

## Conclusions and recommendations

### 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)

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