



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Thursday 4 February 2016

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EQUAL OPPORTUNITIES COMMITTEE

3rd Meeting 2016, Session 4

CONVENER

*Margaret McCulloch (Central Scotland) (Lab)

DEPUTY CONVENER

*Sandra White (Glasgow Kelvin) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Annabel Goldie (West Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

Drew Smith (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Allison Ewing (Scottish Transgender Alliance)

James Morton (Scottish Transgender Alliance)

Vic Valentine (Scottish Transgender Alliance)

CLERK TO THE COMMITTEE

Ruth McGill

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament Equal Opportunities Committee

Thursday 4 February 2016

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Margaret McCulloch): Welcome to the Equal Opportunities Committee's third meeting in 2016. I ask members to set any electronic devices to flight mode or switch them off.

Our first agenda item is a decision on taking business in private. Do we agree to take in private item 3, which is consideration of a paper on the review of the committee's budget consideration?

Members indicated agreement.

Scottish Transgender Alliance and the Equal Recognition Campaign

09:31

The Convener: Item 2 is an evidence session on the Scottish Transgender Alliance's equal recognition campaign. We will start the session with introductions. At the table, we have our clerking and research team, official reporters and broadcasting services. Around the room, we are supported by the security office. I welcome the observers in the public gallery.

My name is Margaret McCulloch and I am the committee's convener. I invite members and witnesses to introduce themselves in turn, starting on my right.

Sandra White (Glasgow Kelvin) (SNP): Good morning, everyone. I am the MSP for Glasgow Kelvin and the deputy convener of the committee.

John Mason (Glasgow Shettleston) (SNP): I am the MSP for Glasgow Shettleston.

Christian Allard (North East Scotland) (SNP): Good morning. I am a North East Scotland MSP.

John Finnie (Highlands and Islands) (Ind): Madainn mhath. Good morning. I am a Highlands and Islands MSP.

Annabel Goldie (West Scotland) (Con): Good morning. I am a West Scotland MSP.

Vic Valentine (Scottish Transgender Alliance): Good morning. I am the policy officer at the Scottish Transgender Alliance. Just to let everyone know, I use the gender-neutral pronoun "they".

James Morton (Scottish Transgender Alliance): Hello. I am the manager of the Scottish Transgender Alliance.

Allison Ewing (Scottish Transgender Alliance): I am the founder of a parent support group called transparentsees, which supports parents of trans children. We have a branch in Glasgow and one that has just started in Edinburgh.

The Convener: Would any of the witnesses like to make a brief opening statement?

James Morton: Thank you for inviting us to give evidence about the equal recognition campaign, which asks the Scottish Government to reform the Gender Recognition Act 2004. We are calling for three things in particular: we would like the Scottish Government to remove the psychiatric diagnosis requirement from legal gender recognition; to reduce the age at which people can

get legal recognition of the gender that they live as; and to provide legal recognition for people who do not identify as men or women. We would be happy to elaborate on that.

The Convener: Where are you with the current process for gender recognition?

James Morton: Since 2004, the act has provided a mechanism for transsexual people to change their gender on their birth certificates and therefore to change their legal gender from male to female or from female to male. It requires people to be over 18 and to provide a load of documents—bank statements, passports, rent statements, bills and payslips and so on—to prove that they have been living in their new gender for more than two years. People have to create a file of such documents.

People also need to provide a written report from their general practitioner and one from their psychiatrist. There is a list of specialists who are allowed to write the psychiatric report. The list is very restricted—only about seven people in Scotland are allowed to provide the second report. The two reports have to detail specifically what, if any, medical treatments a person has undergone as part of gender reassignment. They need to provide details of hormone dosage, the length of treatment and medication names, and exact details and dates of any surgeries. It is easy for doctors to make a slight mistake in those reports or to provide details that are not technical enough, and then the application gets rejected by the tribunal panel.

The information goes to the tribunal panel, which you do not see in person. The panel is made up of judges and medical practitioners, who look at all your documentation in a legalistic way. If any i's are not dotted or t's are not crossed perfectly, the panel rejects your application and requires you to submit further evidence.

People have found the process traumatic, difficult and frustrating. They feel that it removes their autonomy and ability to self-declare and places the decision in the hands of a judicial panel. That makes people feel very demeaned.

John Mason: You mentioned psychiatric diagnosis. I am not very knowledgeable about this area, so I ask you to assume that I do not know much. Will you explain what is involved in psychiatric diagnosis and the main reasons why you feel that it should be removed?

James Morton: In the World Health Organization's international classification of diseases, the only thing that is required to receive a diagnosis of gender dysphoria—transsexualism—is to identify strongly with a different gender for more than six months and to wish to live in that different gender and, potentially,

have medical interventions to assist with that. However, the psychiatric report that the gender recognition panel requires goes much further than that. It expects people to have the psychiatrist detail everything right back to their childhood, including their sexual preferences and what toys they played with as a child. If we took the average person and listed all those things, I am not convinced that they would get through the gender recognition panel.

It is interesting that the World Professional Association for Transgender Health, which represents all the psychiatrists, psychologists and other gender specialists around the world, has said that it does not think that psychiatric diagnosis should be a requirement for legal gender recognition. It feels that the medical profession should simply evaluate someone's readiness for medical treatment, not their access to human rights. It has stated:

"No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone's gender identity, so these should not be requirements for legal gender change."

John Mason: Is the United Kingdom unusual in how it deals with all this?

James Morton: The legislation in different countries very much reflects the year in which it was passed. Legislation passed back in the 1970s often required sterilisation and things such as that. Legislation that was passed in the very early 21st century, such as that in the UK, does not require sterilisation, but it requires intrusive medical reports. More recent legislation, such as the legislation in Ireland last year, takes a self-declaration model, which is now the recognised best practice in human rights terms. Legislation has been improving each decade. The UK legislation has fallen behind the times and we think that it is due for renewal.

John Mason: So you are basically arguing for self-declaration. There is no need for anything to replace the psychiatric diagnosis.

James Morton: We believe that the process should be similar to how people change their gender on other documents at the moment. People can get their name and gender marker changed on things such as medical records and bank statements simply by doing a statutory declaration that says, "This is who I am and this is how I intend to live." That would be on oath, the same as if someone was in a court of law. We think that that is what should be done for birth certificates, too. That is what is done in Ireland and other countries.

Vic Valentine: In Europe, it is the Netherlands, Denmark, Malta, Ireland, Sweden, Norway and Belgium that use the self-declaration model. As

James Morton said, most of that legislation has been passed since 2010. It would not be unusual for Scotland to follow suit in taking that approach, which is moving towards being considered international best practice.

John Mason: You said something earlier about six months. Is that relevant here? Does there have to be some kind of waiting period?

James Morton: The six months relates to access to medical interventions, because people need to be very confident that they are making the right decisions for irreversible treatments to their body. However, we do not believe that medical diagnosis should be part of changing a document. We would not require people to go through any kind of medical evaluation for other types of documentation change.

John Mason: Just to play devil's advocate, I ask whether there any drawbacks or unintended consequences of self-declaration.

James Morton: There is sometimes concern that people might do that for some kind of nefarious purpose or as a joke. However, there is no evidence that people have been using self-declaration to change their gender on other types of document as a kind of joke or with any kind of malicious intent. We think that that is highly unlikely to occur.

Scottish Women's Aid, Rape Crisis Scotland and the Scottish Prison Service all already voluntarily use a good-practice self-declaration model for how they allow access to their single-sex services, so they are confident that that can be managed appropriately.

John Mason: That is great—thank you.

Sandra White: I would like to ask Allison a question. Is that okay, Allison?

Allison Ewing: Yes.

Sandra White: I want to ask about the involvement of parents or guardians. James Morton mentioned that, in a psychiatric diagnosis, people are asked what toys they played with and so on. How involved do parents or guardians become in that so-called diagnosis? Are you asked about it, or is it simply done?

Allison Ewing: Parents are involved in the assessment process for children under 16. We see a psychiatrist and they ask about the child's history; they encourage the child to answer that, too. We have to say whether there has been, for example, a history of gender dysphoria and how they played with their toys. Psychiatrists ask for that information in an assessment before anyone can get the diagnosis of gender dysphoria.

Sandra White: For children who do not have a parent or guardian, or a parent who is still living, it

must be very difficult to get through that psychiatric diagnosis.

Allison Ewing: Yes. I have not yet come across any foster carers who are in that situation, although I am a trustee on the board of Mermaids and I know that we have some members who are foster carers. They have a lot of hoops to get through with social work involvement to get adequate treatment for their foster children; it becomes quite complicated. However, I do not know of any foster carers in Scotland who have been in that situation; the ones I referred to are in England, so they come under different legislation.

Sandra White: Thank you for clarifying that and for making the point about the difficult hoops that they have to go through. Obviously, that is another barrier.

Allison Ewing: Yes. If the young people are over 16, they can access services themselves, but they will still be asked questions such as "What did you play with?", "What was your favourite colour?" and "Did you play with boys or with girls?"

Sandra White: I will not comment on that part—sorry.

James Morton: I want to reiterate that the process of legal gender change is separate from access to medical treatments. We are concerned about the questions that are asked in terms of readiness for hormone blockers, or hormones or surgeries for people of different ages. However, we would not be asking the Scottish Parliament to legislate on that. In terms of legislation, we are asking about the Gender Recognition Act 2004, which would not affect how the assessments for hormone blockers, hormones or surgeries took place.

Annabel Goldie: Following on from John Mason's questions, is there any evidence of anyone who sought gender change under the 2004 act wanting to change their status after that?

James Morton: You mean people reversing their decision to transition.

Annabel Goldie: Yes.

James Morton: A very tiny minority of people decide to change back afterwards. For the tiny number of people that we have encountered, it has virtually always been because of the amount of harassment and exclusion that they faced once they transitioned. They ended up feeling like they had lost so much in being themselves that they felt under pressure to change back to regain contact with their families, for instance.

It is very rare that people change their decision and it will become increasingly unlikely as society becomes more accepting. The feeling that they

just cannot take the discrimination any longer sometimes means that people go back.

09:45

Annabel Goldie: That is helpful. I simply wondered how, if we were to move to a system based on self-declaration, we would manage a situation in which someone subsequently decided that they had acted in error, had made a mistake or regretted what they had done. Would the change of law have to allow for that?

James Morton: At the moment, the gender recognition legislation allows someone to reapply and change their gender back should they be in that exceptional circumstance, just as the law on marriage recognises that, although people have every intention for their marriage to last the rest of their lives, in some sad situations, it does not. The number of people who transition back to gender recognition is minuscule compared to the number of people who divorce.

John Finnie: As John Mason said, there is a measure of devil's advocacy in much of what we will ask because, as you will understand, we need to probe these important issues deeply. How much evidence is there that there are people who are ready to apply for gender recognition at the ages of 16 and 17?

James Morton: There are increasing numbers of young people who find that their families are supportive and they no longer need to hide who they are in shame and fear. Pre-puberty, there is no need for any major interventions and we encourage parents to allow their children to grow and develop, play with whatever toys they want and be whoever they want but not worry about whether it will turn into gender dysphoria and distress at puberty.

The evidence suggests that, if somebody experiences gender dysphoria—significant difference between their gender identity and their assigned gender at birth—when they hit and go through puberty, it is highly unlikely that they will change their mind. The current national health service treatment in Scotland—indeed, the current treatment throughout Europe and further afield—is to allow people to have hormone blockers if entering puberty is causing them to feel extremely distressed. That gives them some breathing space and time to work out how they want to live their lives. They are not usually given any hormones until 16 but they would usually have all their documents except their birth certificate changed over at an earlier age.

If their parents are supportive, a young person should be able to get their birth certificate changed too, so that they do not have contradictory identity documents—some that show one gender and

some that show another—and so that schools do not get confused and become uncertain about which they should respect or how to register them for exams. Such confusion and uncertainty just magnify the sense of difference, the distress and the sense of the person's identity not being respected when they are already distressed about the changes that puberty is causing them.

Allison Ewing: There has been a huge increase in the number of children who are being referred to the Sandyford children and adolescent gender identity services. In 2013, there were 67 referrals, which was absolutely fine for the psychiatrist, who is there only one day a week, to cope with. Last year, there were more than 180 referrals, so there is a very big increase in the number of young people who are being referred.

As James Morton said, the service is trying to triage and assess those who are approaching puberty, so it is adopting what is called a stage-not-age criterion so that, if somebody experiences acute distress, self-harms and attempts suicide, it will try to see them more quickly. However, unfortunately, the waiting list is now a year, whereas it was three months when my child first came out to me four years ago. That increases the distress.

My child came out at 14 and she transitioned completely when she was still 14. She changed her name at school, but she did not get a passport until last February, when she was coming up to 17. It would have helped if we had been able to follow the whole process through and get the birth certificate changed on the same route so that she can move forward. She has been living under her name for three and a half years since she transitioned at school. The school was extremely good at dealing with that, but it would help schools in general if the age was brought down.

For under-16s, parental consent would obviously have to be in place. It would be problematic if a young person was in care or did not have supportive parents, but in such cases they may not even have come out to their parents before the age of 16, and they would not be able to access services on their own without parental support until they were over 16.

Annabel Goldie: That is very helpful.

John Finnie: What support is there? I understand that your organisation provides a broad level of support, but is that suitable for young people or would additional support be required?

James Morton: In terms of voluntary sector support, Mermaids and transparentsees are doing an amazing job, but those organisations are underresourced and lack adequate funding. NHS provision at present involves one day a week with

a child and adolescent psychiatrist who is trying to deal with the entire case load for Scotland. It would be a very small drop in the ocean, in terms of funding, for the NHS to double that provision and bring down the waiting times to a reasonable level.

NHS funding should be put in place so that out-patient appointments for people with gender identity issues can be included in the 18-week treatment time guarantee that everybody else receives for out-patient appointments. We do not want any special treatment; we simply want to be seen on the same timescale as someone would be seen for any other out-patient appointment. A very small amount of additional capacity would be needed to enable that to happen.

John Finnie: On the specific issue of out-patient appointments, have you made any representations and, if so, what response did you receive?

James Morton: We sit as part of the national gender identity clinical network for Scotland that is run by NHS national services. We have also approached the Scottish Government health directorate to ask for increased resourcing of the gender identity clinics. There tends to be a lack of recognition of just how many more cases there are now. Services were planned based on predictions that were made 10 years ago without a realisation that, as social attitudes improve, people become more confident and feel that they have less to lose by coming out as themselves.

We encounter resistance from people who make assumptions that some clinicians would not want to work in the area and that there is no point in recruiting because no one would apply. We do not believe that that is true. In addition, there are multidisciplinary team models that could be used, perhaps by providing more nursing staff or counsellors. That would enable capacity to be increased without needing to have an additional psychiatrist, if psychiatrists are somehow hard to come by. We do not feel that enough effort has been made to try to increase capacity.

John Finnie: Finally, what are the risks and benefits of lowering the application age to 16 and possibly even further in future?

James Morton: Because it involves a document change, it is not irreversible—it simply enables the person to feel valued, understood and accepted. We do not see a significant risk from lowering the age—

John Finnie: Are there any risks at all?

James Morton: The key point is that we ensure that people have parental support. Because we are asking for a change to allow under-16s to apply with parental consent, the system would not

be pitching the parents and the child against each other. It would simply be about recognising that there are young people who have that parental support. It is very sad that there are still young people who do not have parental support, but they are the ones who feel too scared to come out, and that is an issue that requires the education of society.

We think that reducing the age would be a positive change and would show that people know their gender from a young age. If you think back to age three, four or five, you knew that you were a boy or girl and the degree to which that fitted.

We think that people will apply for a birth certificate change only when the parents and the young person are convinced that transition is the right thing to do and the young person is already living successfully in that gender. It just means that the paperwork can be in order and the person is not constantly being outed and quizzed, and having to reveal their past—for example, when they go for their first job or put in for an exam certificate.

John Finnie: Okay—thank you.

John Mason: I would like to follow up on the figures for referrals. If I heard correctly, the figure of 67 has risen quite quickly to 180. From international experience, do you have any forecast for what the need might be in the future, or are we pretty much in the dark?

James Morton: It is hard to know exactly how many people are still holding back from coming out—

John Mason: Presumably there are some.

James Morton: There will be some. Society's attitudes towards transgender people have improved hugely in the past few years, but there are still a sizeable number of people who are not supportive. We think that the number will continue to rise for a while yet. I do not think that there will be the same dramatic rise, as we have hit the tipping point for social awareness of trans. If you ask the average person in the street, they now know what transgender means and they are usually supportive, although occasionally they are not. The biggest leap has happened, but there will continue to be a bit of an increase from now on, although we cannot predict exactly how much and how long.

John Mason: The concern would be that the situation would get worse and waiting lists would be even longer than a year.

James Morton: Yes.

Annabel Goldie: The recent report from the Women and Equalities Committee at Westminster did not focus on trans people with non-binary and

non-gender identities, but it certainly recommended that the UK Government should look at that aspect and at the need, perhaps, to create a legal category for people who do not identify with either gender.

This committee is interested in exploring that area too. Can you help us by explaining what it would mean to be able to identify as gender neutral?

Vic Valentine: At present, the Gender Recognition Act 2004 allows people to change their birth certificate only from male to female or vice versa. Personally, I do not identify as either of those two genders, and in the trans community a big chunk of people are increasingly saying that the labels “man” and “woman” do not fit them.

Even though I do not feel that I am the gender that I was assigned at birth, I do not want to switch to what might be considered the opposite gender. We are left in a position in which many people in the community might be out to their friends or to people who know them and know how they identify, but if they go out later with their friends to the pub and they have to pull out their ID, and it has only “man” or “woman” on it, that undermines their sense of who they are.

We are asking for the ability to opt out of having that M or F on all our official documents. For example, passports can use an X marker rather than an M or an F, as already happens in Australia and New Zealand. We could have something similar on birth certificates so that people do not have a legal marker that undermines their sense of who they actually are.

Annabel Goldie: That is very helpful. I understand the logic and the personal sentiment behind what you have said, but are there any potential risks in adding a gender-neutral option to legal documents such as birth certificates or passports?

Vic Valentine: There are certainly no particular risks in adding that option to passports. Passports have been able to have gender-neutral markers for decades now; that is widely accepted by the International Civil Aviation Organization. Although a few countries will not let in people with gender-neutral markers, it would be the individual's choice whether they would rather have a gender-neutral passport and limited travel options or have a binary gender passport and the ability to travel everywhere.

10:00

Two countries in the world—Malta and Argentina—allow people to be recognised as a non-binary gender on their birth certificates. That has happened under recent legislation. The

legislation is considered to be the international gold standard, because non-binary genders are included. Realistically, that need not cause any problems. It is simply about ensuring that no group in society has a letter hanging over them that marks them as a gender that is not true for them; it just means that all trans people have the same access to the recognition that trans men and women have.

James Morton: Sometimes, people think that allowing the recognition of non-binary people may cause problems for fertility or parental law. However, trans people are in diverse situations that are not readily accounted for by fertility and parental legislation anyway, so that would not make the issues around those areas any more complex, because the lived reality is just as complex. The issue is about the law recognising the diversity of trans people. We have families and relationships and we seek fertility treatment.

As non-binary people, there are trans men and women, but our birth certificates do not necessarily easily reflect how our bodies are. I do not think that that makes the situation any more difficult; it just recognises the reality of people's lives.

Annabel Goldie: I will follow up that point in a moment, James. First, Allison Ewing wants to come in.

Allison Ewing: I have a related point. For the small number of children who are born intersex, with maybe ambiguous genitalia, it may be advantageous for parents to have the ability to register their child at birth as an X. Some intersex people are trans, too. It used to be the case that they would decide whether the child was male or female, and then the child would be brought up as that gender, and perhaps have early surgery. However, current thinking is not to do any surgery at all, and to allow the child to grow up and then express whichever gender—or not—they are. The thought just suddenly came to me that that would also be useful to say.

James Morton: Being born with an intersex body is different from being transgender and having a gender identity that varies from what people's expectations might be. We take the position that all decisions around intersex should be taken by intersex people and their activists. We are in consultation and discussion with intersex people to ensure that they are not left out or ignored. The committee should look at intersex issues in their own right, but we have heard from them that they have concerns about registering an X at birth. They worry that if an X was marked on an intersex child's birth certificate, that might encourage parents to seek surgical interventions to make that child's sex more clear.

Intersex organisations, such as IntersexUK, have said that they would welcome people being able to opt into an X later, but for an intersex baby to be registered as M or F, and no irreversible treatment, such as surgery, to be carried out to force their body to conform to that M or F.

Annabel Goldie: Were such identification to be possible and the law to be changed to achieve that, would that create any issues? I am just trying to think this through. For example, in the unfortunate event that someone were the subject of a conviction before a criminal court with a custodial sentence pending, how would that be dealt with to ensure that the person was sent to an appropriate custodial facility?

James Morton: For several years, we have worked successfully in partnership with the Scottish Prison Service. It takes a self-declaration approach. If someone identifies and lives as female, they would be treated as a female in the custodial process, and the SPS would do an individualised risk assessment and place them and supervise them appropriately within the female estate.

If someone identifies as non-binary, the SPS looks at their individual circumstances. It recognises that it has only male and female estates, but it looks at the person's circumstances holistically, works with them and identifies which of the two options is the closer fit. The custodial system already responds to non-binary people, and that works quite smoothly. Having an X on their birth certificate would not make that any more complex. It is about looking at the individual and considering, with the limited options that are available, how their needs can best be met.

Annabel Goldie: I was going to ask the same question in the context of hospitalisation. I presume that some arrangement currently exists.

James Morton: Yes. Hospital treatment is a bit easier, because single rooms are usually available for people who would be a lot more comfortable in one. In hospital, the issue is about upholding someone's privacy and dignity and working with them in a person-centred way. Large health boards such as NHS Greater Glasgow and Clyde have policies that are non-binary and inclusive and that uphold people's right to dignity and privacy. That works relatively smoothly, as long as the clinicians are willing to follow their own policy or know that it exists. It is only when people are trying to be discriminatory that such things fall down. The more that people have legal recognition and protection, the better those processes operate, because treating someone with dignity is no longer seen as an option; it is seen as a requirement.

John Mason: I want to follow on from Annabel Goldie's questions. If somebody had the gender-neutral option, where would that leave them for sport? Would they then be excluded? Sport tends to be quite rigid on the male-female thing.

James Morton: The sport officiating bodies are much more interested in people's physiology than in their gender identity. The sports have rules about the level of testosterone that someone can have circulating in their body to classify as female for participation purposes. Some non-binary people already participate in sport. Generally, they tend to continue to participate in their birth gender or sometimes they opt to go into a sport that is less gendered, because that feels more comfortable to them. Having legal recognition would still allow sporting bodies to set their rules about the physiology that a person needs to ensure safe and fair participation in a gendered sport.

Sandra White: I want to follow up on Annabel Goldie's questions about the national health service and prisons. The Westminster Women and Equalities Committee report mentioned problems in the NHS and difficulties with people being treated. Also, two transgender people died in prison. Obviously, those matters are devolved to Scotland. You gave a good explanation of what the health board and the prison service do. Have there also been difficulties in Scotland such as those down in England?

James Morton: I want to flag up three key difficulties. We have already touched on the first, which is about the capacity of the gender identity clinics to see people in a timely manner. There has been historical underresourcing. It would not require more than the time of a couple of clinicians to make a massive difference in waiting times and bring them to 18 weeks.

The second difficulty is with some of the assessment questions. We would much rather that people focused on whether someone has realistic expectations of what can be achieved by surgery, for example, and how well they have thought through the consequences of the decision, rather than on what toys they played with as a child. We do not think that the kind of toys that someone played with as a child are a good way of deciding whether they will benefit from genital surgery.

The third difficulty is with GPs. Increasingly, as GPs have had tensions around their contract terms, they have started to use monitoring hormones and providing hormone prescriptions for trans people as one of those political footballs that they can use to flex their muscles. We think that a strong approach needs to be taken to reaffirm that GPs must provide hormone prescriptions and monitoring for trans people and cannot say that that is outwith their general remit.

Sandra White: Sorry. I do not mean to interrupt you, but I was referring to general services in the NHS and, in that respect, I was following on from Annabel Goldie's question. The Westminster Women and Equalities Committee's report seemed to suggest that there was discrimination against transgender people when they were accessing general services in the NHS. I just wondered whether you had come across anything in Scotland that was similar to what the report mentioned has happened in England.

With regard to the prison service and the two people who tragically died, have you seen anything like that in Scotland? Is there any evidence that that is happening?

James Morton: We are very pleased that the Scottish Prison Service has a more progressive and humane policy around trans people than the English prison service has, and that it places them in the gender estate that they identify with, even if their paperwork is not yet in order. That is not to say that the prison service in Scotland does everything perfectly, because there are still discriminatory attitudes among prison staff and difficulties in terms of making sure that people are not misgendered while they are in the prison estate.

In terms of the NHS, yes, there are still problems around discrimination by practitioners. I personally have experienced, as many people have, a change in the way people in the NHS interact with you when they realise that you are trans. There is a change in the level of care and concern, and more an attitude of, "Well, is this your own fault for having decided to transition? Maybe you've harmed your health and it's your own fault." There are also examples of clinicians outing trans people to other clinicians and not respecting their privacy, misgendering them and sometimes an outright refusal of care.

Those are some of the things that we hear about, particularly around mental health service provision. We know that when trans people are, for example, depressed after a bereavement or have some sort of social anxiety that they want cognitive behavioural therapy for, they are sometimes refused treatment by their community mental health care provider. The message is "Oh, you're too complicated because you're trans," or "Well, you're trans, so the gender identity clinic should be dealing with all your mental health needs," but in fact the gender identity clinic is only about gender reassignment—

Sandra White: Sorry to interrupt you again—I know that other members want to come in—but do we have any hard evidence or data in regards to what you are saying?

James Morton: We have some statistics from surveys that we have done. I do not have the exact figures with me today, but I am happy to send them to the committee afterwards.

Sandra White: That would be great. Thank you.

The Convener: Over to you again, Annabel.

Annabel Goldie: Thank you, convener. James, what engagement have you had with the Scottish Government about your campaign for the changes that you seek to the 2004 act? Was your contact with the Scottish Government before or after the recent report from the Women and Equalities Committee?

James Morton: We have been engaging with the Scottish Government for over a year now around the gender recognition reforms that we are seeking, which has continued through the period of the report from the UK Parliament. We are very clear that gender recognition is a devolved matter because it relates to birth certificates, which are a devolved responsibility. We think that legislating in Scotland would provide us with the best opportunity to get the law right; the 2004 legislation was passed by the Scottish Parliament through a Sewel motion.

We think that, ideally, there should be a tandem approach, with the UK Parliament legislating for English and Welsh birth certificates and the Scottish Parliament legislating for Scottish birth certificates. The process would be similar to how equal marriage was progressed by the two Parliaments, and it would enable us to make sure that the legislation was right for Scotland and maximised the potential to achieve all the good practice that we desire.

Annabel Goldie: Would your ideal be to see the same changes north and south of the border?

James Morton: We think that it might end up that Scotland has better legislation. For example, with marriage law, England has more restrictions on 16 and 17-year-olds marrying than Scotland has. Similarly, we think that we could end up with more progressive legislation on gender in Scotland.

There are already differences in some aspects of how gender recognition works in Scotland versus how it works in England. For example, there is a slightly obscure way that you can get gender recognition if you have been transitioned for many years and were prevented from getting it initially because you were still married, before equal marriage. In Scotland, there are less onerous requirements for evidencing that than there are in England.

10:15

Annabel Goldie: You do not think that there would be any particular difficulties if the laws were slightly different.

James Morton: There are so many things on which the laws in Scotland are slightly different from those in England that people are used to that and it would not cause a problem. It would just mean that we would get the right law for Scotland.

Annabel Goldie: Thank you very much indeed.

Christian Allard: I agree with you, James, on that point. In trying to change the law in Scotland first and make it more progressive, is one of your intentions to give a good example to the rest of the United Kingdom?

James Morton: Yes. The Gender Recognition Act 2004 was written quite defensively to try to get it through the House of Lords and some unpleasant statements were made in the House of Lords about the Gender Recognition Bill when it was going through the house. By its design, the Scottish Parliament is easier for trans people to engage with and considers legislation in a slightly different way from the two-house system at Westminster. Scotland should lead the way and put down a blueprint, which will make it a lot easier for the Government in England to legislate for England and Wales and get such a bill successfully through the House of Lords.

Annabel Goldie: I should declare that I was not a member of the House of Lords at that time.

Christian Allard: There are still some reserved issues, such as the Equality Act 2010. What changes do you want? Do you want the law to be based more on gender identity than gender reassignment? You talked about that already. What about the exemption on employment? I did not realise that there could be an exemption on employment. Will you tell us more about that?

James Morton: We were really pleased that the Women and Equalities Committee recommended changes to the Equality Act 2010. We have been calling for that for a long time but we have been directing those calls at Westminster rather than the Scottish Parliament because it is a reserved matter. We would like the protected characteristic to be defined as gender identity rather than gender reassignment, to make it clear that it includes all trans people, not just those who undergo a more medicalised transition from male to female or female to male.

We would also like the exceptions that currently exist to be removed. At the moment, an employer that hires only women, for example, can refuse to hire a trans woman even if she has been many, many years transitioned. That is not appropriate. We are really pleased that women's equality

organisations and violence against women services in Scotland have been trans friendly. As far as we are aware, none of them has used that possible exemption and they employ trans women in women-only posts. However, in England, such bodies sometimes use that exemption, which is wrong and unfair.

Christian Allard: I have been a bit surprised by some of your evidence. You seem to want to go from a binary system to a system of three genders by adding X to the options. Would that not be as constrained? Instead of two genders, we would end up with three. You talked about the intersex community, and the Parliament would want to hear its views. Is that really the right way to go about it?

James Morton: An argument can be made that we should simply degender documents. For example, we do not have legal ethnicities recorded on our documents but we still do minority ethnic equality work by monitoring people's race on diversity forms. Likewise, we do not have legal sexual orientation recorded on our documents but we still do sexual orientation equality. Therefore, a case can be made that we do not need to have a legal gender and that the Government should not be involved in legislating people's gender. However, that would take a lot more consideration and discussion in society, which is not in the right place for that at the moment.

I am a trans man who transitioned from female to male. It took me a lot of effort to get my documents saying "male" and that helps to ensure that people respect my gender identity. There are trans people who would not want a non-binary passport because they might feel that they would be more vulnerable to discrimination if they could not show that they were legally recognised as a man or a woman.

The more we can move to a system in which gender is not a required answer the better. On many forms you cannot get past that stage of the online application unless you tick male or female—information that is often not remotely relevant. For the time being, we think that the way forward is to allow people to opt out of being classified as M or F, but not forcing everyone not to be classified as M or F—allowing it to be optional. It is not about creating a third gender category; it is about creating a space so that people do not need to have a gender category, if you see what I mean. That is a subtle but important difference.

Christian Allard: You have still not convinced me. I would love to hear about the idea that society should become less and less binary from others on the panel. For example, we can think about new schools where facilities would not be female and male anymore. We would not dream of adding another door marked X. I know that society may not be ready for it but, if we want to change

society's view on this particular topic, is it not time to add a fourth point to your campaign? That point could explore how we might not insist so much on specifying gender in Scotland, not only in paperwork but in how we define ourselves in employment and in schools. Would members of the panel like to pick up on that?

James Morton: We certainly see schools increasingly trying to avoid gender stereotypes for their pupils. They are trying to make sure that every pupil knows that they can be who they are, and that they can achieve whatever their ambitions are without being restricted by their gender. We whole-heartedly support that work.

Also, within public toilet provision and other areas, we see a move towards more single cubicles so that people do not have to go through an M door or an F door. I remember going to a service provider where they had labelled the cubicles alternately M, F, M, F. I wondered why they could not just label them "toilet". They were individual, fully contained toilets; nobody was sharing with anybody else. I think that people are moving towards that approach and are less hung up about gender than they used to be, but it is a process. People still make so many instinctive assumptions about gender that it can be quite challenging for some people to realise that gender is not just binary but a lot more diverse and complex.

Vic Valentine: At the moment the reality is that we live in a very binary society, so I think that it is important that there are changes right now to make sure that people who do not identify in either of those binary ways are included. To give an example, when I moved back to Edinburgh and tried to set up my utilities, I had to pick a title to sign up with British Gas. All the titles are gendered and, if I did not pick a title, British Gas would assume that I was a business and would not provide me with a domestic energy supply. Therefore, I had to pick one gender or the other. I have started arbitrarily picking titles out of the list because, realistically, none of them is my title—none of them describes who I am.

There is a lot of value in looking at where we can break down binaries for things such as facilities and titles but, right now, people have to navigate spaces that are designed so much for one or the other. It is really important that we create additional space so that people who do not identify in that way can access things without first having to ask, "Which way will I lie a little bit today?" At the moment, that is the reality.

Christian Allard: You see my point. You are just adding a third option, which may not be the answer for some people who might find it difficult to navigate between the three. Why not remove them all?

Vic Valentine: I think that you could remove them all from some things, but I do not know that we necessarily consider the proposal to be a third option. I would not consider it to be a third gender; it would be a category that describes all people whose gender is not male or female. At the moment, we gender everything one way or the other. The proposal is not for a third option and that everyone in that option is the same; it is more that, at the moment, we organise everything with two options but those two options do not fit everyone, so we need to ensure that people are not just pushed into one of those two.

Christian Allard: My point is that the kind of legislation that you want will reaffirm the idea that people have to make a choice. Do parents think that it is the right approach to say that people have to make a choice about gender, whether it is F, M or X? Alternatively, should we have a space to ensure that people do not need to define their gender? Would that be easier for parents?

Allison Ewing: As James Morton said, it is a difficult question for parents. I think that I would say that parents should be led by their child—let the child define their gender. Some young children, even under 14, come out as non-binary. However, I would need to think more about that question.

James Morton: I want to clarify that we are asking for the option to opt out of the binary approach and to say, "I don't want to have a legal gender; I just want to be a human being." It would be an optional degendering for those who feel that the two current options do not fit them, rather than a blanket enforcement.

It is not a question of saying that the options are male, female and a third legal gender; it is about saying that there are male and female legal genders and then the option of not being legally gendered. Ultimately, we would probably want everybody to pick that option and say, "Don't legally gender me", but the majority of people are comfortable with having a legal gender, so there is no need to immediately remove the gender from everybody legally.

It is simply about allowing those people who do not fit the two options to opt out and say, "I'm a human being and I do not need to have a legal gender of male or female. I can simply live my life as me, as a human being."

Vic Valentine: Obviously, if someone is not trans, people accept their gender because it matches—it is easy and they probably never need to think about it. Therefore, the concept of removing legal gender probably seems much easier to them, because they will not be challenged or have someone use that as a reason to undermine their identity.

For a trans person, there is realistically much more value in having documents that reflect who they are. Although in some ways moving beyond having gender recorded at all would be valuable, right now it is more important to ensure that trans people have passports and birth certificates that say who they are and that say that the Government recognises them in that way.

The Convener: Vic, you said that you have to pick male or female. How does it make you feel when you have to go through that process? What difference would it make if you had the third option?

Vic Valentine: It is mostly a feeling of annoyance—I am not really sure what to put. For example, if it is important for someone to know what my gender is and I cannot say, I am not sure which one to pick that gives them the information that they need.

A good example is that I have been back in Edinburgh for almost a year, but I have not registered with a GP, because all GPs ask for your gender and only provide those two options. I am not really sure why they are asking me. I have toyed with the idea of drawing a third box and ticking that.

Because it is often the first question that is asked, I almost immediately get the sense that the service is not for me. The service probably does not know that people like me exist and, even if it does, it does not care enough to put a third box on a form, so I feel that I probably will not go there or use the service.

The Convener: If you then had to use the service, you would have to explain to the GP that you do not fit.

Vic Valentine: Absolutely. I talked about titles. With my bills, in the end I decided to go for “Mr”, and every time I have to speak to someone on the phone about my bill, they say, “It says Mr Valentine here—is that a mistake? Do you want me to change it?” People hear my voice and assume that I am not a Mr. I say, “No—it’s fine,” and then they say, “Oh—okay, Mr Valentine.” We get those quite strange interactions where people are not entirely sure why we have given certain types of information, but the thing is that they are not giving us the option to tell them what the answer is.

10:30

That is the point—it is not as though we do not exist until you put our identities on forms; we are already using all the same services as everybody else. People are already working with us and helping us; it is just that services are not aware

enough to provide things in an inclusive way, which they should be doing.

The Convener: Are there any large employers or any organisations that, in an application form for example, give you the opportunity to use a third option?

Vic Valentine: On driving licences now you can get gender-neutral titles, and most bank accounts will allow you to do that. My bank card has the gender-neutral title Mx on it. It is becoming much more common in the private sector; an entire project has been set up by non-binary people to spam private sector organisations that do not have gender-neutral title fields and so on and say to them, “Add this option or everyone is going to stop using your services”.

There is good practice out there, particularly on the part of lesbian, gay, bisexual and transgender services that are more used to working with non-binary people. Those services will ask more inclusive questions about gender identity. They will also ask about what pronouns you want to use on forms to avoid having to guess what pronoun someone might use. It is something that needs to be worked on.

James Morton: The Law Society of Scotland has moved to allow its solicitors to be gender neutral. That was in part because one of their trainee solicitors is openly non-binary. When people realise that non-binary people exist and that they are there, it just makes things easier and clearer. Organisations are no longer getting a distorted bit of information; it reflects their lived reality. Even organisations that we might think of as relatively traditional will often move on and be able to accommodate the option quite easily. It is not that hard; it just requires some will.

Sandra White: This is a small question but it is far reaching. It is a question for Vic. You have obviously experienced problems in living a non-binary life. I just want to put this in the mix. When there are cultural or religious differences, how difficult is that for you and others?

Vic Valentine: It is difficult to say in a generalised way, because obviously individual members of different cultures and religions will respond differently. It is also really important to emphasise the fact that binary separations of gender are very much a western, Christian phenomenon, so it is probably our societies that are the most divided about gender in that respect.

I do not necessarily know why non-binary identities would be more of an issue in engaging with people of faith than anything else to do with the LGBT spectrum. It is just something that we have to take on a case-by-case basis.

Sandra White: The point that I wanted to raise relates to what James Morton said about the experiences of transgender people. We know that there are cultural differences and that some religions will not allow a male doctor to treat a woman, for example. I was interested that Vic Valentine's bills are addressed to "Mr" rather than to "Ms", "Miss" or whatever it may be. I wondered about that and about the difficulty that it would cause for you and others. I also wondered about cultural and religious differences for people who do not want someone of a certain sex to treat them. How would you get over that in terms of being non-binary? Would you see that as discrimination against you and others, or not?

James Morton: It is about recognising that there is a wide range of reasons that a service user might want a particular service delivered in a particular way. It is not purely about gender; there can be all kinds of other factors that people would like to be taken into account in order to give them the person-centred care that they need.

As regards provision of services, when somebody is trans, that can be accommodated and it already is. The fact that Vic cannot get documents that reflect their gender does not necessarily mean that Vic is not in a service provision role. Legal recognition simply allows a person's identity to be reflected on their documents. It makes it clearer who they are and enables a service provider to assign its staff more appropriately, not less.

That is not something that needs to be in competition with anything else; we can respect everybody's different views and make sure that the staff allocation reflects the needs of service users.

The Convener: Thank you very much. Does any of the witnesses have anything else that they would like to say that they have not had the opportunity to mention already?

Allison Ewing: I think that, if you adopt the self-declaration, it should be available for 16 to 17-year-olds and—with parental consent—for under-16s.

James Morton: I would just like to thank you again for taking this evidence session. We have covered a lot of diverse issues, some of which can be legislated on and some of which are more about practices within the NHS or other public services. If you have any further questions or points that you would like to clarify after the meeting, we would be happy to send written answers.

Vic Valentine: I will just reiterate James's sentiments and thank you for hearing our evidence today.

The Convener: I thank the witnesses for their contribution. That concludes the public part of the meeting. Our next meeting will take place on Thursday 11 February.

10:36

Meeting continued in private until 11:26.

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