

Recommendation 4 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)

Recommendation 5 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)

Recommendation 7 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)

Recommendation 8 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)

Government response

We are grateful for the Committee's detailed considerations and views on the Gender Recognition Act 2004 in relation to the needs of non-binary people, the principles of gender self-declaration, converting the application process to an administrative process, and to extending legal gender recognition to transgender people aged 16-17, and possibly to children under 16. In line with Government's commitment to furthering transgender equality, we will keep these issues under consideration.

The Government will review the Gender Recognition Act to determine whether changes can be made to improve it in order to streamline and de-medicalise the gender recognition process. However, we share the Committee's concerns in respect of age. We would like to see more evidence on the case for change and the implications of altering the minimum age, moving to a self-declaration process and extending legal recognition to non-binary gender identities. We will therefore monitor the implementation of alternative gender recognition processes in other jurisdictions and we will analyse the evidence placed before the Committee to inform our work.

Recommendation 10 The protected characteristic in respect of trans people under the Equality Act should be amended to that of "gender identity". (Paragraph 108)

Government response

We welcome the acknowledgement that the Government's inclusion of gender reassignment as a protected characteristic in the Equality Act 2010 has improved the lives of transgender people and has been effective in encouraging employers and service providers to take into account the needs of transgender people. The Equality Act replaced a similar provision in the Sex Discrimination Act 1975, broadening coverage significantly by removing a requirement for a person to be under medical supervision, and because the Act does not require a person to hold a Gender Recognition Certificate in order to have the protected characteristic.

The provision of a protected characteristic of "gender reassignment" in the Act is fully compliant with our obligations under the Equal Treatment Directive (2006/54/EC). Discrimination, as defined in the Equality Act 2010, means treating someone less favourably because of a protected characteristic; it is not necessary for the person actually to have that protected characteristic themselves. 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.

The Government is working to ensure that everyone is treated fairly and with respect, including those within the wider transgender community. In November 2015 the Government published two pieces of guidance to help employers and service providers to engage with transgender people effectively. The guidance for service providers, produced in partnership with Gendered Intelligence, sets out guidance and good practice examples to help ensure transgender people are welcomed, included and valued as customers, clients, users or members, and to ensure that they are treated fairly and appropriately. It also aims to help service providers comply with the law. The guidance for employers, produced in partnership with Inclusive Employers, is designed to provide employers with practical advice, suggestions and ideas on the recruitment and retention of transgender employees and potential employees. It is also a useful guide for managers to comply with the law, and for transgender staff themselves. We will keep this under review and will continue to listen to and monitor people's experiences of discrimination, harassment or victimisation.

Recommendation 11 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)

Government response

No such restriction exists on the Equality and Human Rights Commission's (EHRC's) power to investigate complaints of discrimination, and we are not aware of any legal basis for the statement in Mermaids' written evidence to the Committee that "a young person of 16 wanted their name changing at school but their parents did not consent to this. Although the Equality and Human Rights Committee [sic] found the schools [sic] refusal to comply was discriminatory, they could not proceed with action against the school as the young person was under 18." The Committee may wish to note that, in order to comply with the Data Protection Act 1998, the Equality Advisory and Support Service may pass an individual's details to the EHRC only with the explicit consent of the individual. The case referred to in Mermaids' written evidence was not referred to the EHRC. EHRC staff have met with Mermaids recently to clarify how the referrals process operates.

Recommendation 12 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)

Government response

We agree with the principle of this recommendation, that those who sought and have completed a gender transition - and who have secured a Gender Recognition Certificate - should be afforded the full legal and social status of their acquired gender.

The Government welcomes the good practice highlighted to the Committee, for example, by providers of services to domestic abuse survivors that include transgender women as far as possible. We will continue to encourage service providers to share good practice within their sectors. To support service providers in treating transgender customers appropriately and lawfully we recently published Providing Services for transgender customers: a guide⁴. This new guidance, produced in partnership with Gendered Intelligence, sets out guidance and good practice examples to help ensure transgender people are welcomed, included and valued as customers, clients, users or members, and to ensure that they are treated fairly and appropriately. The guide explicitly addresses the sensitive issue of separate and single-sex services, making it explicitly clear that the exception can only be used in exceptional circumstances and where there is no less discriminatory way of providing the service. It also notes that it is very unlikely that any exceptions will apply in ordinary 'high street' service provision situations. The Equality Advisory and Support Service, funded by the Government Equalities Office, can provide advice in those cases where service users feel they may nonetheless have suffered discrimination. In addition, recently published guidance, The recruitment and retention of transgender staff – guidance for employers, produced in conjunction with Inclusive Employers, states clearly that: "very careful consideration should be given before applying a genuine occupational requirement. Such restrictions

are rare and, if wrongly applied, unlawful.” The EHRC provides advice for employers on the use of genuine occupational requirements (GORs) in the relevant section of the Employment Statutory Code of Practice⁶. We understand the concerns being raised by some transgender people about the provisions. The Government is keen to ensure that that law in this area operates fairly and is not abused, therefore we are keen to receive further representations and evidence on the availability and use of the exceptions in the Equality Act 2010 from all affected parties to take into account for future policy discussions.

Recommendation 16 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)

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)

Government response

We are supportive in looking at how this recommendation can be achieved. Gender dysphoria is not a mental illness. This recommendation was discussed at the Clinical Reference Group in February 2016. The complexity of delivering this recommendation was noted, given that all seven Gender Identity Clinics in England are hosted and situated in mental health trusts, and given that there is no single body or organisation that has responsibility or authority for ‘transferring’ gender identity services to another specialty. However, there was support for looking at how these issues can best be addressed and NHS England will continue to work with the Clinical Reference Group and professional associations to explore alternative models.

Recommendation 20 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)

Government response

A public consultation on the draft service specification for the children and young people’s service, and a draft clinical commissioning policy for prescribing cross-sex hormones to young people, closed on 20 April 2016. This process included a stakeholder workshop in March 2016. To address the issue of the amount of time required for assessment before puberty blockers and cross-sex hormones can be prescribed, NHS England has sought advice from the providers of these services (Tavistock and Portman NHS Foundation Trust, and University College London Hospitals NHS Foundation Trust), the Clinical Reference Group for Paediatric Medicine and professional associations; this advice will feed into the draft service specification. NHS England will consider the outcome of public consultation before making a final decision on the service specification and clinical commissioning policy, which is planned to be by July 2016.

Recommendation 29 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)

Government response

We absolutely agree that all young people should be free to be themselves and grow up free from fear of discrimination. We also believe schools should be free to decide for themselves how best they support this, and how they meet the needs of their pupils, in an age-appropriate and sensitive way. To achieve this, we have already delivered a wide range of projects to support transgender and LGB young people to help them reach their full potential:

- In March 2016, Government announced a further £1 million to support schools to address homophobic, bi-phobic and transphobic bullying. This builds on the previous £2m fund which was announced in October 2014 and which funded eight organisations. These projects aim to increase teachers' knowledge and confidence to deal with bullying and provide direct support to young people affected by it.
- In 2014-15, we provided £48,600 to the Albert Kennedy Trust to develop a national pilot online mentoring service. The service supported LGB&T young people who are homeless or are at risk of homelessness. It provided young people with online one-to-one support and advice at times when they are at risk. It also helped build resilience, promoted better wellbeing and provided essential life skills like writing a CV, signposting to services and benefits.
- In 2015-16 we provided £4.9m to 17 voluntary and civil society projects delivering support to children and young people with mental health issues. This included nearly £250,000 to the Metro Centre to establish a mental health service for LGB&T young people and those who work with them across London and Kent/Medway.
- We recently updated guidance for school leaders and counsellors on how to ensure school-based counselling services achieve the best outcomes. This includes how to support the differing needs of vulnerable children, including LGB or T young people or those questioning their gender identity or sexual orientation.
- In February we also launched Disrespect Nobody, the second phase of the teen relationship abuse campaign, encouraging teens to rethink their views on violence, controlling behaviour and consent – including within LGB&T relationships.

We want to ensure that the time that transgender children spend in school is a happy one, and that schools allows them to be themselves and help them achieve all that they are capable of. To help them achieve this, the Government already provides guidance on how schools can comply with the Equality Act. The recommendation makes reference to the Government review of Initial Teacher Training (ITT). An independent review of ITT by Sir Andrew Carter reported in January 2015 and highlighted significant variations in the content of ITT courses. In response, the Government commissioned an independent panel to develop a framework of core content for ITT (chaired by Stephen Munday CBE). Ministers are currently considering the recommendations of the panel and further detail will be published in due course.

Recommendation 30 Trans issues (and gender issues generally) should be taught as part of Personal, Social and Health Education. (Paragraph 361)

Government response We trust schools and head teachers to know how best to meet the needs of their pupils in an age-appropriate and sensitive manner, and trust them to decide what specific issues they cover in line with the needs of their pupils. Transgender issues are included in the non-statutory Personal, Social and Health Education (PSHE) Programme of Study produced by the PSHE Association. This suggested programme of study, produced by some of the leading experts in PSHE teaching, includes teaching young people about diversity, including gender identity; to recognise and challenge stereotypes and to understand the nature and consequences of discrimination, teasing and bullying. It also teaches young people to respect equality and to be productive members of a diverse community. The Government has made it clear in the introduction to the framework to the national curriculum that all schools should teach PSHE.

Recommendation 31 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)

Recommendation 32 We recommend that the Government hold similar conversations with further education providers.

Recommendation 33 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 nontrans staff. (Paragraph 369)

Government response

We are clear that no student should suffer discrimination, harassment or bullying – including transgender students. We agree that further education and higher education bodies should recognise transgender equality as a growing and important matter. To highlight this, Nick Boles, Minister for Skills, who writes to all further education (FE) college governing bodies, college principals and training providers on a termly basis, will reference the importance of providers being proactive on this issue in his next letter. For higher education, Jo Johnson, Minister for Universities and Science, will write to Universities UK, the umbrella body for universities, to highlight the need for transgender equality. Higher Education Institutions (HEIs) take transgender issues very seriously. As autonomous bodies, independent from Government, they have responsibility through the Equality Act 2010, to ensure the wellbeing of their students. It remains a matter in the first instance for institutions to address students' complaints. In addition, students have recourse to an institution's internal complaints procedures and can request the help of the Office of the Independent Adjudicator (OIA) to explore the complaint. The OIA was set up as an alternative to the courts and is free to students. At the request of the Government, Universities UK, whose members consist of ViceChancellors/Principals of UK university institutions, has established a task force to explore what more can be done to support the higher education sector to prevent and respond effectively to all forms of harassment, including those relating to transgender issues. It brings together experts from across the higher education sector with both student and university representatives. The task force will maintain a focus on developing practical recommendations, including raising awareness and sharing good practice across the higher education sector, that universities and students' unions can adapt and implement to suit their own context. The Taskforce will report its findings for the start of the 2016/17 academic year (September 2016). The sector led Equality Challenge Unit (ECU) have produced guidance on transgender staff and students - a practical resource to help higher education institutions in their legal obligations to meet the needs of transgender people. Another initiative, the 'Gender Equality Charter', enables institutions to apply for an award recognising their commitment and progress to equality and diversity in a bid to drive forward cultural and systemic change. In May 2015 the Charter was expanded to recognise transgender staff and students, addressing gender equality more broadly. Similar to HEIs, Further Education Colleges (FECs) are independent and autonomous bodies and are responsible for addressing any issues of discrimination at their institutions. The Skills Funding Agency (SFA) commissioned research in 2011 into sexual orientation and gender identity equality in adult learning. The findings of the research have been published¹⁷. The report made a number of recommendations aimed at further education colleges and independent training providers. SFA have funded a range of projects to address the research findings, through the Equality and Diversity Good Practice Fund and its predecessor funds. An evaluation of the fund by the Institute for Employment Studies found that it has been particularly effective in raising the status of 'newer' protected characteristics such as gender identity. The good practice and resources from each project are freely available for the whole sector to use on the Equalities Toolkit. Additionally, the SFA worked with the Forum for Sexual Orientation and Gender Identity Equality to produce Guidance on transgender equality in post-school education¹⁸. It also has guidance on its website on gender reassignment discrimination. It covers ways that employers can support transgender people at work and is good practice for FE providers.