

Galop's Submission to the Women and Equalities Select Committee's Inquiry on Trans* Equality



About Galop

Galop makes life safe, fair and just for LGBT people. For 32 years we have supported LGBT people who have been the victims of hate crime, domestic abuse and sexual abuse. We provide third party reporting, advice, information, advocacy and a helpline service to over 1250 people annually.

We undertake policy and community development work and use our expertise to help make the criminal justice system fairer and more effective for our clients. We have a specialist Trans* Casework and Advocacy Service. See www.galop.org.uk.

Executive Summary

Galop welcomes the Inquiry, and all efforts to reduce discrimination and inequality for trans* people. As a specialist LGBT anti-violence organisation, Galop's submission focuses on transphobic hate crime and issues relating to the criminal justice system. In summary we submit:

- Transphobic hate crime, harassment and abuse take many forms.
- Whilst there have been increases in reporting, transphobic hate crime remains widely under-reported.
- Further work needs to be undertaken to understand the needs of trans* victims, the barriers to reporting and how to increase access to appropriate services.
- Whilst there have been improvements, there is still clear evidence that frontline workers in criminal justice and other agencies are not dealing with trans* people appropriately.
- Criminal justice agencies are failing to refer to specialist organisations and compliance with the Victims' Code needs to be examined.
- The practical application of some equality legislation has sometimes been problematic. We give specific examples below and recommendations.

1: Terminology and definitions, and the availability of data.

1.1 Terminology

1.1.1 In Galop's experience, confusion remains about what 'trans*' means. We recommend an agreed standard of terminology that is reviewed regularly to account for changes in language.

1.1.2 The definition of the word 'trans*' needs to be:

- Inclusive, not just about binary options.
- Based on self identity, not physiology/biology.

- Defined by trans* people themselves.
- Linked to the appropriate use of pronouns, as defined by the person.

1.1.3 Using the correct terminology is fundamental. If trans* people do not see themselves as included, or others exclude them because of an inappropriate understanding, then people do not come forward or access the services they need.

1.1.4 Examples from Galop's work:

- A young trans* man was repeatedly mis-pronounced in court as he gave evidence of sexual assault and who had his transitioning history used to discredit his testimony.
- Trans* women fleeing from domestic abuse who have been refused refuge places or been asked if they are "pre or post op" before being offered a place.
- A trans man appearing in a Family Court Hearing, was referred to by opposing McKenzie Friend in transphobic language and named as a risk, damaging to the children for being trans*. It was felt that the Judge should have stepped in to stop this and that there was further trauma experienced within the court process.

1.2 Data

1.2.1 If there is confusion regarding definitions then it is impossible to collect accurate data. In our experience this has led directly to the under reporting of transphobic hate crime, domestic abuse and sexual abuse.

1.2.2 Trans* people are routinely excluded from data collection because they are not asked about their gender identity or are asked in an inappropriate way. For example:

- Trans* identities are not currently included in the national census.
- The Met Police do not currently collect data on victims' sexuality and gender identity.
- Questions are asked in a way that shows a misunderstanding of trans* identities. For example: 'Are you male, female or transgender?' (someone can be male or female *and* trans*).

1.2.3. Many agencies are unsure and uncomfortable about data collection, despite this being required by the Equality Act. Asking everyone about sexuality and gender identity should become the norm for everyone, as long as there are a range of possible options, including a 'prefer not to say'.

1.2.4 There needs to be an acknowledgement that many trans* people will not want to declare their trans* identity or history and may be at risk of violence if they do.

1.2.5 Example from Galop's work:

Galop in its role as Co-Chair of the Met Police Sapphire LGBT Advisory Group has had ongoing discussions with the Metropolitan Police about their data system, which does not record information on protected characteristics. Without this data, it cannot be known if people are coming forward as victims of crime or if they are being referred to appropriate services.

1.2.6 Demographic, research and service data about trans* communities is sparse, leading to the issues and needs of this important group falling off the agenda of policy makers and commissioners. We recommend that updated monitoring guidance be issued to public bodies and utilising research funding to provide a solid empirical base for policy makers.

4: Marriage (Same Sex Couples) Act 2013.

4.1 The above Act can be dangerous for transgender people in abusive relationships. Transgender people may seek to apply for a Gender Recognition Certificate (GRC). If a transgender person is married, however, they cannot apply for a GRC without either their spouse's written consent or by filing for divorce. The Spousal Veto proved so troubling that it's recently been dropped in Scotland, yet remains in England. The level of power and control it gives someone over their transgender partner is very concerning. If their partner is abusive, they may use this legislation to further ridicule, deny, and disempower.¹

5: The effectiveness of the Equality Act 2010

5.1 The Equality Act has been an extremely useful tool in helping people access facilities and services on an equal basis and in challenging discrimination.

5.2 However, the use of the term 'gender reassignment' in the Act is proving problematic when trans* people, or agencies on their behalf, try to enforce their rights. Many people think trans* identity implies a binary surgical transition, which the Act's definition also implies. The discrimination and exclusion trans* people face is not primarily based on medically transitioning but on perceived divergence to society's 'gender rules' and hostility or prejudice based on this. Trans* people's vulnerability to discrimination and right to equality does not, and should not, depend on medical transition. The language in the Equality Act does not reflect the range of trans* people's identities, nor the range of people whose rights need protection.

5.3 We have seen the impact of this view in relation to the provision of single-sex services, particularly domestic violence refuges and some services around sexual assault. Knowledge of a person being trans* has been used as a basis for exclusion. This can leave people unable to leave violent situations, putting them at risk of serious harm.

5.4 Galop recommends that the protected characteristic of 'gender reassignment' be renamed as 'trans*' or 'transgender'. Legal protections need to encompass the modern understanding of what 'trans*' means and who is 'trans*'.

¹ See "The Marriage (Same-Sex Couples) Act 2013's Spousal Veto on Gender Recognition and its impact on transgender people and those who are questioning their gender" by Sarah Golightly. <http://theoccupiedtimes.org/?p=12849>

7: Transphobia and hate crime.

7.1 Trans* people can experience high levels of abuse in their daily lives. In 2014, 12% of trans* people in the UK faced transphobic violence and 37% face transphobic harassment, the second highest figures surveyed in an EU country². Our experience tells us:

- Trans* people whose gender expression challenges binary ideas about what men and women 'should be like' or who are more easily identifiable as trans* face high levels of daily transphobia.
- Trans* people who are 'outed' can be at high risk of transphobic hate crime.
- There is significant under-reporting as it is common for individuals to minimise more everyday experiences of abuse due to factors including:
 - Concern that reporting every incident would take too long;
 - Previous poor experiences of reporting;
 - Feeling that the police cannot or are unwilling to do anything about it;
 - Being unaware that what they have experienced is an offence.

7.2 From Galop's casework with trans* victims of hate crime, discrimination and abuse, issues routinely presented include:

- Many trans* people feeling unsafe using public transport so they either will not use it or will limit use to the times of day that feel safer.
- Clients facing transphobic violence in particular neighbourhoods and geographical areas.
- Trans* clients having to give up secure accommodation (and becoming homeless or entering emergency accommodation) because their neighbourhood is too dangerous for them.
- Everyday ridicule, for example deliberate misuse of pronouns and intolerance of gender diversity.
- Being outed at work, in cases leading to job loss.
- Being outed to family leading to break down in relationships, support networks and becoming homeless.
- A victim being outed in the media having gained a successful criminal outcome, leading to re-traumatisation.
- Assault in public.
- Sexual assault.
- Disclosure of gender history and using gender history as a tool to blackmail.
- Accessing services and facilities including: access to toilets; access to sports and social spaces; or access to safe spaces limited.

² Being Trans in the European Union, 2014, sample of 802 UK trans residents.

7.3 There are significant psychological and social impacts of being a victim of transphobia. Research has revealed that trans* people are more likely to have poor emotional and mental well-being, suicidal thoughts and problems at work.³

7.4 Very few transphobic hate crimes are reported to police: In 2013/14, 555 incidents were recorded across England and Wales.⁴ Whilst a welcomed increase in reporting on previous years, we know from our work it does not accurately reflect the extent of the problem. For instance, the Metropolitan Police generally record around 50 transphobic offences annually. Galop is aware of individual trans* people who experience 50 transphobic offences themselves each year. Despite isolated examples, few support services for people who experience crime have made gains on becoming accessible to trans* people.

7.5 The non-recording of transphobic hate crime is a problem. Our experience indicates this is more likely to happen with transphobic crime than with homophobic crime. We are aware of inappropriate treatment of trans* victims through the reporting and investigative process, which has included invasive questioning, mis-gendering, mis-naming, or misrecording people's details.

7.6 Another problem some trans* people face is having their reaction to transphobic abuse inappropriately identified as offending behaviour when reporting crime and being arrested by attending officers when they should be receiving assistance. For example, a trans* woman who walked into a police station to report rape was herself arrested and held in a cell because she appeared to be behaving 'strangely'. She was later threatened with a visit from police when she chose to disengage.

7.7 These issues feed into low levels of satisfaction among those who report transphobia. A high number of people who report hate crime are dissatisfied with the response of police (48%, compared with just 28% of all people who report crime⁵).

7.8 Most Galop clients self-refer, with a lower level of referrals by criminal justice agencies and mainstream support services being received. The Victims' Code of Practice places a duty to offer referrals to specialist services to people who report hate crime. We recommend an audit of compliance with the Victims' Code explicitly examining whether entitlements for people facing hate crime are met by victim services.

7.9 The excessive intrusion into the lives of trans* people by the press makes the prospect of being publicly identified in court difficult for trans* people and prevents justice for many.

³ Count Me In Too' study (University of Brighton, 2013)

⁴ Hate Crimes, England and Wales, 2013/14 Creese and Lader (2014)

⁵ Data from the Crime Survey for England & Wales, An Overview of Hate Crime in England & Wales, 2013

7.10 Though some provisions exist to restrict reporting of court cases, they are rarely applied beyond sexual offences trials, even where there is good cause. We recommend providing updated guidance and training for prosecutors to enable better use of existing provisions and special measures.

7.11 Transphobic denial of goods and services is another issue commonly faced by our clients, for which there is often no feasibly accessible legal remedy.

7.12 Legal protections on inappropriate disclosure of gender identity or history contained within the Gender Recognition Act have yet to be successfully prosecuted in a single case that we are aware of. We believe this is primarily due to the excessively short time limit on a case being brought, which make reporting, investigation and prosecution in time unfeasible and put it out of step with other offences. We have experience of cases that clearly meet all criteria for this criminal offence but are time-barred from accessing justice..

8: Issues in the criminal justice system

8.1 There is a gap between trans* people's levels of confidence in the police and their practical experience of using criminal justice services. For instance, one study suggests that 66% of trans* people questioned were confident of receiving appropriate treatment by police in relation to their gender identity; a relatively high figure. Of those who had actual interactions with the police, 18% felt they were not treated appropriately⁶.

8.2 From Galop's work supporting trans* victims through the criminal justice system issues presented include:

- Trans* people appear to face a disproportionate amount of stop and account/search by police officers. No data exists on this issue either from police or academic sources, but within our casework service our trans* clients appear to face higher levels of stop and account/search than our cis-gender (non-trans*) clients. We recommend further examination of this issue.
- Police do not ask about gender identity as a matter of course.
- Police can misunderstand why some trans* people choose not to live all the time in their gender expression of choice and can be poor at understanding non-binary identities.
- Clients reporting difficulties dealing with disrespect and discrimination from front-line staff. Including 101 call operators, civilian staff, and local response officers.
- Judges and courts sending trans* people to the prison of their birth gender.
- Many clients coming forward to tell us about historical incidents of police transphobia and poor treatment in the criminal justice system.

⁶ Engendered Penalties, Press For Change, 2007, sample of 873 trans respondents
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- Neighbour transphobic harassment and threats of violence not being believed by the police and housing officials.
- Police questioning the number of repeated reports from the same individual and refusing to believe the volume of abuse. Some trans* people experience daily incidents of verbal abuse, taunting and threats.
- Trans* people being very reluctant to report sexual assault.
- Many independent organisations commissioned to work with survivors of sexual abuse/assault do not include trans* people, sometimes explicitly, or because there is little experience or knowledge to include respectfully and helpfully.

8.3 Case examples from Galop's work include:

- A trans* man referred to a Sexual Assault Referral Clinic where the doctor doing the forensic exam continually mis-pronounced them and did not refer to parts of their body appropriately.
- A 101 police operator questioning a trans* woman with a female name about her gender as her voice sounded masculine.
- A trans* man in court as a victim of historic childhood abuse, whose trans history was used to discredit his testimony. The defense counsel repeatedly referred to him with the wrong name and pronoun.

8.4 People who are accused or convicted of crimes make up a visible proportion of trans* communities. There is a lack of research on this important area, however research from the USA suggests this may be due to systematic bias against trans* people within criminal justice institutions. It is also worth noting that despite a large amount of service provision targeted at offenders in the UK, such organisations have yet to make gains on serving and becoming accessible to trans* clients.

8.5 For trans* people in custody front line staff should:

- Ask what gender officer they would feel more comfortable with.
- Avoid multi-occupancy cells.
- Take steps to avoid disclosing gender identity or history to other detained people.

8.6 Though policy in relation to intimate searching of trans* people by police officers has greatly improved over recent years, practice has yet to catch up in some areas.

Recommendations

1. Terminology and definitions need to be inclusive and agreed and regularly reviewed. We recommend using the standards that key trans* organisations and networks have developed.
2. Public bodies and statutory services must ensure that data on trans* people is captured, as they are required to do under the Equality Act.
3. Police forces and other public bodies need to monitor and evaluate the use of their services by trans* people to understand where change is needed.

4. Data collection about trans* experiences of crime within the Crime Survey for England and Wales needs to be improved. Gender identity is at present the only monitored category of hate crime on which the Crime Survey, which shapes criminal justice policy, is silent.
5. Spousal visa rules needs to be changed to ensure they are not used to control and abuse trans* people within relationships and so that trans* victims of domestic abuse can be enabled to access their legal rights around gender identity.
6. Galop's casework evidences safety on public transport as a frequently presenting issue. We recommend joint work between community safety agencies and transport police to fully understand the issue and implement an appropriate strategy.
7. Galop's casework evidences that clients face transphobic violence more frequently in certain geographical areas. We would advocate for research into this, including a mapping exercise.
8. Criminal justice agencies are failing to refer to specialist agencies. We recommend an audit of compliance with the Victims' Code explicitly examining whether entitlements for people facing hate crime are met by victim services.
9. Services delivering specialist support to trans* victims need to be appropriately resourced. For example, Galop's specialist trans* service is resources via time-limited trust funding.
10. Reporting restrictions need to be introduced on trials involving trans* people, so that trans* people are enabled safely to participate. We recommend providing updated guidance and training for prosecutors on this subject to enable better use of these existing provisions and special measures for trans* people.
11. The time limit on prosecutions around the Gender Recognition Act (GRA) needs to be extended.
12. There needs to be appropriate training provided for all criminal justice agencies delivered by suitably experienced agencies.
13. There is a need for recognition of transphobia and inequality for trans* people within criminal justice agencies, the media and other services, including third sector organisations, and reparative work to build trust and confidence with trans* people.

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