

No Excuses: *Inclusion and Equality for all.*

**Our critique of the Government Response to the
Women and Equalities Committee Report on
Transgender Equality.**

Prepared and published by:



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**Specific
Detriment**

Specific Detriment

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Introduction

In July 2015, the Women & Equalities Committee began undertaking an inquiry into equality of transgender people, which involved public consultations with the trans community. The consultation heard a number of people giving oral evidence of the issues that trans people face, and collected an even larger amount of written evidence from the trans community. Evidence was also provided by legal and medical experts.

In January 2016, the committee released a report of their findings and conclusions. This report made a number of recommendations to the government about issues that should be looked at and addressed. On the 7th of July 2016, the government responded to a number of these recommendations.

Sadly, we feel a number of issues and conclusions from the inquiry's report were brushed off or ignored by the government's response. We are releasing this response to the government's response, which looks at a number of these issues and calls for more decisive actions and analysis.

Gender Recognition Act

With regards to the Gender Recognition Act specifically, the response to the report primarily seems to focus on the streamlining of the process of gender recognition, as well as demedicalising the process. While we can applaud these particular efforts as they are thoroughly needed, unfortunately, the response leaves a lot of crucial issues untouched at this time.

Self-declaration

The response makes no commitment to engaging with self-declaration. Instead, they intend to continue investigating it, but would like to see more evidence for change and the implications of it. We would suggest that there was substantial evidence to the inquiry itself to support the consideration of these changes. Self-declaration is vital to equality for trans people.

As looked at in the Nonbinary Inclusion Project's (NBIP) response, "Leaving Nobody Behind"[1], the current gender recognition process is inaccessible, expensive, dehumanising and restrictive. Unfortunately, while both streamlining and demedicalisation will help, this will not solve the problems with this process.

Without a self-declaration process in place, extensive documentation to show that a change of gender is "real" will likely still be required. This will then be assessed by a panel to determine if a person is truly trans or not.

Autonomy

People with disabilities who struggle to complete paperwork and organise the amount of documentation that the process requires will still require assistance to complete the application. As discussed in NBIP's "Leaving Nobody Behind", this not only removes autonomy in what is a very personal process, but also requires that the person being assisted "out" themselves to the person who is assisting them.

Cost

"[...]if your application is refused, you have thrown that money away - a risk not all can afford to take."

Those who are not financially well off may continue to struggle with the costs of the process. Currently, applying for a Gender Recognition Certificate costs £140, and while there are discounts in place for those who may struggle to afford it, the criteria in which they apply is restrictive. Furthermore, these costs are non-refundable, and are incurred for the application of a Gender Recognition Certificate, rather than for obtaining one, so if your application is refused, you have thrown that money away - a risk not all can afford to take.

Even if the cost of the application process were to be lowered, the costs involved in obtaining documentation are prohibitive: some clinicians will charge for medical reports supporting transition in the format required by the Gender Recognition Panel; you may need to obtain a new copy of your birth certificate if you do not have an original; most solicitors charge for the witnessing of the Statutory Declarations required for this process. These are just a few examples, and other pieces of documentation may incur costs of their own.

Dehumanising process

Ultimately, obtaining a Gender Recognition Certificate requires you to go through a process of obtaining and keeping documentation that you have been "living" as the "desired" gender for a certain amount of time. This documentation is then submitted to the Gender Recognition Panel, who discuss your application and make a decision based on the evidence in front of them.

It is dehumanising for gender recognition to be based on a process through which other people decide what gender you should be based on arbitrary documentation that reinforces outdated gender stereotypes and behaviours. A person's gender is theirs to figure out, and for a person to be told that they're wrong about that, and have to continue to be documented as the wrong gender, by a panel of arbitrary and unaffected people based on paperwork is unacceptable and violates a person's autonomy.

In a society where it is dangerous for a person to be publicly out as trans, it must be a straightforward process to update your documentation. Where that is not the case, every action a person takes requiring that documentation - applying for a job, having kids, travelling and more - is a risk to that person's life and health.

Minimum age

The response also suggests that the government would like to see more evidence for altering the minimum age for obtaining a Gender Recognition Certificate.

Gender recognition for younger people is also an important issue that needs to be addressed as a priority. There are a number of issues that specifically affect younger trans people that mean that this is a crucial concern.

Those under the age of 16 often have less options when it comes to forms of identification, which means that they have to rely on birth certificates and similar documentation, which will state a contradictory gender to how they may feel or present.

Furthermore, with section 22 only applying to those who have Gender Recognition Certificates, it is possible for a school to reveal a student's trans identity to teachers or even other students with minimal consequences. While there may be Data Protection Act implications of this, the protections of the Data Protection Act have proven to be insufficient in this regard.

Furthermore, students frequently experience difficulty in getting schools and exam board to update their names or gender on records. Some students also experience difficulty in being permitted to wear the clothes or uniforms that relate to the presentation and gender. Being able to obtain a Gender Recognition Certificate offers protection and a method through which to encourage the schools and exam boards to take the appropriate action in these circumstances.

In many cases, these issues may "out" students in a variety of circumstances, which can put them in dangerous situations, making an already vulnerable group of people even more vulnerable.

Nonbinary (non-binary) recognition

Furthermore, the response seeks further evidence for the recognition of nonbinary genders. Once again, we feel there was substantial evidence in the initial inquiry to support the recognition of nonbinary genders. Nonbinary gender recognition is an important issue to a number of people.

As the NBIP response "Leaving Nobody Behind" discusses, in a survey[1] of 118 nonbinary people, 83% (98 people) had stated that they would have applied for Gender Recognition had the paperwork included their gender as an option. The response further points that this was a survey of only 118 nonbinary people, and that there are estimates[3] placing approximately 252,728 nonbinary people in the UK. These figures serve to show the significance and importance of formally recognising nonbinary genders in some way.

Furthermore, the UK Trans Info report, "Gender Recognition: Where Next?"[2], details results of a survey in which 64% of respondents from the wider trans community would not be willing to compromise on the issue of nonbinary recognition, considering it essential to be included.

How can this be done?

"The most straightforward way of initially introducing nonbinary recognition is to offer an "opt-out" from gender, instead of adding additional gender options."

In NBIP's "Leaving Nobody Behind", a number of options for inclusion of nonbinary people were discussed although no specific recommendations were made on this subject.

Several organisations involved in the production of this response are undertaking a consultation with members of the nonbinary community to find out what options for recognition would be most suitable. In the interim, however, it is our belief that the most

straightforward way of initially introducing nonbinary recognition is to offer an “opt-out” from gender, instead of adding additional gender options.

In this scenario, a person would opt to replace their gender markers with “unspecified” or “not applicable” markers on all documentation. Where the law makes reference to a specific gender, that person would be considered to have the most restrictive set of rules applied to them, while for all intents and purposes they would continue to not have a gender in a legal sense.

There are, of course, other options for implementation, however many of these require significant changes to primary legislation that would take considerable time and effort to carry out. Nonetheless, the nonbinary community is being engaged in an attempt to reach a plan that meets the needs of the community as a whole.

Why is this crucial?

Not all nonbinary people necessarily feel this way, however there are some situations where nonbinary people are deeply uncomfortable being recognised one particular binary gender and instead will prefer to be referred to and recognised as the “other” binary gender in circumstances where explaining their identity or fighting for recognition would consume too much time or energy. Many people who feel this way would also opt to be legally recognised as the gender they prefer - quite often, this is a gender they were not assigned at birth, which means that this will require undertaking the process of obtaining a Gender Recognition Certificate.

Unfortunately, under the current gender recognition process, this will require a person to be appearing to live as that gender all of the time, and to be that binary gender in all aspects of their life, despite this not actually being how they would ideally present or be recognised. Unfortunately, while streamlining the process of gender recognition could help with this issue, a lack of nonbinary recognition and self-declaration continues to perpetuate this issue.

There have been situations^[4] under the current gender recognition process where the Gender Recognition Panel has refused a certificate to people who openly present themselves as nonbinary in some aspects of their life, reasoning that they “are not living in the acquired gender in the sense required and they have not yet fully committed to the other gender”, and encouraging them to get further treatment to fully accept the gender for which they applied for recognition. Unfortunately, we expect this response to continue under any system that does not include nonbinary recognition or self-declaration of gender.

Privacy

We continue to be concerned about the existence of the Gender Recognition Register, in which the government essentially keeps a requisite list of trans people who have been granted gender recognition.

While technically this register is only accessible to certain officials in specific circumstances, there are situations where this information can fall into the wrong hands, or be abused or misused - there are already several cases of this happening. The existence of the Gender Recognition Register continues to make trans people uneasy about applying

for gender recognition - this was listed as a significant concern in both UKTI's "Gender Recognition: Where Next?"[2] and the nonbinary gender recognition survey[3].

The amount of concern people have surrounding the Gender Recognition Register is only increasing, with the recent rise of conservative politics and the recent ongoing attempts to dismantle human rights legislation, particularly following on from the EU Referendum. For example if legal protection from discrimination ceases to exist for trans people, anonymity would be the only remaining option for preventing it.

Section 22

Section 22 of the Gender Recognition Act 2004 makes it a criminal offence to disclose 'protected information' about a trans person. The government's response to concerns over this legislation suggest that they believe the legislation itself is satisfactory, and that they will simply investigate why it has never been used. They seem to be oblivious to the flaws in the legislation itself which have led to it rarely being used.

The biggest issue is that section 22 only applies if the person who made the disclosure knows and believes that the person they are disclosing information about holds a full Gender Recognition Certificate. This means that the protections do not apply to the vast majority of trans people, as only a small minority hold a full Gender Recognition Certificate. Even for those who hold a full Gender Recognition Certificate, the protections often do not apply. Not only must they out themselves to the person, but they must disclose that they hold a full Gender Recognition Certificate. Even then if the person they disclosed to did not believe them then the protections do not apply, so to realistically get the protections of section 22 they must actually show their Gender Recognition Certificate to the person. This means there are very few circumstances in which section 22 can actually apply.

It is vital that the government remove this restriction. Preferably it should apply to all trans people, whether or not they have a full Gender Recognition Certificate. Failing this the requirement to know about the Gender Recognition Certificate should be removed, which means that officials would have to assume that all trans people are protected in order to prevent a criminal offence from occurring.

Another flaw in section 22 is that the law only applies if the person who made the disclosure obtained the information in an "official capacity". This means that if, for example, a manager guesses that a person is trans, or hears about it in the pub, they can out the person without committing an offence. It also means that in many situations the disclosure is not an offence, for example where a neighbour or acquaintance makes the disclosure. This severely limits the applicability of the legislation.

The other most serious flaw is that, as a summary offence, there is a six month time limit after the offence occurs for evidence to be submitted to the magistrate. In many cases it can be several months before the trans person even finds out that the disclosure occurred, and the police can take a long time to investigate this. This means that the deadline can easily prevent a prosecution. Statutory exceptions to the six month time limit do apply to some summary offences, and the government should take steps to create an exception for this offence too in order to increase its effectiveness.

Equality Act

The government response discusses the issues with the Equality Act, most notably, references to “gender reassignment” as opposed to “gender identity” or similar terminology. It talks about the issues pertaining to non-binary (nonbinary) people specifically involved in this case, as well as discussing what is and isn’t protected under the Act.

The response states that the government feels that the provision of the protected characteristic of “gender reassignment” is compliant with their obligations under the Equal Treatment Directive. While this may be true, this unfortunate is not a comprehensive solution to protecting trans and nonbinary people under the Equality Act.

Unfortunately, the government has shown no intention to revise their Equality Act in this regard, which means that trans people will continued to be covered using the term “transsexuals” - this term is largely considered to be both outdated and overly medicalised by the trans community. There are a number of terms that are more inclusive and less stigmatising and medicalised that could be used, such as “transgender person” or “trans person”.

Similarly, the response advocates the continual use of the term “sex reassignment” for the protected characteristic of being trans. Again, this term is inherently medicalised, focussing on the act of sex reassignment rather than the individual, unlike other protected characteristics included in the Equality Act.

Nonbinary specific issues

“Nonbinary people should be covered because they are an oppressed minority in their own right, regardless of whether they are going through transition.”

The Equality Act has always been a bit of a battleground for nonbinary people, since it has never been overt whether nonbinary people are protected under the “gender reassignment” protected characteristic or not. There are a number of divisive opinions on this from a variety of organisations.

One legal opinion[5] states, very clearly, that they feel that nonbinary people are not protected by the Equality Act as it stands: “I consider that this leaves a clear category of individuals who do not come within the protected characteristic of ‘gender reassignment’”. We’re inclined to agree with this opinion.

Many nonbinary people choose not to undertake a medical transition for a number of reasons. Similarly, it is not necessarily uncommon for nonbinary people to forego changing their name or pronouns as part of a social transition. In these circumstances, we’re forced to ask if a person would be considered to be “undergoing a process of gender reassignment”, or even could be perceived to be, and the answer is too grey area to be comfortable or acceptable.

Furthermore, would an individual changing their name or pronouns be enough to be considered going through that process, and to therefore be protected? Especially considering a situation where a nonbinary person has changed their name to something that is generally considered gender neutral, and uses gender neutral pronouns.

Most importantly, the government response contains the following paragraph in an effort to address the issues of nonbinary protections under the Equality Act:

“Wider categories of transgender people, such as cross-dressers, non-binary and gender fluid people are protected if they experience less favourable treatment because of gender reassignment - for example, if they are incorrectly perceived as undergoing gender reassignment when in fact they are not, or incorrectly perceived to be male or female, perhaps because they do not comply with what society normally expects of men or of women.”

Unfortunately, we feel that this is not suitable as an explanation of why nonbinary people may be covered under the Equality Act in its current form. Nonbinary people should be covered because they are an oppressed minority in their own right, regardless of whether they are going through transition, or can be perceived to be. If someone is discriminated against for being nonbinary but cannot be perceived to be undergoing gender reassignment, they are not protected.

Data Protection Act

“The government must commit to a solution in which organisations are not permitted to record a gender marker unless it is relevant.”

Unfortunately, the government response was somewhat lacking in addressing some of the issues surrounding Data Protection. One of the things discussed in a related context, however, was the issue of gender markers on records and documentations generally.

The government response discusses that gender markers on records are often unnecessary, but limits their input to providing guidance on only using them where necessary. We would like to note, however, that what is considered to be “necessary” lacks definition in this context.

The issue that remains unacknowledged is that the removal of gender markers in only some contexts is not enough. The NBIP response to the initial inquiry, “Leaving Nobody Behind”^[1], briefly discussed some of these issues.

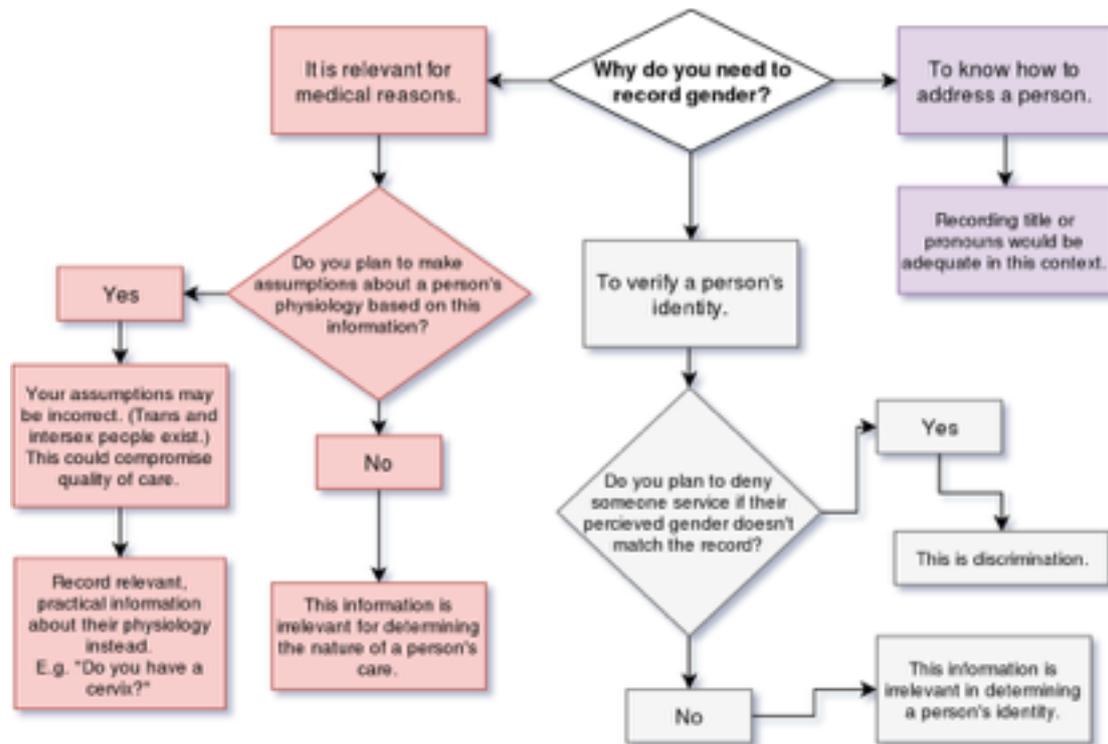
If we were to remove gender markers on some documents, but not all, organisations would simply ignore the documents lacking gender markers. Where a gender marker is not present, it is likely that an organisation would make assumptions on gender based on presentation, and would likely require documentation to challenge those assumptions. Alternatively, it’s possible that they would simply require that documentation in the first instance to ensure their records are “accurate”.

While this is an issue that affects all trans people, it is also likely to affect nonbinary people disproportionately. This is partly due to a lack of gender recognition, however the social implications of having an appearance of presentation (as many, although not all, nonbinary people do) that is not conventionally associated with a specific gender. As a result, it is common that nonbinary people will end up in positions where they are more often required to “prove” their gender to an organisation than binary trans people.

Therefore, guidance is not enough. The government must commit to a solution in which organisations are not permitted to record a gender marker unless it is relevant, while also defining both what is considered to be relevant, as well as what documentation can and cannot be required to prove a gender marker. We would suggest that the government make it clear that, generally, a person’s statement of their gender is enough for it to be

recorded as stated without backing documentation. For example, the following figure demonstrates that in the majority of cases, recording a gender marker is neither 'relevant' nor 'necessary'.

FIGURE 1: RECORDING GENDER MARKERS



Passports

The Trans Inquiry report recommended that “the UK must follow Australia’s lead in introducing an option to record gender as ‘X’ on a passport.” At the time this was welcomed as many trans, and particularly nonbinary people, have been advocating for this change for some time. It is also a policy adopted by the Green Party and the Liberal Democrats. The report also stated that “the requirement for trans people to produce a doctor’s letter in order to change the gender shown in their passport... must be stopped.” It is of note that these recommendations are particularly direct with their use of the word “must”. On the topic of removing gender from passports, the inquiry recommended that “in the longer term, consideration should be given” to this idea.

The Government’s response to the question of X markers on passports was that “UK law only recognises male and female genders, and to introduce a third category denoted by an ‘X’ in the passport would require a change in primary legislation.” We do not consider this a satisfactory response on many levels, primarily because it appears to misunderstand what is meant in the first place by the X marker. We are also disappointed that the Government response showed no apparent effort to assess how the Australian model might apply to the UK.

On the doctor’s letter requirement, the response was that “HMPO will extend the range of supporting documentation that can be used by an applicant to demonstrate use of their

gender of choice in their daily life.” We note that this response stems from evidence originally given to the inquiry, but makes no attempt to clarify what documentation would be accepted, which we find unsatisfactory.

X Markers

“At the moment any nonbinary person effectively has to lie about their gender in order to obtain a passport.”

The International Civil Aviation Organisation (ICAO), a UN agency which manages standards for international air travel, allows the use of X (meaning “unspecified”) on passports as an alternative to M or F[6]. A variety of countries have adopted allowing citizens to specifically apply for a passport with an X marker, including Australia, New Zealand, Denmark, Malta and Bangladesh.

Firstly, we disagree with the assertion that the introduction of X markers on passports requires a change in primary legislation. Noting evidence given to the Trans Inquiry panel that a passport is first and foremost a document to enable someone to travel[7], we would argue an X marker would mean that simply the individual’s “legal gender” is not specified on this particular document. On this point we note that many binary trans people currently possess a correct passport without having obtained a GRC, i.e. their passport is technically not recording their “legal gender” anyway.

Even if we accepted the Government’s assertion that X markers on passports could not be introduced “in isolation from other areas of government” we are most disheartened that there is not even the merest commitment to assessing this properly.

The Government response also says that before such legislation could be introduced in the UK that “we would need to consider the impact that such a change would have on the personal safety and wellbeing of the individual.” It is our general position that any form of direct legal representation would be of huge benefit to nonbinary people. However, for now, let’s address this in the context of passports specifically.

It is commonly asserted that X markers could cause difficulties when travelling abroad. The Trans Inquiry report stated “there was some doubt as to whether certain jurisdictions (e.g. the USA) would accept such a passport,” but it has been confirmed that the US does accept such passports, though anyone requiring a visa must currently choose a binary option[8].

It is also regularly assumed that gender markers on passports are required for identification purposes, but the imprecision of gender for visual identification must be acknowledged. Indeed, Maria Miller stated at one point during Inquiry proceedings that “walking through passport control, we could dress very differently and perhaps it would be difficult to know which gender any of us were.”[7] In addition, The Government has published advice which impress that it is good practice to “try not to assume someone’s gender simply by their appearance.”[9]

At the moment any nonbinary person effectively has to lie about their gender in order to obtain a passport, essentially having to choose which of the binary options is safer for them, assuming that they are even able to obtain the necessary documentation for a passport in the gender other than their birth assignment. The idea that an X passport might

cause difficulties at border control presupposes that people who would look to obtain such a document do not already experience problems with an M or F passport.

Ultimately, given that X passports are being adopted by different countries across the world, receive cross-party support in the UK, are favoured by nonbinary people, and were very strongly recommended by the Trans Inquiry itself, we are frankly insulted that the Government effectively fobbed off the idea without making any commitment to making the necessary discussions and ignored that the Trans Inquiry itself offered a wealth of evidence on the topic.

Removal of Gender from Passports

In its response, the Government rightly points out that ICAO standards currently do not allow for a passport not to record the holder's gender. This position was most recently assessed in a 2012 paper from the New Zealand Passport Office, the findings of which were taken on board by the ICAO. The conclusion of this paper was that "at this stage the costs of the change outweigh the benefits." We welcome the Government's willingness to reassess this by conducting a survey with member states of the ICAO Technical Advisory Group and look forward to seeing the results of this later this year.

However, we're disappointed that the Government appears more interested in pursuing this potential long term goal than seriously considering the legal impacts of the X markers the Inquiry recommended it "must" introduce, especially since the X marker is currently more popular among nonbinary people than removal of gender entirely. We agree with evidence given to the Inquiry that the removal of gender from passports should be "a gradual process, rather than something that you leap straight to."

We conclude therefore that this provision is currently the least pressing in terms of both the strength of the Inquiry's recommendation and the actual will of nonbinary people. The Government should pay more attention to seriously assessing the implementation of X markers on passports as currently allowed by ICAO standards and adopted by other countries.

Updating Gender on Passports

The reason for the Inquiry's recommendation that the requirement for a doctor's letter to change gender must be stopped is that it "inappropriately medicalises what should simply be an administrative matter." This is congruent with other recommendations throughout the report that the Government should generally move away from pathologising trans identities.

To that end, the Government has promised to "extend the range of supporting documentation that can be used" to change the gender marker. It notes that "this will mirror the approach adopted for passport applicants who wish to change their name," but makes no specific recommendations on what documents these might be. In November 2015, Karen Bradley MP, Home Office Minister for Preventing Abuse and Exploitation, stated to the Inquiry in written evidence that sources for such documents "may include, for example, employers or government agencies. We plan to discuss further with representative agencies how best we can extend customer choice." We are disappointed that the Government has not given any indication of when these discussions shall take place.

We have assessed what evidence an applicant may give in order to evidence a change of name. These differ depending on the precise reason, but include; a letter from a council or Government department, a driving licence, a bank statement, or a marriage or civil partnership certificate[10]. The majority of these documents are unlikely to declare gender explicitly, and a marriage/civil partnership certificate is not applicable to everyone. Furthermore, given the general recommendation that the Government takes the lead in moving away from recording gender as a matter of course, we fail to see how this may change.

In practice, we fear a doctor's note shall remain the only viable option for a change of gender on passport, in direct contradiction to the Inquiry's emphatic recommendation that this should not be the case. Furthermore, if the Government is to introduce the option for an X gender marker on passports in the future, it should be taken into account how this could be evidenced.

We encourage the Government to look to the example of the New Zealand Passport Office, which allows an individual to state the sex/gender identity they wish to be displayed on their passport (from the choice of M, F or X) evidenced entirely by completing a Statutory Declaration[11].

We believe that the Government should clarify in a timely manner what specific documentation they intend to allow, or at the very least state a timescale on which this information shall be discussed and made available.

Spousal Veto

"We feel that the current situation does not strike the correct balance in protecting each spouse's rights and goes too far by denying the rights of the trans person."

The law in England and Wales allows married trans people to obtain a full Gender Recognition Certificate, but only if their spouse consents to the marriage continuing. This means that the spouse is effectively able to veto the issuing of a full GRC, and this veto remains in effect for the entire duration of the marriage – whether that be six months or sixty years.

It is concerning that in this response, the issue of this "spousal veto" to gender recognition, is barely addressed, stating only that they will "monitor the issue". This kind of monitoring is impossible, as people who are most likely to be adversely affected by this are unlikely to apply for gender recognition in the first place (the cost involved in this process deters anyone from applying in cases their application may be unsuccessful). The government must act to remove this veto, which currently causes a disproportionate and unnecessary infringement on the trans person's human rights which can last for many months or years.

The government's position previously has been that the consent requirement is not a veto as the trans person can obtain an interim Gender Recognition Certificate which will enable them to end the marriage. However as well as the cost of divorce, this can add a significant delay. A 2007 report by the National Audit Office found that where separating couples refuse mediation to settle disputes "the average elapsed time [...] was 435 days, or over 14 months. Only 70 per cent of these cases were complete within 18 months." [12] In some cases divorce can take several years.

We believe that this is an unacceptable time for trans people to have their human rights withheld, especially when it is taken into consideration that they have already had a two year wait before they are able to even apply for a GRC and an average three month wait for their application to be heard.

We are also aware of some happily married couples which include a spouse that transitioned many years but the other spouse has refused to sign the statutory declaration of consent despite wanting to remain married. These trans people have to choose between an unwanted divorce, and forgoing gender recognition until their spouse dies. We are also aware of several other spouses who are upset and distressed at the prospect of having to sign the statutory declaration of consent despite being happily married and wanting that marriage to continue.

We are also concerned that situations such as if the trans person's spouse is deemed to lack capacity to consent under the Mental Capacity Act 2005. Section 27 of that Act prevents decisions from being made on behalf of a person when it is a decision regarding consenting to marriage or a civil partnership, so the statutory declaration of consent could not be signed on their behalf. The trans spouse would again be forced to choose between their gender recognition and their marriage. Similar situations would occur in other circumstances, such as where the other spouse was in a long-term coma or had gone missing

We acknowledge that many relationships do not survive when one partner undergoes gender transition and that it is important to protect the rights of the spouse who is not transitioning. However we feel that the current situation does not strike the correct balance in protecting each spouse's rights and goes too far by denying the rights of the trans person.

The law already requires the Gender Recognition Panel to inform a trans person's spouse when a GRC application is made, and when a full GRC is issued, and there is usually at least a twelve week gap between the two events. The Matrimonial Causes Act 1973 (as amended by schedule 2 of the Gender Recognition Act 2004) also already provides uncontested grounds for annulment when an interim GRC is issued. These provisions mean that a trans person's spouse is already more than adequately protected under the law.

If these steps are taken then the spouse is kept fully informed of the application, their marriage is not re-registered without their consent and they have the ability to bring the marriage to an end if they find the situation intolerable. If the applicant acts fraudulently in their application then the GRC can be revoked using the appeal procedures in section 8 of the Gender Recognition Act 2004. We believe that this adequately protects the rights of the trans person's spouse and that also allowing them to block the trans person from being issued with a full GRC is a disproportionate and unnecessary infringement on the trans person's human rights.

When considering the spousal consent requirement for the Marriage and Civil Partnership (Scotland) Bill the Scottish Parliament's Equal Opportunities Committee said in their report that they "believe that the non-transitioning spouse's personal choice is sufficiently protected by the automatic grounds for divorce triggered by his or her partner's seeking gender recognition. We therefore believe the requirement for spousal consent for gender recognition is unnecessary and should be removed" [13].

The resulting Scottish Act allows people married in Scotland to obtain a full GRC even if their spouse does not consent and even if they live in England. This is an unusual discrepancy where two married trans people living in the same town in England who did not have spousal consent would be in the position where one was able to obtain a full GRC because they married in Scotland and the other would not because they married in England. Removing the legal requirement for spousal consent as a whole would resolve this kind of discrepancy.

NHS - Adults

“Some of the NHS England’s information that the government has reiterated is completely untrue.”

Most of the section related to the NHS is a reiteration of information previously known from NHS England’s Trans & Nonbinary Network and their Task & Finish Group. This information was almost entirely already known during the inquiry, and therefore was taken into account both in the various pieces of evidence given and by the committee in the writing of their report. NHS England’s work and proposed work on this does not go far enough, and the government has missed a key opportunity to hold them to account on this and demand further improvements. We are also very concerned that there is no mention of nonbinary people in relation to the NHS. We need to see the government committed to pressuring the NHS to fulfil their duty of equality to nonbinary people.

We welcome the government acknowledging that gender dysphoria is not a mental illness, but are concerned that they believe moving it out of the mental health category is complicated. While it is true that the gender clinics themselves are all run by mental health trusts, this does not preclude them being classified in some other way especially as other elements such as surgery are not provided by mental health trusts. Even at NHS England level gender identity services are under the mental health management bracket, and NHS England have full discretion and ability to change this. They should be leading the way in making this change, and encouraging their providers to do the same.

Some of the NHS England’s information that the government has reiterated is completely untrue. The response states that the “greatest single obstacle to reducing historically long waiting times for genital reconstruction surgery has not been money [but rather] it has been a lack of training pipelines for medical and other health professionals with the necessary skills and competencies.” If this were the case then NHS England would have taken advantage much sooner of private surgeons such as James Bellringer at Parkside Hospital who for months had a lot of spare capacity and were asking NHS England to send some of the backlog their way. In addition the surgeons who are doing this surgery for NHS trusts are doing so at a very low capacity – Charing Cross Hospital only did five operations between two surgeons in May 2016 and only six in March.

That is less than one operation per week per surgeon on average, and if the commitment to reduce waiting times were genuine this could easily be increased. The government needs to be pushing NHS England and its providers to look beyond these excuses that they are routinely rolling out, and work to resolve these issues with whatever steps are needed to urgently resolve this crisis, including the provision of additional funding to NHS services for trans people.

It is concerning how much emphasis has been put on the value of the “expert professional advice from relevant Clinical Reference Groups comprised of professionals and lay people

with relevant expertise”. There are two relevant Clinical Reference Groups (CRGs). The first covers adult gender identity services whilst the second covers a wide variety of highly specialised child and adolescent “mental health” issues. Each CRG has just four patient representatives. In the case of the adult CRG, not all of the patient representatives are trans, most are not current patients and one has been absent from the majority of meetings. In the case of the youth CRG, the patient representatives are not all there due to an interest in gender identity services and it is likely that none of them are trans.

Nonbinary people are, as far as we know, unrepresented on either CRG. To make matters worse, NHS England recently ran a consultation which included a proposal to reduce the number of patient representatives in each CRG to two. Given the wide range of issues covered by each CRG it is impossible that they have patient representatives who can give expert advice in all areas. Evidence of this has been shown by the problems raised in each consultation that has occurred so far for service specifications.

Given the high degree of expert knowledge available from patients, activists and voluntary organisations, NHS England should be working with and drawing advice from a much larger range of people than just the few members of the CRGs.

Conclusion

We have looked a number of issues here that we feel need more decisive action and analysis by the government. We feel that the government’s response did not look at the issues raised in the inquiry’s report in enough detail, and did not consider the impact of ignoring the recommendations and conclusions of that report. We also feel that they did not consider the evidence given for the inquiry prior to the report.

In considering how to proceed from this inadequate response, we would suggest the government focus on understanding the importance of, and implementing, the following:

- A process of truly autonomous self-declaration for obtaining a Gender Recognition Certificate.
 - This should be inclusive of nonbinary people in the sense that it would allow somebody to obtain an “unspecified” (“X”) gender marker, that allows them to “opt-out” of legal gender.
 - This should require no evidence.
 - There should be no cost attached to this process. Cisgender individuals do not have to pay to have their gender recognised - it is discriminatory to expect trans and nonbinary people to do so, especially considering the socioeconomic inequalities faced by these minority groups
 - This process should be available to people under 18, and provisions should be made for this to also be available to those under 16.
- The Gender Recognition Register should be abolished, as it is an unnecessary threat to the safety and privacy of trans and nonbinary people.
- The Equality Act should be altered to explicitly protect nonbinary people, including those not undergoing what is traditionally considered “gender reassignment”.
 - The reference to trans people in the Equality Act should be rephrased so it refers to “trans people” or “transgender people” as opposed to “transsexuals” or those undergoing “sex reassignment”.

- Organisations should be prohibited from recording gender markers for individuals unless it is relevant or necessary.
 - “Relevant” contexts for recording gender markers should be clearly and explicitly defined, in order to allow organisations to comply with the Data Protection Act.
 - For contexts where it is considered relevant for a gender marker to be recorded, it should be explicitly stated that evidence should not be required for a person to have the gender marker of their choice recorded.
 - It should also be made explicit that evidence should not be required for recording any gender-related information, such as title or pronouns.
- The requirement for evidence for changing the gender marker on a passport should be removed, and replaced with a process of self-declaration, as discussed above.
 - The option of an “unspecified” (“X”) gender marker should be available to those changing the gender on their passport, as permitted by ICAO guidelines.
 - While there may be individual risks involved with having an “X” passport, there are also risks that come with having an incorrect gender marker. Nonbinary and trans people should not be denied the autonomy to weigh up these risks and choose the best option for themselves.
 - The government should acknowledge that they have misunderstood the purpose of the “X” gender marker. The ICAO defines it as “unspecified”, not “third gender”, so primary legislation changes are not necessary for its implementation.
- Removal of the spousal veto from law, as it undermines trans people’s autonomy and is inherently homophobic.
 - It exists to protect cisgender people from the possibility of being in a “same-sex” marriage, or being officially married to a trans person.
 - Marriage (in a 21st century context) should not allow a person to exert control over their spouse’s personal life. There is no reason that gender should be an exception to this.
- The NHS should be engaging with trans patients, activists and voluntary organisations to ensure that the vast amount of experience within the field is adequately utilised.
 - The NHS is currently utilising the experience of several members of CRGs, rather than that of the wider trans community and of voluntary-sector trans organisations.
- The NHS needs additional funding for gender identity services specifically, to ensure that trans people can access the care they need.
 - This would help to bring waiting lists for all aspects of gender identity services down to reasonable levels.
 - It must be acknowledged that funding is a significant issue contributing to the mistreatment of trans people under the NHS.
- It is imperative that gender dysphoria be removed from the mental health category. Gender dysphoria being categorised as a mental health issue is stigmatising, and leads to additional obstacles to accessing healthcare.
- The NHS must engage with nonbinary people, ensuring they receive equal access to healthcare and gender services. Nonbinary people currently face obstacles far in excess of those faced by other trans people, and are often treated as “experiments”, which is both dehumanising and dangerous.
- The process of assessment for obtaining healthcare for gender dysphoria, most notably the process of “Real Life Experience” (RLE) must be addressed.
 - RLE is dehumanising and exists only to protect cisgender people.

- It is a major barrier to nonbinary people, for whom RLE often means pretending to be or presenting as something they are not.
- RLE should not continue to be a barrier to accessing healthcare for any trans people.
- Assessment times in general for accessing trans healthcare should also be addressed.
 - Delayed access to healthcare due to excessive assessment of a person's gender is life-threatening and dangerous.
 - It should not be the case that cisgender doctors are permitted to judge whether an individual is truly trans or not.

There are many cases in the response where the reason given for not implementing a change is that "more evidence is required". We do not believe this is an adequate excuse for continuing to deny trans and nonbinary people their basic human rights.

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