

Summary of trans work taking place across the Commission

GRA consultation response

- The Policy Secretariat is leading the Commission's response to the government's proposed reform of the Gender Recognition Act, with significant input from the Legal Team.
- The final submission deadline is 19 October, and we aim to submit by 18 October at the latest. The submission will be shared with the Board for information by 17 October.
- There has been significant input from across the Commission, and external consultation with key stakeholders through listening events and further conversations.

Census 2021

- We are working with the Office for National Statistics on 2021 Census on ethnicity, religion and belief, sexual orientation and Gender Identity. Much of their initial position was informed by our gender identity monitoring guidance¹ in 2011, but a lot of testing has happened since.
- We will find out how successful the development process has been probably early next year. Test results have been encouraging, but an amendment to legislation is necessary to include new questions.

Follow up to the UK Government's LGBT survey and action plan

- The UK Government's LGBT survey² has been completed with over 100,000 respondents 13% of whom were trans, about a quarter of whom trans women (3.5%) , a quarter trans men (2.9%), and half non-binary (6.9%).
- The UK Government Action plan³ makes 76 commitments for improving the lives of LGBT people, of which the GRA is one, along with a call for evidence on non-binary and intersex population.
- We have met with GEO about follow up work, to seek to feed into their analysis of the data, and to discuss how our plans might overlap or support each other.
- Our research team is in the very early stages of scoping a potential piece of research to explore trends, changes and attitudes towards gender identity and gender reassignment. We are interested in looking at people's attitudes towards and conception of their gender identity, the increasing number of people (especially young people) identifying as trans and non-binary, and the terminology used to describe different trans identities.

Correspondence

¹ See: <https://www.equalityhumanrights.com/en/publication-download/collecting-information-gender-identity>

² See: <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report>

³ See: <https://www.gov.uk/government/publications/lgbt-action-plan-2018-improving-the-lives-of-lesbian-gay-bisexual-and-transgender-people>

A significant amount of correspondence has been received, which is indicative of a wider national conversation about trans issues. Correspondence has largely been focused around how the Gender Recognition Act and the Equality Act interact, and requests for us to provide specific clarification. Some correspondence is elaborated on below.

Comms work – film ‘All life is transition’

In July this year we released a film which included with Philippa York (cyclist) and Elley West (journalist). It was widely shared on social media, and shown in cinemas.

Terminology paper

We have finalised a paper which aims to equip all staff members to use terminology around trans correctly. The terminology and definitions will be included in our House Style Guide, to inform all published content.

Schools guidance

The Legal Team is drafting guidance on trans pupils for schools. Publication now anticipated in late autumn (by week of 3 December). We are currently consulting on positions with GEO and working with head teachers' associations to ensure it covers the issues they need.

Gamete storage

A judicial review claim was issued against NHS England, challenging its refusal to nationally commission gamete storage for trans patients who are receiving NHS treatment for gender dysphoria that might lead to infertility. The decision whether to fund gamete storage is currently left to CCGs, many of which refuse to fund trans patients while they do fund cancer patients. The claim is currently awaiting a decision from the court on permission to proceed to full hearing; we are pursuing discussions with NHS England about resolving the issues without litigation.

Girlguiding UK

A complaint was raised by Fair Play for Women (FPFW) regarding GGUK's trans inclusion policy. FPFW asserted that GGUK were in breach of the EA as they permit trans members, despite being a single-sex organisation for girls. They also raised concerns on safeguarding and the use of single-sex communal facilities. We sent a letter to FPFW to confirm that we did not consider GGUK to be in breach of the law as they are permitted to either run an organisation for two protected characteristics (girls and trans girls) or a single-sex association for girls with a trans inclusive policy. We also provided high level guidance on the use of statutory exceptions to exclude individuals with the protected characteristic of gender reassignment from single-sex facilities. We did however contact GGUK to provide them some guidance on their newly revised policy and suggestions for correcting some mistakes on their website. GGUK are aiming to publish the revised policy and make website changes by mid-November. FPFW and groups other are publicly taking issue with GGUK's policy and so we are also working with the Comms team to manage media comments.

Pride in London

We received a complaint by a member of the public against Pride in London and its handling of the protest at the Pride in London Parade that took place on 7 July 2018. The complainant wanted the Commission to investigate Pride in London. We looked into the complaint and determined that there are no grounds to suspect an unlawful act.

Trans pupil's complaint against a school

We received a complaint from a trans boy about his school, which is running a school trip to S40(2) but has refused him permission to sleep in the boys' dorm and instead says he has to sleep in a separate room or the girls' dorm. We have been in correspondence with the school regarding the justification for its decision and, from its response, it appears that the School has taken a case-by-case approach and considered the risks involved. In coming to its decision the School looked at his particular request and consulted with him, his parents, and his S40(2) Pastoral Team. The School identified the legitimate aims of safeguarding both him and his fellow students. The safeguarding concerns revolved around privacy, welfare and the risk of sexual interaction. The School considered various options before deciding he should sleep in his own room, for which the School is covering the additional cost.

Based on the above we do not consider there to be sufficient basis on which to take matters further and a letter is being finalised to this effect.

Youth Hostel Association

PPFW wrote to us expressing concern that the Youth Hostel Association ('YHA') is permitting transgender guests to use communal single-sex accommodation and facilities which "match their gender identity". PPFW believe this to be a breach of the law as 'gender identity' is not a protected characteristic under the Equality Act and the policy puts women and children in danger of violence or sexual assault.

PPFW also maintained that the policy discriminates against men and women who do not share the protected characteristic of gender reassignment but who may wish to share a room with people of a different gender but would not be permitted to do so.

We considered the issue and wrote back to PPFW to confirm our conclusion that by allowing trans women, including those who do not have a GRC, to use accommodation otherwise restricted to natal women, the YHA is not acting unlawfully and is not ceasing to provide single-sex accommodation. It is not a requirement that transgender people have to legally change their sex and obtain a GRC before they fall within the protection of the Equality Act 2010, or be permitted access to single sex spaces in their acquired gender. Further, we provided guidance on how the single-sex exception (Schedule 23, paragraph 3) operates and what considerations a service provider must consider when deciding whether to exclude transgender people from single-sex services.

However, given the fact that the YHA's inclusion and diversity policy was not fully reflected on their website, we took the opportunity to draw this to their attention and to provide comments on its revised content.

Communal facilities

FPFW requested our assistance to provide guidance to an un-named charity who provides services to persons with learning difficulties and dementia. The crux of the concern was a refusal by the building management to convert the single-sex communal toilets on the same floor as the charity to single "natal" sex toilets. FPFW/the charity took the position that it was a reasonable adjustment to exercise the EA exception to exclude individuals with the protected characteristic of gender reassignment. We considered the issue, requested more information and provided guidance on how the reasonable adjustments provisions work in the context of private service providers and the interplay with the single-sex services exemption.

Cambridge City Council

FPFW requested guidance on whether Cambridge City Council, in adopting a policy that permitted trans individuals (with or without a GRC) to access all of its separate and single sex services in their acquired gender, was complying with the Public Sector Equality Duty (PSED).

Given the Council was operating a blanket policy of inclusion without providing for the exclusion of trans persons where it may be justified or proportionate to do so in light of the rights and interests of others, we wrote to the Council to set out the law in this area and to explore whether, in developing its policy position, it had complied with the PSED.

In response to our letter the Council advised that it had amended its Policy to acknowledge the exception in the Equality Act 2010 allowing for trans persons to be excluded from accessing single and separate sex services in their acquired gender where it is objectively justified and proportionate to do so. The Council will seek feedback on its revised Policy position from key stakeholders in order to identify any impacts and mitigating actions. It will then incorporate these into an updated Equality Impact Assessment and will provide us with an update to this effect by the end of November 2018.