup> There are particular issues around the imposition of this requirement on non-binary people, whose gender presentation by definition does not conform to the norms associated with conventional male or female identity.<sup>205</sup>

200. A number of witnesses argued for the “informed-consent model”, which is said to be used by some private providers of gender-reassignment / confirmation treatment in the USA. This entails imposing a minimum of clinical preconditions for treatment, on the basis that if the patient is able to give informed consent their wishes should be treated as paramount.<sup>206</sup>

201. Counter-arguments to this approach focus on: the requirement on clinicians to observe established clinical, professional and ethical standards (including those set by WPATH); and the need to ensure that finite NHS resources are spent appropriately and effectively. In addition, the informed-consent only model is not used in any other area of practice within the NHS.<sup>207</sup>

202. Issues regarding appropriate clinical practice in this regard have been tested by two cases brought to the GMC, as the Council explained in evidence to us. In one of these cases, a doctor’s:

fitness to practise was found impaired in 2007 in relation to complaints that he had initiated hormonal and surgical gender reassignment treatment in five patients without sufficiently careful and thorough initial investigation

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202 NHS England, *Interim Gender Dysphoria Protocol and Service Guideline 2013/14*, October 2013, p 9

203 [Q16](#)

204 Action for Trans Health ([TRA 230](#))

205 [Q15](#)

206 [Q16](#); Devi Dunseith ([TRA 015](#))

207 [Q17](#); British Association Of Gender Identity Specialists / Dr James Barrett ([TRA 149](#))

and treatment. His registration was made subject to conditions; he has since voluntarily removed his name from the Medical Register.<sup>208</sup>

203. When we asked the Minister and Mr Huxter, of NHS England, about these issues, they replied that they were unable to comment on clinical matters and would have to seek advice from clinicians on the reasoning behind the current protocols. We subsequently received a further written submission from NHS England explaining that the current clinical protocols are in accordance with UK Intercollegiate *Good Practice Guidelines* and WPATH clinical standards.<sup>209</sup>

204. The Minister and Mr Huxter did indicate that the current interim *Protocol and Service Guideline* is under review and is open to challenge and feedback from “critical friends” and others.<sup>210</sup>

205. NHS England later clarified in writing that:

The draft service specification for adult services was subject to public consultation earlier in 2015. It will be tested with people who use transgender services, the Transgender Network, at its next meeting on 3 December 2015 with a view to delivering a final draft product to NHS England by March 2016.

206. NHS England further told us that:

A follow-up to the multi-agency symposium that was held in June 2015 will be held on 27 January 2016. This will focus on the development of a national workforce and training plan for gender identity services, the relationship between specialised services for transgender people and primary care services, and improving the patient experience for transgender people across the wider NHS. This will provide an early opportunity to consider some of the concerns the Committee expressed with regard to the attitudes of some NHS staff to transgender people.<sup>211</sup>

**207. Part of the NHS’s duty regarding equality for trans people is its obligation to provide appropriate Gender Identity Services to meet the needs of the trans community.**

**208. We strongly welcome the long overdue trend towards the depathologisation of trans identities (decades after the same happened in respect of lesbian, gay and bisexual identities) and the explicit acknowledgement within Gender Identity Clinics that the treatable condition of gender dysphoria is not synonymous with trans identity as such. This approach must be reflected in all areas of Government policy on trans issues, not least in relation to gender recognition.**

**209. We are concerned that Gender Identity Services continue to be provided as part of mental-health services. This is a relic of the days when trans identity in itself was regarded as a disease or disorder of the mind and contributes to the misleading impression that this continues to be the case. Consideration must be given to the transfer of these services to some other relevant area of clinical specialism, such as**

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208 General Medical Council ([TRA 267](#))

209 Department of Health ([TRA 274](#))

210 [Q214](#)

211 Department of Health ([TRA 274](#))



*endocrinology (which deals with hormone-related conditions), or their establishment as a distinct specialism in their own right.*

210. We heard that there are serious concerns within the trans community regarding the treatment protocols that are applied by Gender Identity Services, particularly in respect of clinical assessment prior to treatment and the requirement to undergo a period of “Real-Life Experience” prior to genital (reassignment / reconstructive) surgery. This requirement is seen as reflecting outdated, stereotyped attitudes to male and female gender identity.

211. Many people now favour the adoption instead of a model involving only the granting of informed consent, which is said to be used by some providers of private care in the USA.

212. However, we are unconvinced of the merits of the proposed informed consent-only model. While there is a clear case for the granting of legal gender recognition on request, with the minimum of formalities, this approach is less appropriate for a medical intervention as profound and permanent as genital (reassignment / reconstructive) surgery. Clinicians do have a responsibility to observe ethical and professional standards, including their duty of care towards patients. In this particular area of medicine, appropriate practice also entails paying due regard to the internationally recognised guidelines of the World Professional Association for Transgender Health. In addition, clinicians practising in the NHS have a duty to ensure that the service’s finite resources are spent appropriately and effectively. All of the foregoing obligations are incompatible with simply granting on demand whatever treatment patients request.

213. *The issues that exist around clinical protocols must instead be addressed through the consistent application of clear and appropriate standards across the Gender Identity Clinics. The situation described to us by Dr John Dean, Chair of the NHS National Clinical Reference Group for Gender Identity Services, whereby “there is not a standard approach or a standard training in how the guidelines are interpreted”, is clearly unacceptable and must change.*

214. *The Protocol and Service Guideline must make explicit the right of patients to be fully involved in their treatment and to exercise full personal autonomy in respect of their gender identity and presentation. It must be stipulated that treatment criteria are to be exercised flexibly case-by-case on that basis.*

215. *Assessment prior to treatment must be undertaken in order to meet clinically necessary criteria regarding the patient’s diagnosis, ability to consent to treatment and (physical and mental) fitness for treatment. The requirement to undergo “Real-Life Experience” prior to genital (reassignment / reconstructive) surgery must not entail conforming to externally imposed and arbitrary (binary) preconceptions about gender identity and presentation. It must be clear that this requirement is not about qualifying for surgery, but rather preparing the patient to cope with the profound consequences of surgery.*

### Capacity and quality of services

216. In our inquiry we also heard of problems in the quality and capacity of NHS services. In evidence to us, NHS England admitted that the following problems existed:

- inequitable access and variability across the GICs;
- poor patient experience, including communication;
- capacity pressures;
- workforce pressures; and
- long waiting times for initial assessment and genital reconstruction surgery (with a shortage of specialist surgeons).<sup>212</sup>

217. Unacceptably long waiting times for initial appointments at GICs are clearly endemic. Steve Shrubbs, the then Chief Executive of West London Mental Health NHS Trust, which runs by far the biggest GIC (the Charing Cross Clinic), told us that “People are waiting currently between 12 and 18 months.”<sup>213</sup> GIRES told us:

Recent reports indicate waiting times of 2–3 years for access to some of the adult clinics. The waiting time for genital surgery for trans women is 22 months; without additional services being commissioned, the predicted waiting time is 42 months by 2017 (NHS England).<sup>214</sup>

218. In addition, we heard about the uneven geographical distribution of GICs, meaning that many people have to travel long distances in order to access treatment.<sup>215</sup>

219. Poor quality administration is also widely encountered in GICs. Jess Bradley, of Action for Trans Health, told us that the quality of administration was “just completely routinely rubbish”.<sup>216</sup>

220. Waiting times for initial appointments are in breach of patients’ legal entitlement, under the NHS Constitution, to have their first appointment in a specialist service within 18 weeks of referral. Only in January 2015 did the NHS accept that this principle actually applies to Gender Identity Services.<sup>217</sup>

221. A further issue that was drawn to our attention concerned the fact that some elements of the gender identity pathway (involving “non-core services”) had to be commissioned by local NHS Clinical Commissioning Groups rather than NHS England. The fact that this made it difficult to access some secondary (but, to the patients concerned, still vital) elements of treatment was a real source of distress for some.<sup>218</sup> Dr Dean told us that this

212 NHS England (TRA 244). [There is also said to be a shortage of clinicians providing chest reconstruction surgery for trans men, again resulting in long waiting list.](#)

213 Q14

214 Gender Identity Research and Education Service (TRA 058)

215 National LGB&T Partnership (TRA 077), Lancashire LGBT (TRA 122), Anonymised (TRA 126), Anonymised (TRA 135), Unison Bournemouth Higher & Further Education Branch (TRA 190), Brighton & Hove City Council (TRA 211), Trans Yorkshire (TRA 235), Stonewall (TRA 243)

216 Q24

217 Michael Toze (TRA 001); Dr Saoirse Caitlin O’Shea (TRA 013); Eve Ann Wallis (TRA 023); Suzanna Hopwood (TRA 031); Gender Identity Research and Education Service (TRA 058); Jayde Turner (TRA 092); K Eaton (TRA 106); Peyton Knight (TRA 128); Miss Taylor (TRA 137); UK Trans Info (TRA 138); Melanie Bartlett (TRA 147); NHS England (TRA 244).

218 The Royal College of Speech and Language Therapists (TRA 045); Alexis Vanlee (TRA 247)

had arisen because of an unforeseen conflict between NHS England's *Interim Gender Dysphoria Protocol and Service Guideline* and other policy on commissioning by CCGs. He was confident that the new definitive *Protocol and Service Guideline* would resolve the matter.<sup>219</sup>

222. NHS England told us in written evidence that, after hearing about the shortcomings of Gender Identity Services from the NHS Citizen Assembly, it had set up:

a dedicated working group, accountable to NHS England's Specialised Commissioning Oversight Group to identify and implement solutions to the problems that it heard.<sup>220</sup>

223. Particular attention, we were told, is being paid to the issue of waiting times:

NHS England has worked closely with the three providers of genital reconstruction surgery to model the capacity requirements to begin to reduce waiting times for surgery to below 18 weeks. In 2015/16 NHS England has invested an additional £4.4m in genital reconstruction services. We are funding the surgical providers at maximum capacity, which means that the most significant constraint in reducing waiting times more quickly is due to workforce rather than financial constraints [...] We also know that there are long waiting times for referrals into the gender identity clinics for initial assessment. In the spring of 2015 we embarked upon an ambitious programme of work to identify the reasons for bottlenecks in the patient pathways; to model scenarios for the clinics in meeting the 18 week standard, and expected growth in demand.<sup>221</sup>

224. The shortfall in the skilled workforce necessary to address the volume of demand for the service was, NHS England told us, a matter for Health Education England.<sup>222</sup>

225. When we questioned Ms Ellison, she told us:

the NHS is definitely on a journey here [...] there is a real openness to improvement. There is an understanding and acceptance that current services are not good enough and there are some plans in place to improve that.<sup>223</sup>

226. However, Mr Huxter, of NHS England, seemed more equivocal about criticisms of the quality of the service:

I am well aware of individuals who have raised with me and with other commissioners concerns about services, but I was reviewing data from the West London Mental Health NHS Trust gender identity clinic that had been completed by hundreds of their patients that were reporting very high levels of contentment. I do not dispute that there are individuals and groups of individuals who are not experiencing what they would wish.<sup>224</sup>

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219 [Q23](#)

220 NHS England ([TRA 244](#))

221 NHS England ([TRA 244](#)); cf. [Q203](#)

222 NHS England ([TRA 244](#)); cf. [Q207](#)

223 [Q204](#)

224 [Q209](#)

227. Mr Shrubbs told us:

It never ceases to amaze me, the level of the quality. We serve 2,500 patients. Their views on the clinical quality were extremely high. They had slightly lower views on the administrative quality, if I am honest. I think the quality in real terms is very high, but we really do not have a good grip on the data [...]<sup>225</sup>

228. We received evidence drawing our attention to the possibility of an alternative model of commissioning and provision, involving the delivery of elements of the service away from GICs, at local level and using more non-NHS providers. This had been tried at Calderdale, in Yorkshire (prior to NHS England taking over commissioning), reportedly with some degree of success.<sup>226</sup>

**229. The evidence is overwhelming that there are serious deficiencies in the quality and capacity of NHS Gender Identity Services. In particular, the waiting times that many patients experience prior to their first appointment (in clear breach of the legal obligation under the NHS Constitution to provide treatment within 18 weeks) and before surgery are completely unacceptable.**

**230. We are also concerned at the apparent lack of any concrete plans to address the lack of specialist clinicians in this field. This will be a serious obstacle to addressing the lack of capacity, which growing demand for the service is sure to exacerbate, and cannot be ignored. *The Department of Health must say in its response to us how it will work with Health Education England and other stakeholders to ensure that this is addressed.***

### The Tavistock Clinic (children and adolescents)

231. The GIDS, known as the Tavistock Clinic, is a highly specialised clinic for young people presenting with difficulties with their gender identity, including gender dysphoria and other conditions. The Tavistock Clinic is the only specialist service in the UK providing early-intervention treatment for children and young people. It operates from two main bases (in London and Leeds); and regular outreach clinics are held (in Exeter, Barnstable, Bath, Bristol and Brighton).<sup>227</sup>

232. The Clinic itself told us:

The GIDS interdisciplinary team comprises professionals with specialist child and adolescent training from a range of disciplines including psychiatry, clinical psychology, family therapy, social work, psychotherapy and adolescent endocrinology. Clinicians in the service accept that gender non-conformity cannot be explained adequately within any monolithic theoretical model, and that explanations are probably multi-factorial.<sup>228</sup>

233. Demand for the clinic's services is growing rapidly, with referrals increasing by 50 per cent a year in recent years (and at an even greater rate in the current year).<sup>229</sup> While the

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<sup>225</sup> [Q24](#)

<sup>226</sup> [Q24](#); Trans Yorkshire ([TRA 235](#))

<sup>227</sup> NHS England ([TRA 244](#))

<sup>228</sup> Polly Carmichael and Bernadette Wren / NHS Gender Identity Development Service – Tavistock Clinic ([TRA 236](#))

<sup>229</sup> [Qq64](#), [201](#)

majority of referrals involve young people aged between 14 and 16, the service is seeing a marked increase in the number of younger (pre-pubertal) children being referred (even as young as four)—although the numbers remain small.<sup>230</sup>

234. GPs can refer patients directly to GIDS, but referral takes place chiefly through local Child and Adolescent Mental Health Services (CAMHS). As with adult Gender Identity Services (see above), referral pathways appear to be made problematic by a lack of understanding of gender-identity issues in the wider NHS. Susie Green, the Chair of Mermaids (which represents parents of gender-variant children and adolescents), told us:

the GP will turn around and say, “There is nothing you can do until you are 18” or, “No, we cannot refer you to any specialist, because we do not know about it”, so they will refer them to CAMHS.<sup>231</sup>

She continued:

You will then have a six month wait to be seen by a CAMHS counsellor, regardless of whether you are suffering from depression or self harming, etc., and then you get to CAMHS and they go, “We do not know anything about gender, so we are not dealing with it either.”

Ms Green also told us that some staff at the Tavistock Clinic itself are unaware that direct referral from a GP is possible.<sup>232</sup>

235. While GIDS does not suffer from the long waits associated with the adult service, there still appear to be some problems in this regard. Mermaids reported the results of a survey in 2014 of parents of children and adolescents with gender dysphoria:

27% of all those who responded had waited over 18 weeks for their initial assessment with the GIDS. Parents reported that the wait for the first appointment had a negative impact on the mental health and wellbeing of 31 (77.5%) of the 40 young people included in the survey; three (7.5%) had attempted suicide whilst on the waiting list to be seen for the first time.<sup>233</sup>

236. The Tavistock Clinic explains the basis of its treatment model as follows:

The appropriate care of Gender Dysphoria in children and adolescents is contentious and debated in the absence of an adequate evidence base. It is not possible with any certainty to predict the outcome of gender identity development and the evidence available suggests that for the majority of pre-pubertal children their gender dysphoria does not persist into adulthood [...] The service aims to ameliorate the potential negative impact of gender dysphoria on general developmental processes. We endeavour to help young people and their families manage the uncertainties inherent in the outcome of gender dysphoria and provide on-going opportunities for exploration of gender identity and support.

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230 [Q50](#)

231 [Q53](#)

232 [Q54](#)

233 Mermaids ([TRA 156](#))

Each patient has an individual treatment plan, tailored to meet their particular presentation and needs.<sup>234</sup>

237. The treatment provided by GIDS does not include any form of irreversible (surgical) physical intervention. It does, however, include reversible forms of such intervention for adolescents aged younger than 16; and mostly-reversible forms of intervention for adolescents who are aged 16 and over.

238. Firstly, hormone-blocking medication is available from the onset of puberty (regardless of chronological age); this involves pressing the “pause button” in the process of puberty, allowing the young person concerned the opportunity to address their gender identity issues without the distress that puberty can cause in such circumstances. Pubertal-postponement treatments also, by preventing the development of secondary sexual characteristics, obviate the need for some surgery and other treatments in that regard if the patient later undergoes gender reassignment / confirmation surgery and other treatments.

239. Secondly, cross-sex hormone therapy is available from the age of 16, but only after at least 12 months of hormone-blocking treatment.<sup>235</sup> This form of medication will bring secondary physical sexual characteristics into line with the young person’s acquired / affirmed gender. Some of the changes brought about by cross-sex hormone treatment are not reversible, for example the breaking of the voice for trans men and breast growth in trans women. However, other aspects, for example fertility, hair-loss and hair-growth, are reversible within the early years of treatment.

240. Both these forms of treatment are only provided after a substantial period of assessment. All patients are assessed over the course of between three and six appointments with one or two mental-health professionals from the clinic’s team. If the young person is deemed suitable for pubertal-postponement treatment, a further (endocrinological) assessment takes place. The interval between appointments is roughly monthly; they can, however, be less frequent if capacity is strained, which can occur with the rapid growth in demand.<sup>236</sup>

241. A number of trans advocacy groups told us that, under these current treatment protocols, patients could not access treatment quickly enough. Mermaids said there was a significant risk of self-harm or suicide where hormone treatment is not yet being given;<sup>237</sup> they drew attention to evidence that the attempted suicide rate among young trans people is 48 per cent.<sup>238</sup> We were also told that, under current protocols: the principle of Gillick competence is not observed in respect of children aged under 16; and parental wishes are not heeded.<sup>239</sup>

242. We further heard that the fixed requirement for adolescents to undergo at least 12 months of pubertal-postponement treatment prior to being prescribed cross-sex hormones is arbitrary and unreasonable. It means that someone who is quite certain of their gender identity can be placed in a position of not maturing physically at the rate of their peers

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234 Polly Carmichael and Bernadette Wren / NHS Gender Identity Development Service – Tavistock Clinic ([TRA 236](#))

235 Polly Carmichael and Bernadette Wren / NHS Gender Identity Development Service – Tavistock Clinic ([TRA 236](#))

236 [Q65](#); [GIDS Leaflet: Information for Parents](#)

237 [Qq 59, 66, 86](#)

238 [Q59](#); cf. “Nearly half of young transgender people have attempted suicide – UK survey”, *Guardian*, 19 November 2014.

239 Professor Zoë Playdon ([TRA 098](#)), Focus: The Identity Trust ([TRA 100](#)); Anonymised ([TRA 188](#))

just as they are entering adulthood. This can result in isolation and prejudice, leading to significant distress and harm.<sup>240</sup>

243. Mermaids further argued that: pubertal-postponement treatments should be made available to older children (aged 16 and 17) as well as younger ones; and young people should be included in decision-making about both forms of hormone treatment.<sup>241</sup>

244. Bernadette Wren, Head of Psychology and Associate Director at the Tavistock Clinic, told us that its treatment protocols are based on WPATH guidelines which are almost universally observed in Europe.<sup>242</sup> The protocols were subject to change (for instance, the age at which puberty-blockers were prescribed had already been lowered) and the service specification was currently under review by NHS England.<sup>243</sup>

245. The Tavistock Clinic is aware of an important Dutch long-term study which apparently shows the benefits of early intervention in gender-dysphoric children, with “a staged programme of puberty suppression, cross-sex hormones and gender reassignment surgery” at appropriate ages. This study though, involves a selected group of children showing consistent gender dysphoria from an early age and meeting other treatment criteria<sup>244</sup>

246. Another problematic area, we heard, was the transition to adult Gender Identity Services (at the ages of 17 and 18), with a lack of continuity of care for those patients involved, which can lead to their facing a long hiatus in their care as they sit on a waiting list to enter the adult service.<sup>245</sup> The NHS Gender Identity Services Clinical Reference Group has recommended an easier transition to the adult service from age 17, without the need for a fresh assessment of the patient by the adult service. The Tavistock clinic told us that it was working with the adult service on this issue.<sup>246</sup>

247. Mr Huxter of NHS England told us that an extra £1 million had been made available for the Tavistock Clinic in the current year, to help cope with the need for additional capacity.<sup>247</sup>

248. Ms Ellison, the Public Health Minister, could not comment on the clinical basis for the protocols operated by the Tavistock Clinic but she underlined that the service specification and protocol for GIDS were under review and account would be taken of current clinical thinking and the views of stakeholders.<sup>248</sup> Regarding this, Mr Huxter told us:

We will be going out for testing with stakeholders on the service spec before the end of November [2015]. That then goes back to the paediatric clinical reference group, which oversees this particular area. We will then go out to formal consultation early in 2016. Hopefully that would fit well with the

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240 [Qq54](#), [58](#), [59](#), [60](#), [61](#), [65](#), [66](#)

241 Mermaids ([TRA 156](#))

242 [Qq55-7](#)

243 [Q58](#)

244 [Q51](#); Polly Carmichael and Bernadette Wren / NHS Gender Identity Development Service – Tavistock Clinic ([TRA 236](#))

245 [Qq60](#), [62](#)

246 Polly Carmichael and Bernadette Wren / NHS Gender Identity Development Service – Tavistock Clinic ([TRA 236](#))

247 [Q202](#)

248 [Qq220-1](#)

timetable of receiving the report from the Committee and our being able to reflect that in our considerations.<sup>249</sup>

**249. We acknowledge the hugely important and pioneering work of the Tavistock Clinic in providing help and support for gender-variant children and adolescents, and their families.**

**250. We recognise that there are legitimate concerns among service-users and their families about the clinical protocols which the clinic operates regarding access to puberty-blockers and cross-sex hormones. Failing to intervene in this way, or unnecessarily delaying such intervention, clearly has the potential to lead to seriously damaging consequences for very vulnerable young people, including the risk of self-harm and attempted suicide.**

**251. We also recognise that the clinic has a difficult balance to strike. As with adult Gender Identity Services, clinicians have ethical and professional obligations to ensure that treatment is appropriate; and they must pay due regard to the internationally recognised guidelines of the World Professional Association for Transgender Health. In addition, care must be taken that NHS resources are spent effectively and appropriately.**

**252. There is a clear and strong case that delaying treatment risks more harm than providing it. The treatment involved is primarily reversible, and the seriously dangerous consequences of not giving this treatment, including self-harming and suicide, are clearly well attested.**

***253. Accordingly, we recommend that, in the current review of the service specification and protocol for the Gender Identity Development Service, consideration be given to reducing the amount of time required for the assessment that service-users must undergo before puberty-blockers and cross-sex hormones can be prescribed.***

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<sup>249</sup> [Q252](#)



## 6 Tackling everyday transphobia

254. Our evidence highlighted the fact that discrimination is a part of daily life for trans people—a reality which many feel they have no alternative but to accept. In this chapter we look at various aspects of this everyday transphobia and how they can be addressed.

### Hate crime

255. Several people submitted to us harrowing accounts of their experiences of crime linked to their trans status.<sup>250</sup> Ryan Hughes wrote to us about:

being harassed, spat at, run over in one instance, sexually assaulted, beaten, having dog faeces thrown at me, stones thrown at me, head-butted, even my carer was physically assaulted for associating with me because I am transgendered.<sup>251</sup>

256. The damaging effect of transphobic hate-crime<sup>252</sup> on survivors can go far beyond the immediate impact. The Sussex Hate Crime Project at the University of Sussex told us:

Anti-LGBT hate crime has significant impacts upon trans\* people’s emotions (fear, anxiety and anger) and behaviours (avoidance and proaction) [...] other studies have shown that trans\* people’s experiences of hate crime are marked by high levels of psychological trauma. Our study concurred with much of the current literature on this.<sup>253</sup>

257. Our evidence makes clear that there are significant problems relating to the reporting and prosecution of hate crime against trans people.

### Reporting of hate crime

258. Police records show that in England and Wales there were 310 transphobic hate crimes reported in 2011–12; 361 in 2012–13; 555 in 2013–14; and 605 in 2014–15. This amounts to around one per cent of the total number of recorded hate crimes in each of those years.<sup>254</sup> But further evidence suggests that transphobic hate crimes are massively underreported.<sup>255</sup> Confidential surveys of trans people suggest experience of hate crime is pervasive and everyday. The EHRC told us:

[one] study found that 40 per cent of transgender respondents had experienced verbal abuse, 30 per cent had experienced threatening behaviour, 25 per cent had experienced physical abuse and 4 per cent had experienced sexual abuse. While victims of transphobia can be targeted up to 50 times in one year, only three in 10 report the incident. A Fundamental Rights Agency study into LGBT

250 Dr Saoirse Caitlin O’Shea ([TRA 013](#)); Barbara Aster ([TRA 155](#))

251 Mr R Hughes ([TRA 255](#))

252 The College of Policing’s [Hate Crime Operational Guidance](#) (2014) defines transphobic hate crime as “any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice against a person who is transgender or perceived to be transgender”.

253 Sussex Hate Crime Project / University of Sussex ([TRA 093](#))

254 Government Equalities Office ([TRA 245](#)); Home Office, [Hate Crime, England and Wales, 2014/15, Statistical Bulletin 05/15](#), October 2015. Transphobic hate crime has been recognised as a monitored strand of hate crime by police forces in England and Wales since 2008. It has been covered by the Crime Survey for England and Wales since 2009.

255 [Qq39–40](#); Barbara Aster ([TRA 155](#))

hate crime found that transgender respondents reported the highest levels of victimisation, with almost 1 in 3 being attacked or threatened more than 3 times in the preceding 12 months.<sup>256</sup>

259. Witnesses explained why survivors were reluctant to engage with the criminal justice system. Helen Belcher, of Trans Media Watch, told us that fear of exposure was a major barrier. A lot of people kept their trans identity a secret and “The moment they get the criminal justice system involved suddenly all of that secret is out and huge emotional upheaval and turmoil could then ensue.”<sup>257</sup>

260. Low levels of confidence in the outcome were also an issue.<sup>258</sup> Professor Neil Chakraborti, Director of the Leicester Centre for Hate Studies, told us that trans people:

felt that frontline practitioners often overlooked the everyday challenges of what it is like to be trans and how much courage and resilience you need to report your experiences to a third party. Many of the victims we spoke to just normalised their everyday victimisation; they thought, “Do you know what? This is just something I have to put up with. What is the point of telling anybody because they are not going to do anything about it?”<sup>259</sup>

261. Police initiatives have been taken to encourage reporting of hate crime generally, such as the police-funded website True Vision.<sup>260</sup> Chief Constable Jane Sawyers, National Policing Lead on Transgender for the National Police Chiefs’ Council, told us that national transphobic hate crime training for police officers was essential:

most [...] do not know anybody who is trans and have not dealt with anybody who is trans. Therefore, talking to members of the trans community, being able to hear life experiences or something as simple as understanding what language is correct to use actually helps officers.<sup>261</sup>

### ***Hate-crime prosecutions and convictions***

262. Crown Prosecution Service data on hate-crime convictions shows that during 2014–15 there were 37 completed prosecutions which were flagged as relating to transphobic crime. Of these, 28 had successful outcomes, meaning that the conviction rate was 75.7 per cent; the equivalent figure in 2013–14 was just below 74 per cent. Across all strands of monitored hate crime, the conviction rate was 84.7 per cent in 2013–14 and 82.9 per cent in 2014–15.<sup>262</sup>

263. Professor Chakraborti told us that, if the large number of unreported hate crimes of all types is taken into account, the conviction rate is extremely low—amounting to only 2–3 per cent a year.<sup>263</sup>

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256 Equality and Human Rights Commission ([TRA 078](#))

257 [Q39](#)

258 [Q40](#); Barbara Aster ([TRA 155](#))

259 [Q40](#)

260 True Vision, “[Homophobic and Transphobic Hate Crime](#)” accessed 9 December 2015

261 [Qq34, 35](#)

262 Home Office ([TRA 271](#)); Ministry of Justice ([TRA 275](#)); Crown Prosecution Service, [Hate crime and crimes against older people report, 2013–2014](#)

263 [Q37](#)

### Action to deal with hate crime

264. The Coalition government published the *Hate crime action plan: Challenge it, Report it, Stop it* in March 2012; this was followed by a progress report in May 2014. On 12 October 2015 Home Office Minister Karen Bradley MP announced that the Government would be developing a “new hate crime action plan”, linked to plans to tackle extremism.<sup>264</sup> She told us in evidence that reporting of hate crime overall was increasing, but conceded that more needed to be done. The new plan, she said, would “really drill down into the issue”, including by trying to tackle fear of exposure in the press, through innovative community partnership work and by working with the police and other law enforcement to increase victims’ confidence in being taken seriously.<sup>265</sup>

265. The MoJ Minister Ms Dinenage later clarified in writing to us that “The Cross-Government Hate Crime Programme is led from the MoJ”, with involvement from the Home Office and the Department for Communities and Local Government.<sup>266</sup>

**266. Legal changes are critical, but they will only bite if there is cultural change too—by society but also by those who enforce the law.**

**267. *The Ministry of Justice must ensure that it consults fully with the trans community in developing the Government’s new hate-crime action plan, so that the proposals are well-targeted and likely to be effective in increasing levels of reporting. This plan must include mandatory national transphobic hate-crime training for police officers and the promotion of third-party reporting.***

### Hate crime legislation

268. Trans hate crimes do not currently have parity in the law with other hate crimes.<sup>267</sup> There is no provision for separate transphobic “aggravated offences”, equivalent to those that now exist under the Crime and Disorder Act 1998 in respect of racist and faith-hate crimes. There are also no offences relating to “stirring up hatred” against trans people, as there are for race, religion or sexual orientation under the Public Order Act 1986.

269. Professor Chakraborti told us that this created “hierarchies of victims”. Ms Belcher also drew attention to practical issues with intersectionality:

trans people are not just trans in isolation. You might have trans women of colour or Muslim trans women, and so if they are subject to a hate crime and you start apportioning out, “Is it a transphobic hate crime or is it motivated by religion?”, which box are you going to tick? There are issues if you start segregating [the] reason [for the offence].<sup>268</sup>

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264 HC Deb, 12 October 2015, [cols 9–10](#) [Commons Chamber]

265 [Qq231](#), [232](#), [238](#)

266 Ministry of Justice ([TRA 275](#))

267 [Q38](#) [Jane Sawyers]. Since 2012, Schedule 21 of the Criminal Justice Act 2003 has allowed enhanced sentences to be applied to offences that are aggravated by hostility on the grounds of transgender identity. This places *punishment* for these crimes on the same footing as punishment for those aggravated by hostility on grounds of disability or sexual orientation.

268 [Q43](#)

270. We asked Professor Chakraborti why legislation had been drafted in that way. He told us that legislation had “followed tragedy”, with “piecemeal” responses, rather than there being systematic law-making:

What we do have is a set of legal provisions that is far better than in most countries, to be honest. We have laws and we have protection in this country. That is very, very important, but I am sure that if we could start again we would use different terminology and we would have different sets of legal provisions.<sup>269</sup>

271. In its 2014 review of hate crime laws, the Law Commission concluded that aggravated offences should in principle apply equally to hostility based on race, religion, transgender identity, sexual orientation and disability, but recommended that a further, government-sponsored review be undertaken first because of concerns raised about the existing legislation’s complexity. The Commission was not persuaded of the practical need to extend the “stirring up hatred” provisions to disability and transgender identity, arguing that such offences “would rarely, if ever, be prosecuted, and their communicative or deterrent [effect] would therefore be negligible” and that “criminalisation might also inhibit discussion of disability and transgender issues and of social attitudes relating to them”.<sup>270</sup>

272. Several of our witnesses felt the Law Commission’s report was a “missed opportunity”.<sup>271</sup> Chief Constable Sawyers told us:

if you are either transgender or disabled, how on earth can you ever believe that the law is fair in relation to you?<sup>272</sup>

Professor Chakraborti was disappointed at the Law Commission “parking” the idea of extending aggravated offences and challenged the conclusion that there was no practical need for stirring-up offences.<sup>273</sup> Ms Belcher, who had made a submission to the Law Commission’s review on behalf of Trans Media Watch, argued that it was “very odd” to decide against parity on grounds of the likelihood of few convictions<sup>274</sup> and that relevant legislation would send out a “powerful symbolic message”.<sup>275</sup>

273. Ms Dinenage told us that the Government was open to the idea of further reform:

the Ministry of Justice is really keen to hear the input of this Committee and this inquiry to see where you feel changes might be considered. We already have one of the strongest legal frameworks to combat hate crime, but the Government should never rest on their laurels and never think that they cannot improve the situation.<sup>276</sup>

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269 [Q47](#)

270 Law Commission, “[Hate Crime](#)”, accessed 9 December 2015; Law Commission, [Hate Crime: Should the Current Offences be Extended?](#), Cm 8865, May 2014

271 [Q39](#) [Neil Chakraborti]

272 [Q38](#)

273 [Q39](#)

274 [Q39](#)

275 [Q46](#)

276 [Q266](#)

274. She further wrote to us that the Government will be responding to the Law Commission’s report when the new hate-crime action plan is in place.<sup>277</sup>

**275. We welcome the Government’s willingness to further strengthen hate crime legislation. We believe the case is overwhelming for protecting all groups concerned, including trans people, on an equal basis. *The Government should introduce new hate-crime legislation which extends the existing provisions on aggravated offences and stirring up hatred so that they apply to all protected characteristics, as defined for the purposes of the Equality Act 2010.***

## Recording names and gender identities

276. Trans people in the UK are, like anyone else, entitled under common law to be known by any name they choose (from the age of 16), provided that there is no fraudulent intent. This includes the right to use more than one name (as many people do for professional purposes, such as acting under a “stage name”, or for various personal reasons)<sup>278</sup> There is no such thing in UK law as a “legal name” to which one is required to prove one’s entitlement.<sup>279</sup>

277. As we have noted (see Chapter Three), there does exist in UK law the concept of “legal gender”. However, the circumstances in which it is relevant are limited. These include situations where:

- an application is being made for a job which is restricted to a single sex as an occupational requirement under the Equality Act 2010 (see Chapter Four);
- calculations in regard to pensions or benefits (or the age at which they can be drawn) would differ depending on the legal gender of the person concerned;
- someone has been imprisoned and there is dispute as to which part of the prison estate (male or female) they should be placed in (see below); or
- a marriage or civil partnership is being entered into.

278. There is thus no legal requirement to produce a GRC (or a new birth certificate issued after the granting of a GRC) in order to have a change of name and gender recorded in an organisation’s records.<sup>280</sup> Nor is there any requirement to have undergone any form of gender-reassignment / confirmation treatment for this purpose.

279. Further, under the Equality Act 2010, all organisations (including employers and public bodies, such as the NHS) must respect a trans person’s acquired / affirmed gender and any associated change of name. Failure to change pronouns, names and gender

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277 Ministry of Justice ([TRA 275](#))

278 When someone changes their name, it may be convenient to draw up a document (such as a deed poll or statutory declaration) to help establish their identity in certain circumstances. However, there is no legal obligation to do so; and no official record is kept of changes of name. The use of ordinary titles (Mr, Mrs, Ms, etc.) is also not governed by law in any way and is a matter of custom and practice. Consequently, people may use any of these titles as they choose. Only the use of inherited, appointed and merit titles (such as MP, Lord, Lady, Sir, Dr, etc.) is governed by law.

279 Jane Fae ([TRA 121](#))

280 In fact, living “in role” for two years (which entails changing one’s name and gender identity in most records) is actually a prerequisite for obtaining a GRC.

markers (including honorifics and pronouns) on records in respect of a trans person would (with a few exceptions)<sup>281</sup> constitute unlawful direct discrimination under the Act.

280. Despite these clear legal principles governing records in respect of trans people, we heard significant evidence that trans people encounter problems with “misgendering” (failure to acknowledge a person’s acquired / affirmed gender) and “deadnaming” (failure to acknowledge a person’s change of name) in many situations. It appears to be commonly assumed that there is such a thing in UK law as a “legal name”, when there clearly is not. It also appears to be assumed that legal gender must be proved in many situations when this is in fact neither required nor appropriate.<sup>282</sup>

281. Jane Fae pointed out to us that many common practices regarding the recording of changes in name and gender:

constitute indirect discrimination: the putting in place of rules or arrangements that apply to everyone, but that result in particular disadvantage to trans persons. For such policies to be lawful, they must be a reasonable means of achieving a necessary end. Security alone cannot excuse discrimination: it must be proven that the policy adopted was the best / only policy available to ensure a particular security outcome, and no reasonable alternatives existed.<sup>283</sup>

282. We were told that the GEO had worked with the trans community on guidelines for employers regarding the recording of data relating to trans employees and customers, but this had still yet to be published.<sup>284</sup>

## Passports

283. Many organisations, including HM Passport Office, still require a declaration of name-change and a doctor’s letter confirming a change of gender which is meant to be permanent.<sup>285</sup> Home Office Minister Karen Bradley told us that the Home Office was looking to:

provide the customer with a greater choice on what evidence and from what source that they wish to confirm that the change of gender is likely to be permanent. This may include, for example, employers or government agencies. We plan to discuss further with representative agencies how best we can extend customer choice.<sup>286</sup>

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281 Criminal records may retain a reference to an offender’s birth gender and birth name in order to link a record of offending to a particular individual for the purposes of criminal justice, as well as disclosure and barring. Recent changes have allowed an offender to request a change of the gender and name on their record to reflect their change of gender if their crime is a non-sex related offence (i.e. it does not require registering on the Sex Offenders Register).

282 Jane Fae ([TRA 121](#)); Stonewall ([TRA 243](#))

283 Jane Fae ([TRA 121](#))

284 LGBT Consortium ([TRA 83](#)); Jane Fae ([TRA 121](#))

285 In evidence the Minister claimed that this was not necessary: [Qq240–1, 250–2](#). However, it is clearly still a requirement at present: Home Office ([TRA 271](#)); Sue Pascoe ([TRA 262](#)); UK Government, “[Passports: change your name and personal details](#)”, accessed 9 December 2015

286 Home Office ([TRA 271](#))

284. Some trans people report that they encounter problems when trying to use a passport showing their acquired / affirmed gender (with, for instance, accusations that such a passport is a forgery).<sup>287</sup>

285. A UK passport cannot be issued without the holder's gender being recorded as either "male" or "female". In Australia, by contrast, provision exists for passports to be issued with the holder's gender recorded as "X" (meaning indeterminate, unspecified or intersex). Bangladesh and New Zealand are reported to have similar arrangements. Several witnesses argued that UK law should be changed in this respect as part of recognising non-binary identities. Dr Ari Gust wrote to us:

If passports were to have an "other" or "x" category, it would offer official recognition of my gender identity and help me to be confirmed by others in my gender identity. This would radically relieve the everyday anxiety of living a non-binary gender.<sup>288</sup>

286. Karen Bradley told us:

The gender identifiers are important in making sure that somebody can be identified, and they can assist with border and law-enforcement matters, but we will look carefully at the evidence of the inquiry.<sup>289</sup>

It was also pointed out that there was some doubt as to whether certain jurisdictions (e.g. the USA) would accept such a passport.<sup>290</sup>

### **National Insurance, tax and benefit records**

287. As we have noted (see Chapter Three), the DWP records changes in legal gender and retains on a long-term basis information about trans people's birth names and birth genders. Some trans people strongly resent this "Retention Policy", arguing that their previous identity should simply be erased from the records.

288. The DWP seeks to provide an extra layer of security for trans customers whose records show the issuing of a GRC. This is done by designating such records using a "Special Customer Record" (SCR) marker, with a high security rating. A "sensitive account" marker is applied to these records so that details of people's trans status are kept confidential. (This is dealt with in Special Section D of HMRC.)<sup>291</sup> However, some trans people report that the DWP fails to keep their trans status confidential.<sup>292</sup>

289. We also heard that the increasing use of National Insurance records to verify identities for the purpose of matters such as electoral registration, driver and vehicle licensing, and vehicle hire caused significant problems for trans people. The special status of trans people's records caused delays in the processing of identity checks; and in some cases trans people had their identities doubted after National Insurance records were checked.<sup>293</sup>

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287 Ms Sarah Cooper ([TRA 037](#))

288 Dr Ari Gust ([TRA 080](#)); cf. LGBT Liberal Democrats ([TRA 197](#)), [Qq145](#), [154–7](#)

289 [Q244](#)

290 [Q155](#)

291 [Q153](#); Jane Fae ([TRA 121](#))

292 Unpublished evidence (TRA 005)

293 [Q152](#); Michael Toze ([TRA 001](#)); unpublished evidence (TRA 064); Jane Fae ([TRA 121](#)); Helen Belcher ([TRA 150](#)); Scottish Transgender Alliance ([TRA 225](#))

290. In 2014 a case was taken to the High Court in which it was argued that the DWP's Retention Policy was in contravention of Article 8 of the ECHR and of the Equality Act 2010. The Court held that, although the policies about retaining information on a person's legal gender had a proper foundation, they lacked clarity and precision, were not readily accessible and would need to be kept under review.<sup>294</sup>

291. The DWP told us in written evidence that it was unable to comment on the court case, as the verdict was being appealed, with a hearing set for early December 2015. On the other matters raised regarding the department's recording of trans identities, it advised us that SCR markers are applied automatically to accounts, but customers are given the opportunity to opt out. While the extra security arrangement can cause delays (as an SCR record can only be accessed by someone with appropriate access privileges), any delay can be mitigated by ensuring "that the higher User access is already available for when the SCR claimant arrives at the office".

292. Further, the CIS "no longer automatically display the presence of GRC data on a customer's record. This ensures that only specialist staff are aware of, or have access to, GRC information for customers". Similar safeguards were being applied to new services and systems as they were developed and introduced.

293. The DWP denied that any problems with electoral registration could be laid at its door and said that in such cases the individuals concerned were referred to the relevant local authority officer. Also, the department had no knowledge of any problems relating to the hire of motor vehicles resulting from SCR markers on DWP records.<sup>295</sup>

### **Non-gendering**

294. We heard that it is open to doubt how far it is actually necessary to record people's genders at all. Michael Toze pointed out that the limited application of legal gender was actually diminishing as a result of pension reforms:

With pensions equalisation, gender is irrelevant for pension and tax purposes for most people born after the 1960s. The government should be planning for a future situation where gender will be treated as an equality characteristic to be monitored (similar to ethnicity or religion) rather than a piece of personal information which makes a functional difference to legal or other processes.<sup>296</sup>

295. We discussed this issue with Ms Morgan:

When and why do we need to know about people's genders? That is a big debate to be had. Thinking about exam certificates and exam entrance, in one way, what does it matter what someone's sex is? It is their paper, it gets marked and they get a grade. On the other hand, I would like to know which subjects girls are not doing and boys are not doing and which ones they are not doing well in. For research purposes and knowledge, I would like that information.<sup>297</sup>

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<sup>294</sup> [The Queen \(on the application of C\) v Secretary of State for Work and Pensions \[2014\] EWHC 2403 \(Admin\)](#), July 2014; [Q152](#); Michael Toze ([TRA 001](#)); Gender Identity Research and Education Service ([TRA 058](#)); LGBT Consortium ([TRA 083](#))

<sup>295</sup> Department for Work and Pensions ([TRA 269](#))

<sup>296</sup> Michael Toze ([TRA 001](#))

<sup>297</sup> [Q269](#)



296. There is a need for greater awareness of trans people’s legal right in most contexts to have their name and gender recorded as they wish without precondition. It is commonly assumed that there is such a thing in UK law as a “legal name”, when there is not; and that legal gender must be proved in many situations when this is in fact neither required nor appropriate.

297. *The Government must take the lead by ensuring public services have clear and appropriate policies regarding the recording of individuals’ names and genders. The requirement for trans people to produce a doctor’s letter in order to change the gender shown in their passport inappropriately medicalises what should be simply an administrative matter. This requirement must be dropped.*

298. *The UK must follow Australia’s lead in introducing an option to record gender as “X” on a passport. If Australia is able to implement such a policy there is no reason why the UK cannot do the same. In the longer term, consideration should be given to the removal of gender from passports.*

299. *The Government should be moving towards “non-gendering” official records as a general principle and only recording gender where it is a relevant piece of information. Where information on gender is required for monitoring purposes, it should be recorded separately from individuals’ personal records and only subject to the consent of those concerned.*

## Prison and Probation Services

300. During this inquiry the deaths in custody of Vicky Thompson<sup>298</sup> and Joanne Latham<sup>299</sup> underlined the overwhelming challenges faced by trans prisoners and the prison service itself. The case of Tara Hudson, who was moved from a men’s prison to a women’s prison only after a national campaign, demonstrates the confusion within the prison system.<sup>300</sup>

301. There is no reliable data about the numbers of trans people in the criminal justice system. We heard an estimate that there are 100 trans prisoners, but the Prison Service does not currently capture such information.<sup>301</sup>

302. The Prisons and Probation Ombudsman, whose role is to investigate deaths in detention and complaints by people in detention, told us that the lack of data was a significant problem. The Ombudsman’s:

own equality and diversity monitoring is stymied by this lack of information. [...] Clearly, more needs to be done by NOMS [the National Offender Management Service], to enable their own monitoring and to facilitate scrutiny bodies such as this office to identify complaints from transgender prisoners. Without this, neither NOMS nor ourselves can be assured that the specific protections afforded to this group under equality legalisation are provided to

298 [“Transgender woman Vicky Thompson found dead at Armley jail”](#), BBC News, 19 November 2015

299 [“Transgender inmate found dead in Woodhill prison cell”](#), BBC News, 1 December 2015

300 [“Calls for transgender woman to be moved from male prison”](#), BBC News, 27 October 2015; [“Transgender woman Tara Hudson moved to female prison”](#), BBC News, 30 October 2015; [Q283](#)

301 [Qq92, 94](#); Prison Reform Trust ([TRA 198](#)); Bent Bars ([TRA 264](#)). The figure of 100 is apparently derived from [“Male prisoners jump at transgender privileges”](#), *Sunday Times*, 27 July 2014.

them while they are in custody or that broader lessons from our investigations are being learned across the prison system.<sup>302</sup>

303. Trans prisoners are protected by the Equality Act. At the same time, the provisions on single-sex services (see Chapter Three) apply to prisons: carceral facilities can be provided on a single-sex basis, as this is a proportionate means of achieving a legitimate aim; and trans prisoners can be excluded from facilities relating to their acquired / affirmed gender where this is a proportionate means of achieving a legitimate aim.

304. Related issues arise in relation to the placement of trans people in appropriate settings when under the supervision of the National Probation Service (NPS) or Community Rehabilitation Companies (CRCs).

305. The NOMS Prison Service Instruction on *Care and Management of Transsexual Prisoners* (PSI 07/2011) sets out clear standards, including that:

- prisoners must be located according to their gender as recognised under UK law;<sup>303</sup>
- a trans prisoner may be “sufficiently advanced in the gender reassignment process” that they can be placed “in the estate of their acquired gender, even if the law does not yet recognise they are of their acquired gender”
- prisoners wishing to undergo gender reassignment must be allowed to live permanently in their preferred gender, including access to clothes and make up;
- convicted trans prisoners are entitled to the same NHS treatment that they would have received if they had not been imprisoned;
- trans prisoners must have a management care plan outlining how they will be managed safely and decently within the prison environment;
- a change of name which is genuine and permanent must be allowed;
- trans prisoners at all stages of the gender reassignment process must be encouraged to enter into a voluntary written agreement on searching arrangements.

306. The Prison Reform Trust described the Instruction as “a significant achievement”, which “went a long way towards protecting the needs and treatment of transgender people in prison”.<sup>304</sup> However, we heard that there has been significant inconsistency in the actual application of the Instruction. The Bent Bars Project, an LGBT prisoner advocacy group, told us:

Prisoners in some establishments report being supported and recognised and being allowed to express their identities in line with PSI 07/2011. Others are systematically denied the right to wear appropriate clothing, misinformed or lied to about their rights and not given access to appropriate medical treatment. In at least one case, a prisoner was led to believe that the prison had been trying

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302 Prisons and Probation Ombudsman ([TRA 252](#))

303 A female-to-male trans person with a GRC may not be refused location in a male prison. A male-to-female trans person with a GRC may be refused location in a female prison only on security grounds, and would then be considered a female prisoner in the male estate and must be managed according to Prison Service Order 4800 *Women Prisoners*.

304 Prison Reform Trust ([TRA 198](#))

to make appointments with the NHS Gender Identity Clinic, only to discover on release that no contact whatsoever had been made by the prison at all.

The situation could be even worse for those prisoners who began their transition while in custody.<sup>305</sup>

307. The Prison Reform Trust also expressed concern about un-convicted prisoners usually having to wait for treatment for gender dysphoria, arguing that this appeared to “undermine” the principle of prisoners having equivalent access to healthcare.<sup>306</sup>

308. Julia Gamble, a prison Equalities and Diversity Officer, expressed her view that there was ambiguity in the Instruction, which led certain prison establishments to think that a diagnosis of gender dysphoria needed to be confirmed before a prison-based care plan could be established.<sup>307</sup>

309. More significantly, it appeared that all too often the Instruction was simply being ignored.<sup>308</sup> The Prison Reform Trust had received complaints about inaction after inappropriate comments from other prisoners or staff, and about lack of access to outside support or specialist organisations. The Trust had also had its letters returned and been told by prison staff that it had to misgender a prisoner.<sup>309</sup> (We ourselves discovered that a prisoner had been told that they could not telephone us about our inquiry. The prison authorities concerned only allowed this after the MoJ intervened, having been directly contacted by the prisoner.)<sup>310</sup>

310. Witnesses told us that there was sometimes scepticism among prison staff about individuals’ motivations for wishing to live in-role in their acquired / affirmed gender.<sup>311</sup> The press have reported cis-gendered males claiming to be trans in order to obtain privileges,<sup>312</sup> and Dr Barrett, of BAGIS, suggested that there might also be other more varied, and sometimes sinister, motives.<sup>313</sup> The Prison Reform Trust, however, felt that the numbers of prisoners in this situation, and the challenges they posed, might have been “exaggerated”.<sup>314</sup>

311. The Prisons and Probation Ombudsman told us:

one theme that does appear to emerge from complaints from transgender prisoners was access to, or restrictions on, make-up or clothing which would help the prisoner to live in their acquired gender [...] [I]n two of the three cases [investigated] the prison was required to ensure that their local policy was compliant with the [Prison Service Instruction] or that staff be reminded of the requirements of both local and national policy regarding transgender prisoners. [...] [I]t is not unusual for us to make recommendations that prisons

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305 Bent Bars ([TRA 264](#))

306 Prison Reform Trust ([TRA 198](#))

307 Julia Gamble ([TRA 091](#))

308 Julia Gamble ([TRA 091](#)); Prison Reform Trust ([TRA 198](#))

309 Prison Reform Trust ([TRA 198](#))

310 E-mail from Parliamentary Briefing Team, Department for Education, 29 October 2015

311 [Q120](#); British Association of Gender Identity Specialists / Dr James Barrett ([TRA 149](#)); Prison Reform Trust ([TRA 198](#))

312 “[Male prisoners jump at transgender privileges](#)”, Sunday Times, 27 July 2014

313 British Association of Gender Identity Specialists / Dr James Barrett ([TRA 149](#))

314 Prison Reform Trust ([TRA 198](#)). They told us it appeared “reasonable” to ask experts to make an assessment where there were any doubts about motivation, but these assessments should take place quickly and be centrally monitored to ensure consistency and compliance with the Equality Act.

should ensure that their staff are aware of, and feel confident in implementing, Prison Service Instructions, but perhaps this is all the more pertinent in the context of transgender issues about which many prison staff may lack awareness and training.<sup>315</sup>

312. The issues with implementation of the Instruction do appear to be largely down to a lack of understanding, reflecting unacceptable and discriminatory attitudes towards trans people in society.<sup>316</sup> Ms Gamble told us that prison staff reaction:

has in the past ranged from disbelief (“He’s just trying to get attention”) through concern (“How are we going to put a care plan in place in a sex offenders prison?”) to disengagement (“I’m going to transfer him!”) at no stage is this regarded as a positive change in the life of the prisoners and one that might lead them to have better self perception, increased self confidence and an improvement in their state of mental health.<sup>317</sup>

313. Megan Key, the lead on trans issues in the NPS, explained that NOMS was currently revising the Instruction on trans prisoners, looking at how it “could be more flexible”, with less emphasis on legal gender status.<sup>318</sup> Ms Key also told us that the revised guidance would cover prisoners on remand.<sup>319</sup> We were told by the Government that the revised Instruction will in addition extend to the NPS and the 21 CRCs.<sup>320</sup>

314. The Government further explained to us that in 2014 it had carried out a series of interviews with transgender offenders to inform revision of the Instruction. This had, it said, “provided important insights” which would “enrich” the quality of care provided.<sup>321</sup>

315. The current Instruction has an “Expiry Date” of March 2015, meaning that the new version is now significantly overdue. This has undoubtedly created some very damaging confusion. During our inquiry we were contacted by a prisoner who had been told that the existing guidance no longer applied and that prisons were now free to set their own rules in this regard. The Justice Minister Ms Dinenage, however, categorically assured us that the original Instruction was “still valid”, pending the new version.<sup>322</sup> We were also told the same by the Prisons and Probation Ombudsman.<sup>323</sup>

316. The Minister told us that the new Instruction would be issued “hopefully, before Christmas [2015]”.<sup>324</sup> She subsequently told the House that “The intention is to implement the guidance early in the New Year [2016].”<sup>325</sup>

317. Later, in response to Ms Thompson’s death, Andrew Selous, Parliamentary Under Secretary of State for Prisons, told the House that:

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315 Prisons and Probation Ombudsman ([TRA 252](#))

316 [Q120](#)

317 Julia Gamble ([TRA 091](#))

318 [Qq97](#), [122](#)

319 [Qq122-3](#)

320 Government Equalities Office ([TRA 245](#))

321 Government Equalities Office ([TRA 245](#))

322 [Q285](#)

323 Prisons and Probation Ombudsman ([TRA 252](#))

324 [Q283](#)

325 Commons written answer, [Written question 14133](#), 5 November 2015

A review of the current policy began earlier this year, and revised policy guidance will be issued to reflect NOMS' responsibilities to transgender offenders in the community, as well as in custody. The intention is to implement the guidance in due course. The management and care of trans people in prison is a complex issue, and the review is using the expertise developed by NOMS practitioners, as well as engaging with relevant stakeholders, including those from the trans community, to ensure that we provide prison staff with the best possible guidance.<sup>326</sup>

Ms Dinenage subsequently wrote to us that “The revised guidance will be implemented in due course.”<sup>327</sup>

318. Regarding the Probation Service, Ms Dinenage told us:

There are very good examples [...] of programmes that have been put in place by individual CRCs particularly with the trans community in mind.<sup>328</sup>

The Minister did subsequently write to us, but only told us in general terms about the requirement in CRCs' contracts for them to “comply with relevant Human Rights and Equalities legislation”.<sup>329</sup>

319. Ms Dinenage also told us that a new equality information form would be introduced “very shortly” allowing trans people to voluntarily disclose their status in order to help judges when making decisions, as well as prison governors and staff.<sup>330</sup>

**320. While the safety and welfare of all offenders is paramount, caring for and managing trans offenders appropriately is crucial. There is a clear risk of harm (including violence, sexual assault, self-harming and suicide) where trans prisoners are not located in a prison or other setting appropriate to their acquired / affirmed gender. Neither is it fair or appropriate for them to end up in solitary confinement solely as a result of their trans status.**

**321. We welcome the revision of the Prison Service Instruction on Care and Management of Transsexual Prisoners to make it more flexible and to extend it to prisoners on remand and offenders in statutory contact with the National Probation Service. The Ministry of Justice, National Offender Management Service and National Probation Service must urgently clarify what the situation is pending the publication of the new Instruction. When the new Instruction is published, they must ensure that staff are trained on it and that its implementation is monitored.**

## Media

322. Witnesses told us that there had been “a positive shift” in the portrayal of trans people in the media.<sup>331</sup> The death in 2013 of a trans primary-school teacher who had been outed

<sup>326</sup> HC Deb, 20 November 2015, cols 975–976 [Commons Chamber]

<sup>327</sup> Ministry of Justice (TRA 275). On 8 December 2015 Ms Dinenage announced that the review would be widened in scope and would complete its work early in 2016 – Commons [Written statement HCWS368](#), 8 November 2015.

<sup>328</sup> [Q286](#)

<sup>329</sup> Ministry of Justice (TRA 275)

<sup>330</sup> [Q283](#)

<sup>331</sup> Trans Media Watch ([TRA 162](#)); [Qq189](#), [190](#)

by newspapers, and the resulting public outcry, was a turning point.<sup>332</sup> In recent months, the press has covered the transitions of celebrities such as Stephanie Hirst, Jack Monroe and Kellie Maloney in a largely sympathetic and supportive manner. The portrayal of trans people on television and radio also appears to be more thoughtful and better informed than previously. “Boy Meets Girl”, the first UK sitcom with a major role for a trans character played by a trans actor, Rebecca Root, launched on the BBC as we began taking evidence for our inquiry and was described by one of our witnesses as an “utterly superb, sensitive programme”.<sup>333</sup> Trans actors playing trans characters now feature in “Eastenders” (Riley Carter Millington) and “Hollyoaks” (Annie Wallace), and both have been welcomed by viewers.

323. However, there was still significant room for improvement. Trans Media Watch reported that some comedy programmes continued to present a problem. Ms Belcher explained why this was difficult to address:

A line of defence very often is comedy. If we encounter something that is hateful, the response is almost always, “Oh, it was just a laugh. It was a bit of a joke; we did not mean it seriously” [...] How do you then prove a malicious intent when they are saying it was only a joke?<sup>334</sup>

BBC Radio 4’s Woman’s Hour was also highlighted as having “a history of treating trans people with “incredulity”. Christie Elan-Cane also referred to the “freak show element [...] where trans people are essentially just brought there to air their dirty linen for public ridicule”.<sup>335</sup>

324. Trans Media Watch also told us that tabloids were still outing individuals with no regard to the impact of unwanted attention, hiding behind the defence of “positive” stories. Christie Elan-Cane helped us to understand why this could be so difficult:

as someone who was outed in the media years ago, I did not know what I was letting myself in for, which sounds a bit naïve now, but I had no idea about the impact that would have on my life. You think that you are in control, but you very quickly lose control and they will portray you any way they want until you do not recognise that person.<sup>336</sup>

325. Trans Media Watch told us of a piece published by the *Sun* in December 2014 which revealed a prospective parliamentary candidate’s trans status and made an insulting reference to this as well as to her disability. They told us that the new self-regulatory press body, the Independent Press Standards Organisation (IPSO), had provided only limited protection.<sup>337</sup> IPSO had agreed that the initial article was a breach of the Editors’ Code<sup>338</sup>, and that a subsequent apology was “insincere” and a “further attempt at humour at Ms Brothers’ expense”. But Trans Media Watch told us that IPSO had not commented on

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332 Q28; Trans Media Watch ([TRA 162](#))

333 [Q190](#)

334 [Q47](#)

335 [Q189](#)

336 [Q189](#)

337 [Q30](#)

338 The [Editors’ Code of Practice](#), enforced by Independent Press Standards Organisation, covers a wide range of guidance including proscribing prejudicial or pejorative reference to an individual’s race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.

whether the latter article amounted to victimisation.<sup>339</sup> Ms Belcher told us that this was deterring other trans people from taking forward complaints:

a number of trans people, as people in general, will not take forward complaints because they want the story to die and so a lot goes unchallenged. Anything which then is seen to be further victimising or further unnecessary exposure will act as a major deterrent.<sup>340</sup>

326. IPSO, however, wrote to us that it “would not agree with Ms Belcher that we have not engaged with the issue or that our actions might be a deterrent to complainants.”<sup>341</sup>

327. We put concerns about victimisation to Mr Vaizey, who responded as follows:

I am very sorry to hear if that is the case. Many people who are transgender live with a great deal of discrimination and a great deal of bullying and victimisation. The last thing we want is for people to feel that somehow, if they raise what I would regard as legitimate complaints or concerns [...] that would make things more difficult for them.<sup>342</sup>

328. Another argument made to us was that the Editors’ Code does not apply to trans people as a group. Ms Belcher told us this meant that the press could use very insulting or inflammatory language against trans people in general without any redress being available. She thought that there was a worrying trend of publishing problematic articles which used that approach, yet Trans Media Watch had not seen any signs that IPSO intended to address this.<sup>343</sup>

329. On this point, IPSO responded that:

contrary to Ms Belcher’s suggestion, IPSO’s rules allow for groups to complain about an article that relates to a broad class of individuals. Indeed, in the last month, IPSO worked with the charity Changing Faces to successfully mediate a resolution on a piece on the *Daily Express* website about facial disfigurement.<sup>344</sup>

330. In general, Ms Belcher told us there was an “awful lot of ignorance” in the regulators with a “base level of understanding [that] is very low”. We asked Trans Media Watch whether they consider Ofcom (the statutory regulatory authority for the UK broadcasting industry) to be effective. They had met Ofcom in 2010 and had found trans awareness at a low level, but had not had much contact with them since. They had never received specific feedback following complaints to the BBC.<sup>345</sup>

331. Mr Vaizey told us that Ofcom was planning to bring out an updated code in spring 2016, with a consultation.<sup>346</sup> He subsequently wrote to us that Ofcom were updating their research on what is considered offensive language, with a view to revising Section 2 of the Broadcasting Code, concerning “harmful and / or offensive material”. The research update “includes testing audience attitudes to discriminatory language about trans people and

339 [Q30](#); Trans Media Watch ([TRA 162](#))

340 [Q30](#)

341 Independent Press Standards Organisation ([TRA 248](#))

342 [Q301](#)

343 [Q30](#)

344 Independent Press Standards Organisation ([TRA 248](#))

345 [Q31](#)

346 [Q303](#)

will include a sub-group of participants from the trans community”. Ofcom considered that the existing rules themselves:

are currently sufficient to ensure that viewers and listeners are protected from offensive or harmful material involving or referring to the trans community that is discriminatory, offensive and not justified by the context in which it is presented.<sup>347</sup>

332. We also heard that media coverage of trans people remains narrowly focused. Helen Belcher told us that very little was written in the press about the things that “actually affect trans lives”, like the healthcare, discrimination, employment and education issues which we covered in our inquiry. She highlighted the “butterfly syndrome”, and explained why this emphasis on transition was so objectionable to trans people:

real life is not like that [...] There is a process of realisation; [...] of self-acceptance; [...] of coming out to those around you and interacting with the world, and it takes time. It is not an immediate switch [...] terms like “sex swap” or “sex change” [...] indicates an immediate or whimsical decision [...] it would be incredibly unlikely that people [...] make this kind of life-changing decision on that basis.<sup>348</sup>

Christie Elan-Cane echoed these comments, saying being non-gendered was “not a lifestyle choice”, adding that it was “incredibly frustrating” that being non-gendered was always portrayed as a “young person’s issue”,<sup>349</sup> with the implication that it might therefore be “a phase”.<sup>350</sup>

333. We also heard that fictional trans characters were likely to be “one dimensional”.<sup>351</sup> Mr Vaizey told us:

I would much rather see somebody cast as a doctor, a nurse, a policeman, a lawyer, an MP, who also happens to be transgender. I do think there is something in that critique of broadcasters and I hope that, more and more, we will see people from the transgender community, as, indeed, from other communities that are underrepresented on our screens, cast in mainstream roles and their background is simply irrelevant in that respect.<sup>352</sup>

**334. While coverage of trans people in the media has been improving in recent years, there is no room for complacency—and confidence in regulators still appears low among the trans community. Both the Independent Press Standards Organisation and Ofcom should consider what steps they might take to encourage more trans people to come forward with complaints.**

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347 Department for Culture, Media and Sport ([TRA 270](#))

348 [Qq28–9](#)

349 [Q189](#)

350 [Qq189](#), [193](#)

351 [Q189](#)

352 [Q300](#)



## Online services

335. Trans people often face shocking abuse online.<sup>353</sup> Ms Belcher gave us a dreadful example of a Tweet that encouraged trans people to kill themselves.<sup>354</sup>

336. The DCMS told us that it was “absolutely clear that what is illegal off-line is also illegal on-line”,<sup>355</sup> but we heard that successful prosecution of online transphobic hate crime was even less likely than hate crime generally. Chief Constable Sawyers told us:

If [online hate crimes] are committed by somebody who is thousands and thousands of miles away, it is really difficult to start to police those things happening.<sup>356</sup>

337. Most offensive website content stops short of being criminal.<sup>357</sup> Many of our witnesses argued that online providers needed to do more in such cases.<sup>358</sup> Trans Media Watch told us, for example, that it was very difficult to get Facebook to take offensive pages down. As well as the direct effect of the abuse itself, the posting online of “very personal, possibly inaccurate data” about someone can also have an indirect impact on such matters as trying to get a job or rent a flat.<sup>359</sup>

338. Mr Vaizey told us he had not found social media companies “particularly forthcoming” in producing clear codes of conduct, which he described as “a straightforward ask, not really of Government, but of society”.<sup>360</sup> Trans Media Watch told us that another issue was that many social media companies were based in the US which appeared to be less aware of trans issues.<sup>361</sup>

339. Since self-regulation does not appear to be working, we asked DCMS and the Minister whether formal regulation was needed. Mr Vaizey told us they had “not gone down the road of seeking formal regulation”.<sup>362</sup> DCMS argued:

Regulation risks stifling the creativity and innovation that the internet enables, and could be impractical and might impair the technical dynamism of the internet.<sup>363</sup>

Ms Belcher explained to us that social media companies were not regulated as broadcasters were because social media were seen as more conversations between people than a broadcast mechanism.<sup>364</sup> The Minister also told us it was “important to get the balance

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353 [Q304](#); Trans Media Watch ([TRA 162](#))

354 [Q45](#)

355 Department for Culture, Media and Sport ([TRA 259](#)). DCMS pointed to the House of Lords Communications Select Committee’s report into Social Media and Criminal Offences in July 2014, which found that the criminal law was “generally appropriate for the prosecution of offences committed using social media” – House of Lords, Report of the Select Committee on Communications, Session 2014–15, *HL Paper 37*, para 94.

356 [Q47](#). The UK Supreme Court has indicated that an offence can be committed under UK law where the person posting or controlling illegal material online is present in this country (irrespective of the physical location of the server on which the content is hosted). Home Office rules say that if the location of this individual is not known, then the police force in the area where the complainant lives is responsible for commencing enquiries.

357 Department for Culture, Media and Sport ([TRA 259](#))

358 Trans Media Watch ([TRA 162](#)); [Q47](#) [Jane Sawyers], [304](#)

359 [Q45](#)

360 [Q304](#)

361 [Q45](#)

362 [Q304](#)

363 Department for Culture, Media and Sport ([TRA 259](#))

364 [Q45](#)

right”, allowing people to speak freely online while also dealing with the “occasional overreaction”.<sup>365</sup>

340. The Government told us that it was working with social media companies in a number of ways. Under the UK Council for Child Internet Safety (UKCCIS), the Government and OFCOM were working with companies like Twitter, Facebook, Google, Ask.FM, MindCandy and Microsoft to try to develop best practice guidance for children.<sup>366</sup> We have also followed the work done on tackling revenge pornography online. We put it to the Minister that it appeared the Government could achieve more for trans people if it made it more of priority. The Minister told us this was “a very fair point”.<sup>367</sup>

341. Mr Vaizey told us that this area fell within the remit of Baroness Shields, the new Minister for Internet Safety and Security.<sup>368</sup> He later wrote to us reiterating that “what is illegal off-line is also illegal on-line” and stating that “robust legislation [is] in place to deal with internet trolls, cyber-stalking and harassment, and those who send messages that are grossly offensive, obscene or menacing”. He drew to our attention the Criminal Justice and Courts Act 2015, which amended offences in the Malicious Communications Act 1988, and the Communications Act 2003, to allow more time for investigations into offences, as “appropriate for modern communications and the internet”.<sup>369</sup>

***342. The Government’s desire to work with online service providers rather than further regulate them must not be an excuse for inaction. The Government must keep the situation under close review and work proactively with providers to ensure that they take their responsibilities seriously.***

## Schools

343. Gender-variant young people and their families face particular challenges at school. From witnesses we heard that schools often do not know how to deal with matters such as:

- recording a change of name and gender;
- bullying;
- inclusion in sport; and
- access to toilets.<sup>370</sup>

344. Gendered Intelligence explained:

There are gender divisions across the whole of our school systems [...] uniform policy, Sex and Relationship Education [SRE], Physical Education, sports, toilets, seating plans in the classroom and the ways teachers ask children to line up.<sup>371</sup>

Each of these situations is potentially problematic for a gender-variant pupil.

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365 [Q308](#)

366 Department for Culture, Media and Sport ([TRA 259](#))

367 [Q308](#)

368 [Qq304](#), [307](#), [309](#)

369 Department for Culture, Media and Sport ([TRA 270](#))

370 Mermaids ([TRA 156](#)); Gendered Intelligence ([TRA 163](#)); National Union of Students ([TRA 187](#))

371 Gendered Intelligence ([TRA 163](#)) para 24

345. The EHRC told us:

Research indicates that 91% of trans boys and 66% of trans girls experience harassment or bullying at school, leading to depression, isolation and a desire to leave education as early as possible. This is a higher rate of discrimination than that faced by young lesbian and gay students. This poor treatment at school has a knock-on effect on their mental health, attendance and ability to learn. Many gender-variant children report hiding their identity, to the detriment of their self-esteem, and leaving school as soon as possible to escape the bullying and harassment that they faced.<sup>372</sup>

346. Evidence we received during our inquiry suggested that the support and provision for trans school children is uneven, varying from school to school. Some schools were “outstanding”<sup>373</sup> and “fantastic, [...] doing everything they can”. Yet, as, Susie Green, the Chair of Mermaids, told us “too many [...] fell short”.<sup>374</sup>

347. Ms Green gave this illustration:

We have had an incident where a child turned up after transitioning over school holidays and the school refused to allow the child entry to the building and insisted on saying that the name and the gender on the birth certificate was the one that was legal and, therefore, they could not and would not respect their gender choices or their name change choices.<sup>375</sup>

348. We also heard that access to professionals, such as educational psychologists and Parent Support Advisers, was limited.<sup>376</sup> Ms Green told us that some schools were adopting a “victim mentality”, seeing the transgender student as the problem and wanting to “get rid” of, rather than accommodating, them and addressing the wider issues. She told us that some schools took the view: “We do not want to be dealing with that, so let us just shuffle it off to one side” or refuse to acknowledge it.<sup>377</sup>

349. Under the Equality Act 2010 (see Chapter Four), it is unlawful for schools to treat pupils less favourably on grounds of gender reassignment.<sup>378</sup> However, as the EHRC pointed out to us, the Act:

does not provide protection from harassment related to gender reassignment for students in schools, unlike most other protected characteristics; although such treatment by a school may amount to direct discrimination.<sup>379</sup>

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372 Equality and Human Rights Commission ([TRA 078](#))

373 Gendered Intelligence ([TRA 163](#)) para 23

374 [Q76](#)

375 [Q76](#)

376 Unpublished evidence (TRA 030)

377 [Q78](#)

378 The protection of pupils against discrimination on grounds of gender reassignment (under Section 85) now matches the protection in schools in relation to sexual orientation.

379 Equality and Human Rights Commission ([TRA 078](#)); cf. Trades Union Congress ([TRA 117](#)). The offence of harassment as defined under Section 26 of the Equality Act 2010 does not apply in schools with regard to religion or belief, sexual orientation or gender reassignment.

350. According to the Department for Education, the lack of protection against harassment in this regard is not significant, as the provisions on direct discrimination provide adequate protection in a school setting.<sup>380</sup>

351. Schools also have to take account of the protected characteristic of gender reassignment when considering their obligations under the Public Sector Equality Duty (PSED).<sup>381</sup> The Department for Education has produced guidance for schools to help them understand how the Equality Act affects them and how to fulfil their duties.<sup>382</sup> This guidance includes a section on gender reassignment, which explains that this definition does not mean a pupil has to be undertaking a medical procedure.<sup>383</sup>

352. Mermaids argued that the EHRC’s enforcement powers under the Act were limited by a requirement to have the consent of a young person’s parents in order to pursue a complaint about discrimination:

a young person of 16 wanted their name changing at school but their parents did not consent to this. Although the Equality and Human Rights [Commission] found the school’s refusal to comply was discriminatory, they could not proceed with action against the school as the young person was under 18.<sup>384</sup>

353. Schools also have to have behaviour policies which include bullying. In its written evidence to us the Government stated that:

All children and young people should be allowed to be themselves and to achieve all that they are capable of. The Government is determined to stamp out bullying in school (or in higher or further education) because of their gender identity [...]<sup>385</sup>

354. Many witnesses called for a “more coherent and standardised” approach for supporting gender variant people through their education.<sup>386</sup> Mermaids described a “lack of even basic understanding of gender variance within many education professionals.”<sup>387</sup> They called for staff training around gender identity to be widely available and mandatory for all school staff and to be included during teacher training.

355. The Women and Equalities Minister, Ms Morgan, who is also Secretary of State for Education, admitted to us that “there are clearly some areas where there is a lot of improvement needed.”<sup>388</sup>

356. We asked Ms Morgan what she was doing to make sure that schools were abiding by their responsibilities under the Equality Act. She replied:

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<sup>380</sup> [Department for Education, The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities, May 2014, paras 1.19–21](#)

<sup>381</sup> Schools as public bodies, are required, in carrying out their functions, to have due regard to the need to achieve the objectives set out under Section 149 of the Equality Act 2010 (the Public Sector Equality Duty).

<sup>382</sup> Department for Education, Equality Act 2010: advice for schools, February 2013; Department for Education, [The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities](#), May 2014

<sup>383</sup> Government Equalities Office ([TRA 245](#)) para 16

<sup>384</sup> Mermaids ([TRA 156](#))

<sup>385</sup> Government Equalities Office ([TRA 245](#)) para 15

<sup>386</sup> Gendered Intelligence ([TRA 163](#))

<sup>387</sup> Mermaids ([TRA 156](#))

<sup>388</sup> [Q296](#)

we are looking at initial teacher training. At the moment, there is no curriculum as such, but Sir Andrew Carter has been doing a review for my Department on what we think should be in teacher training, without wishing to be too prescriptive, but there are areas where there is more that we could do about getting teachers to be more confident and to support pupils and other members of staff.<sup>389</sup>

357. Several witnesses argued that schools should provide better education on gender identity, possibly under the SRE component of Personal, Social and Health Education (PSHE). The GEO has recently funded the PSHE Association and sector experts to draw up advice for schools on gender-variant pupils, incorporating a toolkit for schools on supporting gender variant pupils and lesson plans on gender identity for use in PSHE lessons. It also drew attention to the introduction to the new national curriculum, which states that all schools should teach PSHE, drawing on good practice.<sup>390</sup>

358. Several witnesses pointed out that PSHE is not statutory. Jay Stewart, of Gendered Intelligence, told us: “I would be recommending statutory PSHE across the country [...] it is a brilliant curriculum to support students to know lots of stuff around sexual orientation and also gender identity.”<sup>391</sup> Mermaids told us that they supplied resources via councils to schools across the country. However, as they were not national resources, schools often felt no obligation to refer or adhere to the guidance.<sup>392</sup>

359. We asked Nicky Morgan if she felt that transgender issues should be taught in schools as part of what should be mandatory PSHE. She replied: “PSHE is hugely important [...] but just because you say something is statutory [does not mean] it is going to be taught well.”<sup>393</sup>

**360. *More needs to be done to ensure that gender-variant young people and their families get sufficient support at school. Schools must understand their responsibilities under the Equality Act. They must abide by their legal responsibility to ensure that all staff receive sufficient training to ensure they are compliant across all protected characteristics, including that which relates to trans people, especially gender-variant young people. In its review of initial teacher training, the Government should consider the inclusion of training on the protected characteristics.***

**361. *Trans issues (and gender issues generally) should be taught as part of Personal, Social and Health Education.***

## Post-school education

362. One in three trans students experience at least one form of bullying or harassment on campus. Research by the National Union of Students (NUS) found that trans students were twice as likely as LGB students to have experienced harassment, threats or intimidations, and physical assault on campus.<sup>394</sup> We also heard evidence that in further education,

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389 [Q296](#)

390 Government Equalities Office ([TRA 245](#)) para 15

391 [Q79](#)

392 Mermaids ([TRA 156](#)) pp 5-6

393 [Q298](#)

394 National Union of Students ([TRA 187](#)) para 2

the learning environment for LGBT learners might be more hostile than that in higher education.

363. Such experiences impact on trans students' studies and participation in student life more broadly. The NUS stated that students who had experienced transphobic harassment in higher education were two to three times more likely to consider leaving their course. Students who had experienced transphobia had also reported that it had put them off from participating in sport.<sup>395</sup>

364. We also heard about other issues which concerned trans students, including lack of gender-neutral toilets, lack of policies to update names and genders in the student register, being repeatedly mis-named or mis-gendered by staff, problems with university security staff, and insufficiently well trained career advisers.<sup>396</sup> One trans person told us they had left university after two terms due to bullying from other students and lack of support from lecturers, including frequent mis-gendering. Anna Lee, Vice President, Welfare and Community, Lancaster University Students' Union, told us that universities were also "not being as accommodating as they should be to trans students requiring time out during their course for mental health reasons or a variety of other reasons, and students having to really fight for their ability to, say, take a degree in one year longer."<sup>397</sup>

365. When asked about the provision of gender-neutral toilets in higher education institutions Dr Jay Stewart, Director, Gendered Intelligence, told us that:

Genderneutral toilets, genderneutral spaces and genderneutral language need to flow through many of our institutes of education, right through to higher education. There is no reason to say "male" or "female" in many senses, so why should we? [...] We should have more genderneutral toilets, the same for everyone. That will help lots of people, including trans and nonbinaryidentified people.<sup>398</sup>

366. We put the levels of reported bullying and harassment of trans students to Nick Boles MP, Minister of State for Skills at the Department for Business, Innovation and Skills. He told us

That, in a sense, is perhaps particularly shocking. Maybe this is naïve of me, but you would rather hope that a younger age group was more aware and more open-minded. We can excuse, perhaps, people who have grown up in a different age and with a different set of attitudes. That is very troubling.<sup>399</sup>

367. He continued by saying:

The higher education sector has a sectorled Equality Challenge Unit and it produces guidance. There is guidance called "Trans staff and students in higher education", which was updated in 2010, which helps the institutions. There is a gender equality charter.

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395 National Union of Students ([TRA 187](#)) para 4 [The same findings applied to biphobia and homophobia.](#)

396 National Union of Students ([TRA 187](#)) para 6

397 [Q80](#)

398 [Q82](#)

399 [Q293](#)

He said that what was needed was a “challenge to bad behaviour” and a “zero-tolerance regime”. He told us that he was:

very happy to take that away and have a discussion with the Universities Minister, Jo Johnson, about whether we can make sure that university vice chancellors, frankly, are taking this seriously and not just thinking, “Oh, well, I have my charter and I have my guidance”, but are doing something about it where these cases are reported.<sup>400</sup>

368. The GEO, in its written submission, also told us that the Skills Funding Agency had commissioned research in 2011 into sexual orientation and gender identity equality in adult learning. A number of recommendations were made in the report aimed at further education colleges and independent training providers and a range of projects subsequently funded by the Skills Funding Agency, through the Equality and Diversity Good Practice Fund and its predecessor funds. The Institute for Employment Studies had evaluated the fund and found that it has been particularly effective in raising the status of “newer” protected characteristics such as gender identity. The GEO noted that the good practice and resources from each project were “freely available for the whole sector to use”.<sup>401</sup>

**369. The levels of bullying and harassment experienced by trans students in further and higher education are unacceptable. We welcome the offer of the Minister of State for Skills to raise this with university Vice Chancellors and to discuss with them whether enough is being done when complaints are made. We recommend that the Government hold similar conversations with further education providers. The Government should also take steps to ensure all further education and university staff receive gender identity awareness training. Further and higher education institutions should take proactive steps to promote trans equality, including having a Transgender Champions scheme for their non-trans staff.**

## Social care for young people

370. We also heard evidence that there is a lack of appropriate training of social care staff in trans issues, raising particular issues for gender variant looked-after children or gender variant children in secure accommodation Mermaids wrote:

[our] experience of children in care or families dealing with social services has been poor. There have been many cases where, if the families support their child’s gender variance, social services have attempted to remove children from the family home by treating this as a safeguarding concern and investigating the parents accordingly. Social workers have no formal knowledge or training around gender variance, and appear to act on their own prejudices rather than researching gender issues. For children and young people in care, no provision or reasonable adjustments are made if a young person is presenting as the opposite gender to their birth gender, and in many cases staff are failing on their duty of care.<sup>402</sup>

400 [Q293](#)

401 Government Equalities Office ([TRA 245](#)) para 17

402 Mermaids ([TRA 156](#)) para 6

371. In oral evidence Susie Green explained that as a result of such ignorance many trans looked after children felt “very unsafe”. She told us about one individual in Mermaids’ teens’ group who had received “no support, is very frightened of consequences and has had violence against them in that setting where staff have not interceded appropriately”.<sup>403</sup>

372. We asked Dr Bernadette Wren about the Tavistock Clinic’s experience of young people in care. She replied:

We do see people in care, but we see the people we see and who make their way to us. I cannot speak about all the people who are not being referred to us, and they are the people we ought to be worried about. Our experience has been [...] a seachange, partly driven by the equalities legislation that enables social workers to have a degree of confidence of knowing what these children are entitled to [...] I would say it is a very mixed bag. We have some exemplary cases where social care is incredibly supportive of the young people. There is good practice out there.<sup>404</sup>

**373. We have heard worrying evidence about some social workers’ lack of knowledge on gender variance. *The Government should seek to address this through formal training as a matter of urgency.***

**374. A key theme running through this chapter has been lack of sufficient understanding of trans issues by professionals in the public sector, probably reflecting society’s lack of knowledge—and sometimes prejudice. We have already recommended that the Government bring forward a new strategy to tackle issues faced by trans people. *Appropriate training of public sector professionals on gender identity issues must be a key part of this new strategy.***

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403 [Q83](#)

404 [Q88](#)



# Conclusions and recommendations

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## Our Inquiry

1. Fairness and equality are basic British values. Parliament established this Committee to provide the opportunity for on-going focused scrutiny of where fairness and equality are not yet a reality of day-to-day life. A litmus test for any society that upholds the principles of fairness and equality is the extent to which it supports and protects the rights and interests of every citizen, even the most marginalised groups. Whilst Britain has been among the countries that have gone furthest in recognising lesbian, gay and bisexual rights, our society is still failing this test in respect of trans people, despite welcome progress in recent years. (Paragraph 7)

## Cross-government strategy

2. The Minister for Women and Equalities and the Government Equalities Office have a cross-government role in respect of trans equality. The 2011 Advancing Transgender Equality action plan remains largely unimplemented. Within the next six months, the Government must agree a new strategy which it can deliver, with full cross-departmental support. (Paragraph 26)
3. It must also draw up a balance sheet of the previous transgender action plan, confirm those actions which have been completed and agree a new strategy to tackle those issues which remain unaddressed. This must be done within the next six months. It should set out clearly the areas of responsibility and lines of accountability in the public sector regarding trans equality issues. It should also include a wholesale review of issues facing non-binary and non-gendered people. (Paragraph 26)
4. The Government must also make a clear commitment to abide by the Yogyakarta Principles and Resolution 2048 of the Parliamentary Assembly of the Council of Europe. This would provide trans equality policy with a clear set of overall guiding principles which are in keeping with current international best practice. (Paragraph 27)

## Gender Recognition Act 2004

5. The Government must look into the need to create a legal category for those people with a gender identity outside that which is binary and the full implications of this. (Paragraph 31)

## Providing proof

6. While we recognise the importance of the Gender Recognition Act as pioneering legislation when it was passed, it is clear that the Act is now dated. The medicalised approach regarding mental-health diagnosis pathologises trans identities; as such, it runs contrary to the dignity and personal autonomy of applicants. (Paragraph 44)
7. Within the current Parliament, the Government must bring forward proposals to update the Gender Recognition Act, in line with the principles of gender self-

declaration that have been developed in other jurisdictions. In place of the present medicalised, quasi-judicial application process, an administrative process must be developed, centred on the wishes of the individual applicant, rather than on intensive analysis by doctors and lawyers. (Paragraph 45)

### Spousal consent

8. We are very aware of the widespread and strongly felt opposition within the trans community to the provision on spousal consent which was introduced by the Marriage (Same Sex Couples) Act 2013. We understand that trans people feel this gives their spouses an effective “veto” on the acquisition of a full Gender Recognition Certificate. (Paragraph 61)
9. The nature of marriage (whether same-sex or different-sex) is that of a legal contract between two consenting parties, the terms of which cannot be changed without the consent of both parties. This means that in a marriage where one party transitions, the non-trans spouse does have a legal right to be consulted if it is proposed to change the terms of the marriage contract in consequence—and this right must also be given due weight. (Paragraph 62)
10. We do take very seriously the evidence that we have heard regarding the scope that the spousal-consent provision gives for married trans people to be victimised by spouses with malicious intent. Where this occurs, it is, of course, deplorable and inexcusable. (Paragraph 63)
11. The Government must ensure that it is informed about the extent of this and ways of addressing the problem. (Paragraph 63)

### Age limit

12. For some young people the decision regarding gender recognition is straightforward; for some it is not. It is important that clear safeguards are in place to ensure that long-term decisions about gender recognition are made at an appropriate time. Subject to this caveat, a persuasive case has been made to us in favour of reducing the minimum age at which application can be made for gender recognition. (Paragraph 70)
13. We recommend that provision should be made to allow 16- and 17-year-olds, with appropriate support, to apply for gender recognition, on the basis of self-declaration. (Paragraph 70)
14. We are very cautious about recommending gender recognition in respect of children aged under 16 (subject to parental consent or self-declaration on the basis of Gillick competence), and believe the Government should further consider the possible risks and benefits. (Paragraph 71)

### Data protection

15. Evidence we received demonstrates abuse of confidential information about people’s trans status, contrary to Section 22 of the Gender Recognition Act, which is

intended to protect trans people against “outing”. However, we note that not a single prosecution has yet been brought under this Section. There is a grave danger that this provision will become (if it has not already become) a “dead letter”. (Paragraph 87)

16. The Ministry of Justice must investigate why there have not been any prosecutions and take action to address this. It must also work with the courts to tackle the issue of trans people being inappropriately “outed” in court proceedings. (Paragraph 87)

### Gender reassignment as a protected characteristic

17. The inclusion of “gender reassignment” as a protected characteristic in the Equality Act 2010 was a huge step forward and has clearly improved the position of trans people. However, it is clear to us that the use of the terms “gender reassignment” and “transsexual” in the Act is outdated and misleading; and may not cover wider members of the trans community. (Paragraph 107)
18. The protected characteristic in respect of trans people under the Equality Act should be amended to that of “gender identity”. This would improve the law by bringing the language in the Act up to date, making it compliant with Council of Europe Resolution 2048; and make it significantly clearer that protection is afforded to anyone who might experience discrimination because of their gender identity. (Paragraph 108)
19. The protections afforded by the Equality Act 2010 are intended to be available to all, including children and adolescents. (Paragraph 109)
20. The Equality and Human Rights Commission must be able to investigate complaints of discrimination raised by children and adolescents without the requirement to have their parents’ consent. (Paragraph 109)

### Exemptions in respect of trans people

21. Significant concerns have been raised with us regarding the provisions of the Equality Act concerned with separate-sex and single-sex services and the genuine occupational requirement as these relate to trans people. These are sensitive areas, where there does need to be some limited ability to exercise discretion, if this is a proportionate means of achieving a legitimate aim. However, we are not persuaded that this discretion should apply where a trans person has been recognised as of their acquired gender “for all legal purposes” under the Gender Recognition Act. In many instances this is unlikely, in any case, to meet the proportionate test. (Paragraph 132)
22. We recommend that the Equality Act be amended so that the occupational requirements provision and / or the single-sex / separate services provision shall not apply in relation to discrimination against a person whose acquired gender has been recognised under the Gender Recognition Act 2004. (Paragraph 132)

### Separate-gender sport

23. Trans people are being excluded from the health and social benefits of non-competitive sport because of a misunderstanding of the fairly limited legislative exclusions. We welcome the Minister's suggestion that a practical guide be produced to better inform sporting groups, including university societies. (Paragraph 143)
24. We recommend that the Government work with Sport England to produce guidance which help sporting groups realise that there are likely to be few occasions where exclusions are justified to ensure fair competition or the safety of competitors. (Paragraph 143)

### NHS services

25. We have found that the NHS is letting down trans people, with too much evidence of an approach that can be said to be discriminatory and in breach of the Equality Act. (Paragraph 144)

### Professional regulation of doctors

26. We welcome the evidence we received from the Parliamentary Under-Secretary of State for Public Health regarding the importance of understanding and addressing the needs of transgender patients. And the creation for this purpose by NHS England of the Transgender and Non-Binary Network is a commendable step. (Paragraph 181)
27. However, it is clear from our inquiry that trans people encounter significant problems in using general NHS services due to the attitude of some clinicians and other staff when providing care for trans patients. This is attributable to lack of knowledge and understanding—and even in some cases to out-and-out prejudice. (Paragraph 182)
28. GPs in particular too often lack an understanding of: trans identities; the diagnosis of gender dysphoria; referral pathways into Gender Identity Services; and their own role in prescribing hormone treatment. And it is asserted that in some cases this leads to appropriate care not being provided. (Paragraph 183)
29. The NHS is failing in its legal duty under the Equality Act in this regard. There is a lack of Continuing Professional Development and training in this area amongst GPs. There is also a lack of clarity about referral pathways for Gender Identity Services. And the NHS as an employer and commissioner is failing to ensure zero tolerance of transphobic behaviour amongst staff and contractors. (Paragraph 184)
30. A root-and-branch review of this matter must be conducted, completed and published within the next six months. (Paragraph 184)
31. The General Medical Council must provide clear reassurance that it takes allegations of transphobia every bit as seriously as those concerning other forms of professional misconduct. (Paragraph 185)

## Treatment protocols

32. Part of the NHS's duty regarding equality for trans people is its obligation to provide appropriate Gender Identity Services to meet the needs of the trans community. (Paragraph 207)
33. We strongly welcome the long overdue trend towards the depathologisation of trans identities (decades after the same happened in respect of lesbian, gay and bisexual identities) and the explicit acknowledgement within Gender Identity Clinics that the treatable condition of gender dysphoria is not synonymous with trans identity as such. This approach must be reflected in all areas of Government policy on trans issues, not least in relation to gender recognition. (Paragraph 208)
34. We are concerned that Gender Identity Services continue to be provided as part of mental-health services. This is a relic of the days when trans identity in itself was regarded as a disease or disorder of the mind and contributes to the misleading impression that this continues to be the case. (Paragraph 209)
35. Consideration must be given to the transfer of these services to some other relevant area of clinical specialism, such as endocrinology (which deals with hormone-related conditions), or their establishment as a distinct specialism in their own right. (Paragraph 209)
36. We heard that there are serious concerns within the trans community regarding the treatment protocols that are applied by Gender Identity Services, particularly in respect of clinical assessment prior to treatment and the requirement to undergo a period of "Real-Life Experience" prior to genital (reassignment / reconstructive) surgery. This requirement is seen as reflecting outdated, stereotyped attitudes to male and female gender identity. (Paragraph 210)
37. Many people now favour the adoption instead of a model involving only the granting of informed consent, which is said to be used by some providers of private care in the USA. (Paragraph 211)
38. However, we are unconvinced of the merits of the proposed informed consent-only model. While there is a clear case for the granting of legal gender recognition on request, with the minimum of formalities, this approach is less appropriate for a medical intervention as profound and permanent as genital (reassignment / reconstructive) surgery. Clinicians do have a responsibility to observe ethical and professional standards, including their duty of care towards patients. In this particular area of medicine, appropriate practice also entails paying due regard to the internationally recognised guidelines of the World Professional Association for Transgender Health. In addition, clinicians practising in the NHS have a duty to ensure that the service's finite resources are spent appropriately and effectively. All of the foregoing obligations are incompatible with simply granting on demand whatever treatment patients request. (Paragraph 212)
39. The issues that exist around clinical protocols must instead be addressed through the consistent application of clear and appropriate standards across the Gender Identity Clinics. The situation described to us by Dr John Dean, Chair of the NHS National Clinical Reference Group for Gender Identity Services, whereby "there is not a

standard approach or a standard training in how the guidelines are interpreted”, is clearly unacceptable and must change. (Paragraph 213)

40. The Protocol and Service Guideline must make explicit the right of patients to be fully involved in their treatment and to exercise full personal autonomy in respect of their gender identity and presentation. It must be stipulated that treatment criteria are to be exercised flexibly case-by-case on that basis. (Paragraph 214)
41. Assessment prior to treatment must be undertaken in order to meet clinically necessary criteria regarding the patient’s diagnosis, ability to consent to treatment and (physical and mental) fitness for treatment. The requirement to undergo “Real-Life Experience” prior to genital (reassignment / reconstructive) surgery must not entail conforming to externally imposed and arbitrary (binary) preconceptions about gender identity and presentation. It must be clear that this requirement is not about qualifying for surgery, but rather preparing the patient to cope with the profound consequences of surgery. (Paragraph 215)

### Capacity and quality of services

42. The evidence is overwhelming that there are serious deficiencies in the quality and capacity of NHS Gender Identity Services. In particular, the waiting times that many patients experience prior to their first appointment (in clear breach of the legal obligation under the NHS Constitution to provide treatment within 18 weeks) and before surgery are completely unacceptable. (Paragraph 229)
43. We are also concerned at the apparent lack of any concrete plans to address the lack of specialist clinicians in this field. This will be a serious obstacle to addressing the lack of capacity, which growing demand for the service is sure to exacerbate, and cannot be ignored. (Paragraph 230)
44. The Department of Health must say in its response to us how it will work with Health Education England and other stakeholders to ensure that this is addressed. (Paragraph 230)

### The Tavistock Clinic (children and adolescents)

45. We acknowledge the hugely important and pioneering work of the Tavistock Clinic in providing help and support for gender-variant children and adolescents, and their families. (Paragraph 249)
46. We recognise that there are legitimate concerns among service-users and their families about the clinical protocols which the clinic operates regarding access to puberty-blockers and cross-sex hormones. Failing to intervene in this way, or unnecessarily delaying such intervention, clearly has the potential to lead to seriously damaging consequences for very vulnerable young people, including the risk of self-harm and attempted suicide. (Paragraph 250)
47. We also recognise that the clinic has a difficult balance to strike. As with adult Gender Identity Services, clinicians have ethical and professional obligations to ensure that treatment is appropriate; and they must pay due regard to the

internationally recognised guidelines of the World Professional Association for Transgender Health. In addition, care must be taken that NHS resources are spent effectively and appropriately. (Paragraph 251)

48. There is a clear and strong case that delaying treatment risks more harm than providing it. The treatment involved is primarily reversible, and the seriously dangerous consequences of not giving this treatment, including self-harming and suicide, are clearly well attested. (Paragraph 252)
49. Accordingly, we recommend that, in the current review of the service specification and protocol for the Gender Identity Development Service, consideration be given to reducing the amount of time required for the assessment that service-users must undergo before puberty-blockers and cross-sex hormones can be prescribed. (Paragraph 253)

### Hate crime

50. Legal changes are critical, but they will only bite if there is cultural change too—by society but also by those who enforce the law. (Paragraph 266)
51. The Ministry of Justice must ensure that it consults fully with the trans community in developing the Government’s new hate-crime action plan, so that the proposals are well-targeted and likely to be effective in increasing levels of reporting. This plan must include mandatory national transphobic hate-crime training for police officers and the promotion of third-party reporting. (Paragraph 267)

### Hate crime legislation

52. We welcome the Government’s willingness to further strengthen hate crime legislation. We believe the case is overwhelming for protecting all groups concerned, including trans people, on an equal basis. (Paragraph 275)
53. The Government should introduce new hate-crime legislation which extends the existing provisions on aggravated offences and stirring up hatred so that they apply to all protected characteristics, as defined for the purposes of the Equality Act 2010. (Paragraph 275)

### Recording names and gender identities

54. There is a need for greater awareness of trans people’s legal right in most contexts to have their name and gender recorded as they wish without precondition. It is commonly assumed that there is such a thing in UK law as a “legal name”, when there is not; and that legal gender must be proved in many situations when this is in fact neither required nor appropriate. (Paragraph 296)
55. The Government must take the lead by ensuring public services have clear and appropriate policies regarding the recording of individuals’ names and genders. The requirement for trans people to produce a doctor’s letter in order to change the gender shown in their passport inappropriately medicalises what should be simply an administrative matter. This requirement must be dropped. (Paragraph 297)

56. The UK must follow Australia's lead in introducing an option to record gender as "X" on a passport. If Australia is able to implement such a policy there is no reason why the UK cannot do the same. In the longer term, consideration should be given to the removal of gender from passports. (Paragraph 298)
57. The Government should be moving towards "non-gendering" official records as a general principle and only recording gender where it is a relevant piece of information. Where information on gender is required for monitoring purposes, it should be recorded separately from individuals' personal records and only subject to the consent of those concerned. (Paragraph 299)

### Prison and Probation services

58. While the safety and welfare of all offenders is paramount, caring for and managing trans offenders appropriately is crucial. There is a clear risk of harm (including violence, sexual assault, self-harming and suicide) where trans prisoners are not located in a prison or other setting appropriate to their acquired / affirmed gender. Neither is it fair or appropriate for them to end up in solitary confinement solely as a result of their trans status. (Paragraph 320)
59. We welcome the revision of the Prison Service Instruction on Care and Management of Transsexual Prisoners to make it more flexible and to extend it to prisoners on remand and offenders in statutory contact with the National Probation Service. (Paragraph 321)
60. The Ministry of Justice, National Offender Management Service and National Probation Service must urgently clarify what the situation is pending the publication of the new Instruction. When the new Instruction is published, they must ensure that staff are trained on it and that its implementation is monitored. (Paragraph 321)

### Media

61. While coverage of trans people in the media has been improving in recent years, there is no room for complacency—and confidence in regulators still appears low among the trans community. (Paragraph 334)
62. Both the Independent Press Standards Organisation and Ofcom should consider what steps they might take to encourage more trans people to come forward with complaints. (Paragraph 334)

### Online services

63. The Government's desire to work with online service providers rather than further regulate them must not be an excuse for inaction. The Government must keep the situation under close review and work proactively with providers to ensure that they take their responsibilities seriously. (Paragraph 342)



## Schools

64. More needs to be done to ensure that gender-variant young people and their families get sufficient support at school. Schools must understand their responsibilities under the Equality Act. They must abide by their legal responsibility to ensure that all staff receive sufficient training to ensure they are compliant across all protected characteristics, including that which relates to trans people, especially gender-variant young people. In its review of initial teacher training, the Government should consider the inclusion of training on the protected characteristics. (Paragraph 360)
65. Trans issues (and gender issues generally) should be taught as part of Personal, Social and Health Education. (Paragraph 361)

## Post school education

66. The levels of bullying and harassment experienced by trans students in further and higher education are unacceptable. We welcome the offer of the Minister of State for Skills to raise this with university Vice Chancellors and to discuss with them whether enough is being done when complaints are made. (Paragraph 369)
67. We recommend that the Government hold similar conversations with further education providers. The Government should also take steps to ensure all further education and university staff receive gender identity awareness training. Further and higher education institutions should take proactive steps to promote trans equality, including having a Transgender Champions scheme for their non-trans staff. (Paragraph 369)

## Social care for young people

68. We have heard worrying evidence about some social workers' lack of knowledge on gender variance. (Paragraph 373)
69. The Government should seek to address this through formal training as a matter of urgency. (Paragraph 373)
70. A key theme running through this chapter has been lack of sufficient understanding of trans issues by professionals in the public sector, probably reflecting society's lack of knowledge—and sometimes prejudice. We have already recommended that the Government bring forward a new strategy to tackle issues faced by trans people. (Paragraph 374)
71. Appropriate training of public sector professionals on gender identity issues must be a key part of this new strategy. (Paragraph 374)

## Annex: Terms of reference

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Evidence submissions were called for regarding the following issues:

- terminology and definitions, and the availability and reliability of data, relating to the trans community;
- the relationship between the Government Equalities Office and other government departments in dealing with transgender equality issues and how the UK's performance compares internationally;
- the operation of the Gender Recognition Act 2004 and whether it requires amending;
- the aspect of the Marriage (Same Sex Couples) Act 2013 which is referred to as the "spousal veto";
- the effectiveness of the Equality Act 2010 in relation to trans people;
- employment and workplace issues (including in the Armed Forces) affecting trans people;
- transphobia (including the portrayal of trans people in the media) and hate crime against trans people;
- issues affecting trans people in the criminal justice system;
- issues concerning the diagnosis of gender dysphoria, including the operation of NHS Gender Identity Clinics;
- access to gender reassignment treatment under the NHS;
- trans people and wider NHS services;
- NHS services for trans youth;
- issues concerning trans youth in the education system; and
- issues concerning trans youth and social care services (including looked-after children).

# Formal Minutes

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**Tuesday 8 December 2015**

Members present:

Maria Miller, in the Chair

Jo Churchill

Ben Howlett

Mims Davies

Draft Report (*Transgender Equality*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 374 read and agreed to.

Annex and Summary agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Tuesday 15 December at 9.45am]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's [inquiry web page](#).

### Tuesday 8 September 2015

*Question number*

**Jess Bradley**, Member, Executive Committee, Action for Trans Health; **Dr John Dean**, Chair, Clinical Reference Group for Specialised Gender Identity Services, NHS England; **Terry Reed OBE**, Co-Founder, Gender Identity Research and Education Society (GIREs); and **Steve Shrubbs**, Chief Executive, West London Mental Health NHS Trust

[Q1–25](#)

**Helen Belcher**, Director, Trans Media Watch, **Professor Neil Chakraborti**, Director, The Leicester Centre for Hate Studies, and **Chief Constable Jane Sawyers**, National Policing Lead on Transgender for Equality, Diversity and Human Rights Co-ordination Committee of the National Police Chiefs' Council

[Q26–47](#)

### Tuesday 15 September 2015

**Susie Green**, Chair, Mermaids, **Anna Lee**, Vice President, Welfare and Community, Lancaster University Students' Union, **Dr Bernadette Wren**, Head of Psychology and Associate Director, Gender Identity Development Service, The Tavistock and Portman NHS Foundation Trust, and **Dr Jay Stewart**, Director, Gendered Intelligence

[Q48–90](#)

**Professor Michael Brookes OBE**, Professor of Forensic Psychology, Birmingham City University, and **Megan Key**, Equalities Manager, National Probation Service

[Q91–129](#)

### Tuesday 13 October 2015

**Peter Dunne**, Visiting Researcher, New York University Law School, **Karen Harvey**, Chair, a:gender, **James Morton**, Manager, Scottish Transgender Alliance, and **Ashley Reed**, initiator of online petition on gender self-definition

[Q130–178](#)

**Christie Elan-Cane**, Non-Gendered campaigner and **Sue Pascoe**

[Q179–197](#)

### Wednesday 28 October 2015

**Karen Bradley MP**, Minister, Preventing Abuse and Exploitation, Home Office, **Jane Ellison MP**, Parliamentary Under-Secretary of State for Public Health, Department of Health, and **Will Huxter**, Regional Director of Specialised Commissioning (London), NHS England

[Q198–252](#)

**Rt Hon Nicky Morgan MP**, Secretary of State for Education and Minister for Women and Equalities, **Nick Boles MP**, Minister of State for Skills, Department for Business, Innovation and Skills and Department for Education, and **Caroline Dinanage MP**, Parliamentary Under-Secretary of State for Women, Equalities and Family Justice, Ministry of Justice and Department for Education

[Q253–298](#)

### Tuesday 3 November 2015

**Mr Edward Vaizey MP**, Minister for Culture and the Digital Economy, Department for Culture, Media and Sport

[Q299–315](#)

## Published written evidence

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The following written evidence was received and can be viewed on the Committee's [inquiry web page](#). TRA numbers are generated by the evidence processing system and so may not be complete.

- 1 Action for Trans Health ([TRA0230](#))
- 2 Action for Trans Health ([TRA0246](#))
- 3 Adrienne Macartney ([TRA0046](#))
- 4 Age UK ([TRA0241](#))
- 5 Albert Kennedy Trust ([TRA0239](#))
- 6 Alexis Vanlee ([TRA0247](#))
- 7 Amy Cohn ([TRA0194](#))
- 8 Ann Farmer ([TRA0016](#))
- 9 Anonymised - ([TRA0020](#))
- 10 Anonymised - ([TRA0041](#))
- 11 Anonymised - ([TRA0043](#))
- 12 Anonymised - ([TRA0050](#))
- 13 Anonymised - ([TRA0053](#))
- 14 Anonymised - ([TRA0054](#))
- 15 Anonymised - ([TRA0055](#))
- 16 Anonymised - ([TRA0057](#))
- 17 Anonymised - ([TRA0061](#))
- 18 Anonymised - ([TRA0066](#))
- 19 Anonymised - ([TRA0070](#))
- 20 Anonymised - ([TRA0082](#))
- 21 Anonymised - ([TRA0126](#))
- 22 Anonymised - ([TRA0133](#))
- 23 Anonymised - ([TRA0134](#))
- 24 Anonymised - ([TRA0135](#))
- 25 Anonymised - ([TRA0170](#))
- 26 Anonymised - ([TRA0173](#))
- 27 Anonymised - ([TRA0176](#))
- 28 Anonymised - ([TRA0178](#))
- 29 Anonymised - ([TRA0226](#))
- 30 Anonymised - ([TRA0250](#))
- 31 Anonymised - ([TRA0260](#))
- 32 Anonymised - ([TRA0012](#))
- 33 Anonymised - ([TRA0035](#))
- 34 Anonymised - ([TRA0049](#))

- 35 Anonymised - ([TRA0081](#))
- 36 Anonymised - ([TRA0084](#))
- 37 Anonymised - ([TRA0095](#))
- 38 Anonymised - ([TRA0119](#))
- 39 Anonymised - ([TRA0124](#))
- 40 Anonymised - ([TRA0136](#))
- 41 Anonymised - ([TRA0139](#))
- 42 Anonymised - ([TRA0144](#))
- 43 Anonymised - ([TRA0146](#))
- 44 Anonymised - ([TRA0181](#))
- 45 Anonymised - ([TRA0185](#))
- 46 Anonymised - ([TRA0188](#))
- 47 Anonymised - ([TRA0201](#))
- 48 Anonymised - ([TRA0222](#))
- 49 Anonymised - ([TRA0233](#))
- 50 Bent Bars Project ([TRA0264](#))
- 51 Brighton & Hove City Council ([TRA0211](#))
- 52 British Association of Gender Identity Specialists ([TRA0149](#))
- 53 Brook ([TRA0182](#))
- 54 Calderdale Council ([TRA0111](#))
- 55 Campaign to End Rape (CER) ([TRA0210](#))
- 56 Cecilia Dubois ([TRA0060](#))
- 57 Cheryl Morgan ([TRA0112](#))
- 58 Christie Elan-Cane ([TRA0266](#))
- 59 Claire McCann (Barrister) ([TRA0273](#))
- 60 Cliniq ([TRA0104](#))
- 61 Department for Culture, Media and Sport ([TRA0270](#))
- 62 Department for Culture, Media and Sport ([TRA0259](#))
- 63 Department for Work and Pensions ([TRA0269](#))
- 64 Department of Health ([TRA0274](#))
- 65 Discrimination Law Association ([TRA0165](#))
- 66 Dr Alex Sharpe ([TRA0028](#))
- 67 Dr Ari Gust ([TRA0080](#))
- 68 Dr Arvin Chaudhary ([TRA0004](#))
- 69 Dr Karl Rutledge ([TRA0143](#))
- 70 Dr Saoirse Caitlin O'Shea ([TRA0013](#))
- 71 Dr Susan Gilchrist ([TRA0189](#))
- 72 Dr Eleanor Burns ([TRA0063](#))

- 73 Dr Lee Middlehurst ([TRA0130](#))
- 74 Equaliteach C.I.C ([TRA0123](#))
- 75 Equality and Human Rights Commission ([TRA0078](#))
- 76 Equality Challenge Unit ([TRA0171](#))
- 77 Erin Smith ([TRA0097](#))
- 78 Erin Smith ([TRA0253](#))
- 79 Evangelical Alliance ([TRA0038](#))
- 80 Focus: The Identity Trust ([TRA0100](#))
- 81 Forum for Sexual Orientation and Gender Identity Equality in Post School Education ([TRA0172](#))
- 82 Fred - ([TRA0204](#))
- 83 Galop ([TRA0183](#))
- 84 Gender Identity Research And Education Society (Gires) ([TRA0058](#))
- 85 Genderagenda ([TRA0224](#))
- 86 Gendered Intelligence ([TRA0163](#))
- 87 General Medical Council ([TRA0267](#))
- 88 Government Equalities Office ([TRA0245](#))
- 89 Helen Belcher ([TRA0150](#))
- 90 Home Office ([TRA0271](#))
- 91 IPSO ([TRA0248](#))
- 92 IWW Nottinghamshire GMB ([TRA0085](#))
- 93 Jack Wolfe ([TRA0142](#))
- 94 Jacqueline Mearns ([TRA0087](#))
- 95 Jamie - ([TRA0044](#))
- 96 Jane Fae ([TRA0121](#))
- 97 Janella Bell ([TRA0029](#))
- 98 K Eaton ([TRA0106](#))
- 99 K&L Gates LLP ([TRA0096](#))
- 100 Kate Mariat ([TRA0166](#))
- 101 Kirsty Walker ([TRA0025](#))
- 102 Lancashire LGBT ([TRA0122](#))
- 103 Lesbian Rights Group ([TRA0164](#))
- 104 LGBT Consortium ([TRA0083](#))
- 105 LGBT Youth Scotland ([TRA0175](#))
- 106 LGBT+ Liberal Democrats ([TRA0197](#))
- 107 LGBT+ Society of the University of Strathclyde ([TRA0212](#))
- 108 Lisa Davies ([TRA0237](#))
- 109 Lisa Severn ([TRA0129](#))

- 110 London Friend ([TRA0094](#))
- 111 Master Sifu Victoria Richardson ([TRA0069](#))
- 112 Mermaids ([TRA0156](#))
- 113 Michael Toze ([TRA0001](#))
- 114 Michael Toze ([TRA0261](#))
- 115 Michelle Knight ([TRA0257](#))
- 116 Ministry of Justice ([TRA0272](#))
- 117 Ministry of Justice ([TRA0275](#))
- 118 Mirella - ([TRA0214](#))
- 119 Miss - Taylor ([TRA0137](#))
- 120 Miss Alexandra Stone ([TRA0022](#))
- 121 Miss Emma LLoyd ([TRA0215](#))
- 122 Miss Jayde Turner ([TRA0092](#))
- 123 Miss Mel Harris ([TRA0067](#))
- 124 Mr Bernard Reed ([TRA0059](#))
- 125 Mr Charlie Attenborough ([TRA0068](#))
- 126 Mr Joe Daniell ([TRA0011](#))
- 127 Mr Michael Steven ([TRA0191](#))
- 128 Mr Peyton Jacob Knight ([TRA0128](#))
- 129 Mr Zac Snape ([TRA0089](#))
- 130 Ms Astrid Walker ([TRA0192](#))
- 131 Ms Barbara Aster ([TRA0155](#))
- 132 Ms Brenda Smith ([TRA0115](#))
- 133 Ms Caroline Paige ([TRA0151](#))
- 134 Ms Eve Wallis ([TRA0023](#))
- 135 Ms Gillian B ([TRA0132](#))
- 136 Ms Julia Gamble ([TRA0091](#))
- 137 Ms Melanie Bartlett ([TRA0147](#))
- 138 Ms Miranda Yardley ([TRA0203](#))
- 139 Ms Mridul Wadhwa ([TRA0219](#))
- 140 Ms Nuala Dowie ([TRA0120](#))
- 141 Ms Sally Rush ([TRA0105](#))
- 142 Ms Sarah Cooper ([TRA0037](#))
- 143 Ms Siobhan Winter-Smith ([TRA0003](#))
- 144 Ms Sophia Crews ([TRA0161](#))
- 145 Ms Stephenie Robinson ([TRA0034](#))
- 146 Ms Suzanna Hopwood ([TRA0031](#))
- 147 Ms Suzanna Hopwood ([TRA0033](#))



- 148 Ms Victoria Mitchell ([TRA0232](#))
- 149 Ms Johanna-Alice Cooke ([TRA0102](#))
- 150 Mx Adam Harper Eaves ([TRA0088](#))
- 151 Mx Daira Hopwood ([TRA0234](#))
- 152 Mx Devin Dunseith ([TRA0015](#))
- 153 Mx Miles Row ([TRA0047](#))
- 154 Nat T. ([TRA0238](#))
- 155 National Aids Trust (NAT) ([TRA0206](#))
- 156 National Lgb&T Partnership ([TRA0077](#))
- 157 National Union of Students (NUS) ([TRA0187](#))
- 158 NHS England ([TRA0244](#))
- 159 Outreach Cumbria ([TRA0223](#))
- 160 Parents Campaigning for Sex Equality for Children and Young People ([TRA0228](#))
- 161 ParliOUT: The Houses Of Parliament's LGBT Workplace Equality Network ([TRA0127](#))
- 162 Peter Dunne ([TRA0251](#))
- 163 Polly Carmichael and Bernadette Wren NHS Gender Identity Development Service (Tavistock Clinic) ([TRA0236](#))
- 164 Prison Reform Trust ([TRA0198](#))
- 165 Prisons and Probation Ombudsman ([TRA0252](#))
- 166 Professor Sheila Jeffreys ([TRA0131](#))
- 167 Professor Zoë Playdon ([TRA0098](#))
- 168 Radical Feminist Legal Support Network ([TRA0052](#))
- 169 Rape Crisis England and Wales ([TRA0195](#))
- 170 Rhianna Humphrey ([TRA0265](#))
- 171 Rise ([TRA0159](#))
- 172 Royal College of General Practitioners (RCGP) ([TRA0268](#))
- 173 Ryan Hughes ([TRA0255](#))
- 174 Ryan Hughes ([TRA0258](#))
- 175 Safe T ([TRA0090](#))
- 176 Sarah Brown ([TRA0169](#))
- 177 Scottish Transgender Alliance ([TRA0225](#))
- 178 Scottish Women Against Pornography ([TRA0199](#))
- 179 Steph Farnham ([TRA0240](#))
- 180 Stephanie Davies-Arai ([TRA0101](#))
- 181 Stonewall ([TRA0243](#))
- 182 Stonewall Housing ([TRA0227](#))
- 183 Sue Pascoe ([TRA0256](#))
- 184 Sue Pascoe ([TRA0262](#))

- 185 Support U ([TRA0186](#))
- 186 Sussex Partnership NHS Foundation Trust ([TRA0276](#))
- 187 Sussex Police ([TRA0174](#))
- 188 Suzanna Hopwood ([TRA0032](#))
- 189 Terry Reed ([TRA0019](#))
- 190 The Beaumont Society ([TRA0099](#))
- 191 The British Psychological Society ([TRA0113](#))
- 192 The Dawn Skinner Fund ([TRA0062](#))
- 193 The Royal College of Speech and Language Therapists ([TRA0045](#))
- 194 Tilly Simmonds ([TRA0009](#))
- 195 Trans Media Watch ([TRA0162](#))
- 196 Trans Yorkshire ([TRA0235](#))
- 197 Trans\*Formation ([TRA0040](#))
- 198 TUC ([TRA0117](#))
- 199 UK Lesbian and Gay Immigration Group ([TRA0205](#))
- 200 UK Trans Info ([TRA0138](#))
- 201 UNISON ([TRA0116](#))
- 202 Unison Bournemouth Higher & Further Education Branch ([TRA0190](#))
- 203 University of Leeds Centre for Law and Social Justice and Intersex UK ([TRA0167](#))
- 204 University of Sussex ([TRA0093](#))
- 205 Women & Girls Equality Network (WAGEN) ([TRA0207](#))
- 206 Women Analysing Policy on Women ([TRA0086](#))
- 207 Women's Aid ([TRA0200](#))
- 208 Women's Resource Centre ([TRA0213](#))