

Written evidence submitted by Susan Gilchrist to the U.K Parliament Women and Equalities Select Committee's Inquiry into Transgender Equality.

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NOTE:

The details of the Committee's Enquiry can be found here:

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/transgender-equality/> .

The personal submission by Susan Gilchrist can also be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/written/19610.html>

1: PREFACE

- a. This is a personal submission which reflects a particular interest. A major deficiency of current legislation is that it always presumes a binary approach i.e. people adopt male or female identities and there is nothing in between. There is however large ranges of experience which deny that assumption, and even when people do identify themselves in a binary capacity; other circumstances can intervene.
- b. I fit completely into the binary category. Therefore I fully identify myself as having a female gender identity. However I fought against this and I tried to suppress it for many years. As a consequence I had built up a full life as a man. For me to transition completely would mean swapping one set of problems for another. Fighting my sense of gender identity does not work and most people lose this battle. Instead I have tried to find a way through this situation which present legislation is neither prepared for nor expects.
- c. The way I have done this is to look for richness it can bring and I have taken a very active role in support of LGBTI matters. Although for example I have not had to make use of Gender Identity Clinics I have played an active role in the development of more effective protocols within the NHS and also in giving support. I am involved in the LGBTI Anglican Coalition and serve on the executive board, having been a past co-chair of the organisation, and I currently have a role in monitoring the Church of England Shared Conversations process on LGBTI matters. I am also active in and serve in an official capacity on the committee of a transgender support organisation.

- d. I am additionally involved in academic research and would like to table my paper: "Personality Development and Gender: Why We Should Re-think the Process" <http://www.tgdr.co.uk/documents/209P-RethinkPaperFull.pdf> for consideration by the Committee. (This paper should be available on the website in the next few days). All of these research papers can be found on the "Writing and Research" section of the website <http://www.tgdr.co.uk/index.htm> and a transgender resource section can be found on the home page of this site. I would further draw your attention to the submission independently being made by the LGBTI Consortium, which has my support.

2: TERMINOLOGY AND DEFINITIONS, AND THE AVAILABILITY AND RELIABILITY OF DATA, RELATING TO THE TRANS COMMUNITY

- a. A wide variety of terms are used which are neither consistent, nor do they accurately reflect the condition. It is shown that the primary desires for transgender people is to be themselves. While the desire for gender reassignment may be obsessively pursued, this is the outcome rather than the cause. The paper on: "Personality Development and Gender: Why We Should Re-think the Process" by the author of this submission <http://www.tgdr.co.uk/documents/209P-RethinkPaperFull.pdf> addresses these issues.
- b. Until adequate and agreed research which provides a coherent approach is undertaken, confusion will continue to arise. There is also a particular lack of confidence because little is understood about the origins of transgender conditions. This is particularly true of non-binary people, and there is not enough of an evidence base and research. However the absence of this knowledge base should not impede the provision of support. Clinicians need to be brave and take calculated risks but they also need to be backed by their organizations and the wider health and care community. Legal concerns may raise issues where greater assurance or protection is required, and this may inhibit consideration of non-standard paths.
- c. Intersex people need to be adequately catered for. The framing of legislation in binary terms man/woman; male/female; husband/wife enforces the binary presumptions, and it is recommended that where possible legislation should be framed in non-gender specific terms.

3: 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

- a. The support of the Government Equalities Office is strongly welcomed.
- b. Many departments and organisations do appear to have developed comprehensive protocols to deal with the issues involved. However the working out of these protocols in practice across government departments and also between departments and service providers in relation to trans people appears to be patchy. In some instances this may be due to a lack of understanding about what trans people require. Dealing with employee prejudice is an issue to address.
- c. Concern is also expressed over the availability of resources and the consequences of any cutbacks that may take place. The cumulative impact of these changes threatens to turn the clock back on equality. LGBTI people still experience significant inequalities and many have suffered disproportionately as a result of austerity and

public sector cuts. Without a strong equality infrastructure it will be even harder to challenge these inequalities in LGBTI issues, and to reverse the setbacks in the years to come.

4: THE OPERATION OF THE GENDER RECOGNITION ACT 2004 AND WHETHER IT REQUIRES AMENDING

- a. It is noted that the Act gives transsexual people legal recognition as members of the sex appropriate to their gender (male or female) allowing them to acquire a new birth certificate, affording them full recognition of their acquired sex in law for all purposes, including marriage. It is also noted that one of the main exceptions is a right of conscience for Church of England clergy (who are normally obliged to marry any two eligible people by law) and the exemptions given to it by the act
- b. A significant difficulty comes from the binary context in which the act is framed. A separate category of "gender identity" should be introduced in order to be more clearly inclusive of those transgender people who do not identify as transsexual and/or do not intend to change the gender in which they live.
- c. This includes people who do identify themselves within a binary mode. However people are increasingly identifying themselves within non-binary categories and the terms "gender questioning" or "gender queer", are sometimes used.
- d. Only a proportion of people who are entitled to obtain a gender recognition certificate, attempt to obtain it. A particularly unfortunate consequence of binary nature of the Gender Recognition Act is that it effectively disenfranchises transgender people and intersex people who do not fit into clearly defined binary categories. Until non-binary category is officially recognised this will always be an issue.
- e. It is also recommended that measures should be added to explicitly include intersex people and clarify protections from discrimination in education, certain kinds of employment, and medical insurance.
- f. Many official forms require people to identify themselves as either male or female. It is recommended that an additional category should be a mandatory requirement on all official documents which allows for this fluidity. For example, would requiring the UK passport office and other government agencies to accept 'mx' or non-gender binary titles which could allow some, or many, individuals a space to live with comfort and perhaps reduce need, or demand, for transition?
- g. It is suggested that the exemption for religious organisations be reviewed in the light of more recent work. See Gilchrist, S. 2013 "A Reassessment of the Traditional Christian Teaching on Homosexuality, Transsexuality and on Gender and Sexual Variation Using a New Neurophysiological and Psychological Approach." <http://www.tgdr.co.uk/documents/SuD1231g-ReassessmentPsychologyExtended.pdf>

5: ASPECTS OF THE MARRIAGE (SAME SEX COUPLES) ACT 2013

- a. The Marriage (Same-Sex Couples) Act that progressed through Parliament contained an amendment to the Gender Recognition Act 2004 which means that if a married person wishes to transition and gain their full Gender Recognition Certificate (GRC), they must gain the consent of their spouse for the marriage to continue. This

may be highly problematic as it effectively gives a huge amount of control over the issuing of the full GRC to the spouse. In an ideal world, where everyone takes the news of their partner wishing to transition extremely well, then this wouldn't be a massive hurdle, however things may not be so simple. If the spouse of a transitioning partner dug their heels in, they could quite easily drag out divorce proceedings in an effort to frustrate and hinder. There is now evidence that the spousal veto is likely to be misused by those who do not want their trans spouse to transition. Such quarrels may be regrettable and sad, but it is argued that these are issues that should be settled between the two partners without any legislation being involved. No vetoes are required in other circumstances. It is recommended that the spousal veto be dropped

- b. *Prior to the enactment of this legislation people who would have preferred to continue their marriage may have already dissolved their marriage as a requirement to obtain gender recognition, and it is likely that people in that situation will have then registered a civil partnership to replace their lost marriage. Under the current legislation they are able to convert that civil partnership to a marriage, but that marriage will in effect be backdated to the date they registered the civil partnership. However, that will still leave them in a position where they have been married twice, with an unmarried gap between those marriages. It is argued that this legislation could be amended to provide, where a couple dissolved their marriage to obtain gender recognition and subsequently registered a civil partnership, that on converting that civil partnership to a marriage, that marriage could be treated as having started at the start of their original marriage, in effect restoring the continuity of their marriage from the time that it was first made.*
- c. For further information see the paper: “ Love’s constancy & legal niceties: transgendered perspectives on marriage” by Tina Beardsley & Susan Gilchrist <http://www.tgdr.co.uk/documents/SuE0927f-TrangenderMarriageFinal.pdf>

6: THE EFFECTIVENESS OF THE EQUALITY ACT 2010 IN RELATION TO TRANS PEOPLE

- a. It is noted that the Equality Act 2010 protects people from discrimination or unfair treatment on the basis of nine “protected characteristics”: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It prohibits discrimination in a variety of contexts: services and public functions; management of premises; employment; education; associations.
- b. The Equality Act contains exceptions to the general prohibition of sex discrimination which allow the provision of single-sex or separate-sex services for men and women. A business or service provider can decide whether and how a transsexual person can use such a service, depending on all the circumstances. The use of toilet facilities is an issue of current concern. The decision must be ‘objectively justified’ – in other words, it must be a fair and reasonable way of achieving a legitimate aim. While the intention is there, enforcement may be a problem for transgender people
- c. An issue that may be of concern is that of third party harassment. This makes an employer liable for repeated racist, sexist, homophobic or other prejudice-based harassment of staff by third parties like service users, customers or clients, where the employer has failed to take reasonable steps to protect them. There appears to be

government moves to repeal some of the legislation. If this is repealed important protection may be lost.

- d. There are a range of different gender identities within the transgendered community, including transsexuals and transvestites. However, it is only transsexual people who are explicitly protected under the Equality Act. Transgendered people who do not intend to transition are not directly protected, although aspects of the Act may afford protection from discrimination and harassment in certain circumstances. The intention to transition seems paramount. The discretion involved in this context may mean that non binary people are effectively excluded from the act

7: ISSUES CONCERNING THE DIAGNOSIS OF GENDER DYSPHORIA, INCLUDING THE OPERATION OF NHS GENDER IDENTITY CLINICS

- a. **STANDARD PATHWAYS:** Gender Identity Clinics tend to work on the principle that for most people who approach them, reassignment is the goal. There tends to be a presumption amongst GICs that a standard pathway exists. This requires clients to test the validity of their identity by undergoing a "life test". People are required to live in the gender they identify with before any action is taken. The presumption is that people have already decided that they want to pursue gender reassignment and this pathway is intended to help them find the correct course to take. People who do not wish to follow the prescribed pathways may be judged not to be genuine in their attempt. However a standard pathway is like a sticking plaster for all wounds. It has neither regard for, nor offers any help for the nature of the injury or the trauma that has occurred.
- b. **PATHWAY PRESUMPTIONS:** While there is increasing recognition of non-binary situations, the assumption made in all of the pathways is that people who in this situation are automatically seeking to live in a non-binary social role. The recent guidance to General Practitioners on the RCGP website indicates there is a great variety of transgender experiences, but the advice which is given almost exclusively relates to transition, social changes and hormonal and medical requirements needed for moving into a cross gender role. The UK Good Practice and WPATH Guideline reinforce this assumption. All of the pathways I have been offered have made this presumption, and all of them would have destroyed the truce which balances the aspects of my identity which build on my relationships with others against the selfhood which is created by gender inside.
- c. **EARLY ACCESS TO PATHWAYS:** There are a many people who are struggling with their own transgender experiences in the hope that thy can keep their family commitments, links, with others and jobs alive. This constitutes a group of people who are suffering major trauma, but who are also likely to resist contacting GICs for as long as they can. Those who do eventually contact GICs may have already taken damaging action which compromises any sort of truce that they could otherwise have wished to obtain. By the time the approach is made some may also have been forced to the conclusion that immediate transition and the search for reassignment is the only course they should take, and they see the GICs as primary agents for that purpose. Ease of and early referral is needed particularly for this group of people
- d. **RECOMMENDATIONS:** Pathways are needed which do not deny or prevent change, but must also recognise those things which ought to be preserved. These should aim to make a smooth change possible so that if this is needed it can come at the right time, for the right reasons and in a way that minimizes the trauma it creates. Ease of access and referral should be available, and also be known to be available, at the

earliest possible stage to those who are struggling with gender dysphoria in their lives. The perception that GICs are always about transition and reassignment needs to be removed.

- e. **PERCEPTIONS:** Sometimes it is easier to present yourself in a binary way as you might get access to treatment quicker
- f. **COMMUNICATION:** There are sometimes major failures of communication. This can be institutional in nature. NHS England as the commissioner of gender identity services and communication from providers is felt to be poor. Some communication was in NHS England's direct control, however NHS England is not responsible for the communication that comes from provider services, and a better way of bridging these gaps should be found.
- g. **PARTICIPANTS:** Participants experience of the complaints system particularly in terms of services provided by Gender Identity Clinics has not been positive. Some participants felt that they were labelled as troublemakers if they raised issues and concerns. There appears to be limited communication between patients and providers, apart from appointment letters, and no contact between NHS England commissioners and members of the community apart from Network events.
- h. **INERTIA:** There is a great deal of anger and frustration because all of these things seem to be incessantly talked about, but nothing happens

8: TRANS PEOPLE AND WIDER NHS SERVICES

- a. **VOLUNTARY RESOURCES:** There are few transgender specific organisations but many small grass roots groups. There is a lack of Trans and non-binary competence in these larger organisations. Piece meal funding brings lack of continuity, skills and consistency. Patchy geography is also a problem
- b. **NEED FOR INFORMATION:** Early provision of Information is needed to help people manage the increasing pressure that is faced when trying to decide the best way forward. It is important to get the right and provide full information early in order to make the right choices. Information for GPs who need to be educated in this area Better GP training is crucial including the provision of fact sheets on what a GP may or may not do. Any information provided needs to be endorsed/branded by NHS England as then the doctors will take notice of it.
- c. **INFORMATION PATHWAYS:** Information should go via CCGs as they also need to understand responsibilities and ensure that these are being adhered to. People need to know where to look for information. Information is required between visits to the Gender Identity Clinic, People need to know how the system works – a clear NHS document is needed. People need to know what treatment and care they can expect to receive locally and nationally. Families and carers require information as well. People who are transgender don't just need care in relation to being transgender. They may need other services for example mental health services and the staff in these other units also be trained to understand the trans issues
- d. **AWARENESS:** Gender appropriate support must be provided. For example not knowing what ward a person is put on male or female – can cause great anxiety. Peer support and independent lifetime support is also needed, including providing for transition from youth to adult and older people. Medical support is not

enough. A social model of care should be provided to compliment the medical approach.

- e. SUPPORT: There is the need to for centres of excellence which provide social pathways alongside the medical. These need to have a wider geographical spread and be more in number than the Gender Identity Clinics. Voluntary sector resources should be used. Directories of information and access to information should be made available on a widespread basis. Training for health professionals should be given by non-binary people

- f. FURTHER DETAILS: More information is available on the slides of a presentation which the author gave to an NHS England Symposium on Transgender and Non-binary Issues to health professionals and medical associations in the 30th June 2015. The slides are available on: <http://www.tgdr.co.uk/documents/SuF0630q-TransgenderNBSymposiumSlidesSil-30jun15.pdf>

Susan Gilchrist. 21 August 2015