

UK Trans Info works to improve the lives of trans and non-binary people in the UK, in particular by promoting accountability and transparency in government and service provision. This submission is informed by that work.

We have sought where possible to address the headings set out in the discussion document. Omission of any particular topic is just that, and doesn't imply any particular position (or indeed the lack of a position) on the matter.

Terminology

In our work we explicitly talk about **trans and non-binary people**. While many non-binary people - those who do not identify exclusively as wholly male or female - consider themselves to be trans, many do not, and our terminology reflects that.

When talking about trans people, we talk about their **gender** as self-defined. This may differ from the **recorded gender** on any given document. Like anyone else, trans people may not have any access to identification, or may have multiple documents.

Legislation

Documents such as driving licenses and passports can be updated on request. A Gender Recognition Certificate (GRC) is not required. While the Gender Recognition Act (GRA) confers certain protections upon those who hold a GRC, it does not forbid the same courtesy from being extended to those

A well-designed process for complying with the GRA can (and should) be easily extended to all trans people as a matter of course, including those who do not or cannot hold a GRC.

The Equality Act protects all trans people, regardless of their intention to undertake any medical or legal process in the course of their transition.

While there are minor variations, all public sector and privately contracted staff will be familiar with applying these same legal standards to ensure that everyone is treated equitably in respect of their disability, race, or other protected characteristic.

Not mentioned in the discussion document is the **Data Protection Act**. While there are exemptions for certain purposes within the justice system, these are qualified by a need to still comply with the conditions for data processing in Schedule 2 of the Act (<https://ico.org.uk/for-organisations/guide-to-data-protection/conditions-for-processing/>).

Whether or not an individual is trans (and further information about their trans experience) is **sensitive personal data**. This means that any disclosure or processing without explicit consent must be **necessary** (rather than merely convenient or helpful) to the activities of the court, prison, or other body.

We support the assertion in PSI 07/2011 that “A convicted prisoner retains all civil rights that are not taken away expressly or by necessary implication”. This principle should remain prominent in any updated policy.

Recording

An individual's trans status (or information relating to their trans experience) might be recorded either explicitly or implicitly (e.g. through the name of an institution, or some single gendered service). Once this has happened, it is difficult to undo and may be open to accidental or implicit disclosure.

Unnecessary recording of trans status can lead to difficulties in accessing employment, housing or social security, along with the negative effects on wellbeing that entails.

While demographic monitoring can be useful, the lack of existing data should not be seen as a barrier to service provision. Where possible, default service provision should be inclusive of trans people's experiences, negating the need for specific capacity planning.

All information systems should permit the possibility of individuals being neither male nor female, and should not enforce any relationship between (for example) an individual's title and their recorded gender. An individual's gender history should not normally be visible to any given person with access to an information system.

Medical Treatment

For many trans people, medical intervention is a necessary part of their transition. *R v North West Lancashire Health Authority* (1999) affirmed that such treatment was necessary and should be provided accordingly.

Contrary to PSI 07/2011, there should be a presumption that cancellation of appointments or abridgement of current treatment would have “consequences that adversely affect the health and well-being”.

At present, the NHS is failing in its legal obligation to provide consultant led treatment for trans people within 18 weeks of referral. Therefore, the current standard of “the same quality of care [one] would expect to receive from the NHS” should rather be the quality of care “one would be entitled to from the NHS”.

For many trans people, accessing medical intervention is not desirable or is impractical. Having successfully accessed or intending to access any given medical intervention should never be a barrier to the justice system respecting and affirming an individual’s gender.

In Custody

There should be a presumption towards safely housing male or female prisoners in the estate that corresponds with their gender. However, where a trans person indicates that they would not feel safe in the estate corresponding to their gender, they should not be forcibly housed there.

Solitary confinement should never be used as a substitute for safe housing, except in exceptional circumstances with the express consent of the person in question. Nor should trans people ordinarily be housed in a comparatively higher security prison in lieu of attempting to provide safe accommodation in the appropriate category.

Non-binary people should be housed in the estate where they feel most comfortable. **Further specific engagement is urgently required with organisations run by non-binary people, to ensure that they are appropriately and safely housed.**

Children and Young People

While there are a growing number of supportive organisations for trans young people, clustered around major cities, formal support is still subject to monopoly by the under-resourced Gender Identity Development Service. Coupled with reliance upon (or indeed estrangement from) parents, young people may not have felt able to express their trans identity prior to contact with the justice system.

We are concerned by the assertion in PSI 07/2011 that “*Where a young person under 18 is concerned, the establishment must be satisfied that [affirming their gender] is consistent with its duty to promote the young person’s wellbeing*”.

The default position - particularly where the young person is Gillick competent - should be to respect their gender. Any decision to wholly or partially deny that assertion of their identity must then be subject to the test of consistency with the establishment’s duty of care.

Given the importance of this matter, we urge the Ministry of Justice to show leadership in seeking specific guidance from voluntary organisations run by and for young trans people themselves.

Policy Formulation and Oversight

There is no single trans community, and consultation with specific organisations is not a substitute for open consultation. Transparent and accountable processes are a necessary component of community trust in both the organisations that represent trans people, and the justice system.

With that in mind, there are an increasing number of trans run organisations with expertise in both engaging their particular communities and developing policy which reflects the experiences of those communities.

Where trans people are doing substantial skilled work in the development of policy, funding should be sought to ensure that they are paid an appropriate rate for that work (either through the organisation commissioning the policy or - where one exists - the organisation developing it).

Ideally, the people paid to develop policy on how trans people are treated by the Ministry of Justice would be trans people with personal experience of that particular area of the justice system.

Training and Support

While trans experience is complex, it is not unduly complicated. Where confusion arises in the public sector, it is often due to staff being asked to operate processes and practices which are incompatible with that experience.

It is in the gift of NOMS to minimise staff training requirements, by minimising the “special casing” of trans people in its processes and practices. Where mainstream practice accounts for trans experience by design, there is no additional training required on engagement with trans people specifically.

Where training is required, staff should not be patronised. Up front presentation of material as “complicated” or “difficult” gives an undue expectation that they will struggle with ideas that they would otherwise readily understand. It also undermines the confidence of trans people that that material will be well-received and properly acted upon.