



Submission to independent expert on protection against
violence and discrimination based on sexual orientation
and gender identity

Submitted by Galop, the UK LGBTI anti-violence NGO

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1) About Galop

The submission is provided by Galop, the UK's LGBTI anti-violence charity. Galop have worked for 35 years with LGBTI people facing hate crime, domestic abuse and sexual violence. The organization provides advice, support, advocacy and third-party reporting facilities to over 1450 people on a yearly basis.

2) Introduction and executive summary

- 2.1 The UK is considered one of the most advanced countries in the EU and the world in terms of legislation on sexual orientation equality. Male-male sexual acts were decriminalized by the enactment of the Sexual Offences Act (1967). Section 28 of the Local Government Act (1988) that forbade the 'promotion' of homosexuality was repealed in 2000 for Scotland and in 2003 for England and Wales, furthermore the ban on lesbians and gays in the armed forces was lifted in 2000. Legal reform on sexual equality in the 2000s also included the equalization of the age of consent (2000), the Adoption and Children Act (2002), the Employment Equality (Sexual Orientation) Regulations (2003), the Civil Partnership Act (2004), the Equality Act (Sexual Orientation) Regulations (2007), the Human Fertilization and Embryology Act (2008), and most recently the Equality Act (2010).
- 2.2 With relevance to gender identity, a Government Policy Concerning Transgender People issued in December 2002, states that transgenderism "is not a mental illness", while the Gender Recognition Act (2004), allows transgender people to change their legal gender in the UK, allowing them to acquire a new birth certificate, affording them full recognition of their acquired sex in law for all purposes. This UK laws firmly establishes 'sexual orientation' and 'gender identity' as a protected characteristics, in defence against discrimination.
- 2.3 Despite progressive legal protections of LGBTI people still face numerous forms of violence and abuse; including hate crime (homophobic, biphobic and transphobic), domestic abuse and sexual violence.
- 2.3 In summary, we submit:
- Evidence demonstrating, transphobic hate crime remains prevalent and widely under-reported across the UK.
 - Evidence demonstrating further work needs to be undertaken to understand the needs of trans and intersex victims, barriers to reporting and measures to increase access to appropriate services.
 - Whilst there have been improvements, evidence points to criminal justice professionals and other agencies are not dealing with trans and intersex people appropriately.
 - Criminal justice agencies are failing to refer to specialist organizations and compliance with the Victims' Code needs to be examined.
 - The practical application of some equality legislation relevant to legal recognition of trans and intersex peoples gender identity has sometimes been problematic.

3) Trans-positive terminology

- 3.1 In Galop's experience, confusion remains across practice and policy trans people and their identities. We recommend an agreed standard of terminology that is reviewed regularly to account for changes in language.
- 3.2 The definition of the word 'trans' needs to be:
- Inclusive, not just based binary options.
 - Based on self-identity, not medical or biological.
 - Defined by trans people themselves.
 - Linked to the appropriate use of pronouns, as defined by the person.
- 3.3 Using the correct terminology is fundamental. It helps remove barriers and increase access to public services. Examples from Galop's work includes:
- A young trans man was repeatedly mispronounced 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 inappropriately asked if they are "pre or post op" as part of assessing whether they are eligible to be offered a place.
 - A trans man appearing in a Family Court Hearing, was referred to using transphobic language and his trans argued as a risk factor to his children.
- 3.4 Trans people are routinely excluded from data collection because they are not asked about their trans identity or history; or that are asked in an inappropriate way. For example:
- Trans identities are not currently included in the UK national census.
 - UK police forces do not routinely 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*).
- 3.5 Many agencies are unsure and uncomfortable about data collection, despite this being required by the Equality Act.
- 3.6 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.

4) Transphobia and Hate Crime

- 4.1 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 country according to Fundamental Rights Agency research, Being LGBT in the EU'. 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.

4.2 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 and 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.

4.3 Very few transphobic hate crimes are reported to police: In 2015/2016, 1% of recorded hate crime in England & Wales were transphobic hate crimes (858) according to the official data released by the UK Home Office. Whilst a welcomed increase in reporting on previous years, we know from our work this does not accurately reflect the extent of the problem.

4.4 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, we are aware of a case where 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.

5) Marriage (Same Sex Couples) Act 2013.

5.1 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.

6) The effectiveness of the Equality Act 2013.

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

7) Issues in the criminal justice system

7.1 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.
- Police do not ask about gender identity as a matter of course.
- Police can misunderstand why some tran* 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 frontline staff. Including 101 call operators, civilian staff, and local response officers.
- Judges and courts sending trans people to the prison of their birth gender.
- Police questioning the number of repeated reports from the same individual and refusing to believe the volume of abuse.
- 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.

7.2 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 defence counsel repeatedly referred to him with the wrong name and pronoun.

8) Violence experienced by People with Intersex traits

8.1 Galop has seen an increase in service users with intersex traits services as a result of efforts to positively understand and include this group. Violence experienced by our intersex clients includes:

- Medical and surgical interventions on children with intersex traits, to ‘normalise’ their sex, aimed at making them appear “male” or “female”, before they are old enough to understand or consent.
- Experience violence, discrimination and abuse including hate crime, domestic abuse, sexual violence and unequal access to good and services.
- Risk of violence when in binary gendered spaces such as public bathrooms.
- Knowledge and understanding of people with intersex traits and related issues is extremely poor in the police and the criminal justice system, and in mainstream advocacy and support services, and even some LGBT services. This is an additional barrier to reporting violence experienced, and when violence is reported, often intersex people face further discrimination and inappropriate treatment that further compounds the problem.
- As knowledge is so poor there is no systems in place to capture data, and often people with intersex traits do not disclose to services, making them invisible.

8.2 An example of an intersex person we worked with is Sam, who was also gender fluid, sometimes presenting as masculine and sometimes feminine. They experienced domestic abuse, including physical and sexual violence from their cis male partner. The abuser justified their behaviour on the grounds that he rejected Sam’s feminine traits because it challenged his own identity as a gay man, and that Sam needed “correction”. Sam reported one incident of physical violence to the police, but their partner made counterclaims that resulted in Sam being arrested and kept overnight in a cell. The police decided to take no further action on either claim, despite Sam’s injuries. Sam believed that this was because the police misread the situation as a fight between two men (which in itself demonstrates lack of police understanding of same sex domestic abuse). Sam understandably no longer wanted to engage with the police as they had been mis-gendered and the police displayed no understanding of intersex identities. As a result of fleeing from the domestic abuse, Sam became homeless and faced additional barriers to accessing emergency accommodation because they were intersex and gender fluid.

8.3 Another case example is that of Nasma, who was an intersex person who approached us having been assaulted by someone who approached her asked her for sex. Our client refused and carried on walking with her friends. She recalls the perpetrator muttering something to her in Arabic (she is of Arabic origin) before he punched and kicked her numerous times. Her friends intervened and she was taken to a police station where the matter was reported.

8.4 This type of violence is exacerbated by the fact that in the UK there is no legal access to non-mandatory gender neutral documents. Currently intersex bodied people are forced to be legally male or female, usually assigned by a doctor at birth. Later in life this assigned sex may conflict with the sex characteristics and/or gender identity of the intersex person, leaving them at risk of this kind of abuse as their presentation may not “match” their legal sex.

9) Recommendations

9.1 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 (e.g: TGEU).

- 9.2 Public bodies and statutory services must ensure that data on trans people is captured, as they are required to do under the Equality Act.
- 9.3 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.
- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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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