

Non-Binary Working Group Report and Recommendations March 2022

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Introduction

About Us

The Working Group for Non-Binary People's Equality (the working group) was formed by the Scottish Government to make recommendations about things the Government should do to improve non-binary people's lives.

We are individual non-binary community members, workers at charities which support non-binary people, and academics with expertise in non-binary issues. We spent a year meeting to discuss the systemic problems in our lives and how to solve them. This report is the result of our work: thirty-five detailed recommendations about what it will take to make Scotland a place where all non-binary people have the resources, support, and freedom they need to live flourishing lives.

Non-binary people do not fit easily into the categories of "man" and "woman". This means different things to different non-binary people, but overall, it means that our lives, bodies and identities need other ideas to describe them, and that our needs aren't easily categorised as men's or women's. Because so much of our society is based on the idea that there are only men and women, non-binary people face a lot of specific problems and need specific support. Solving these problems would often solve problems for many people who aren't non-binary as well.

We talked about big areas where non-binary people face oppression and exclusion: healthcare, data, law, services, sports, and school. In each area, we worked on practical ideas that could make a real difference to our lives. Sometimes these were small details with big results, like improving the way we're recorded in NHS IT systems, and sometimes these were big social changes that would require a lot of further work, like rethinking how the law applies to us.

In the full document, each recommendation has a headline explaining what we think should happen, and then more detail on why it's important and how it should be done. The report is long and detailed, but this short introduction describes all our main ideas. The numbers in this introduction refer to the full recommendations.

Our work here is the end of one process, but it should be the beginning of something much bigger. Improving life for non-binary people in Scotland is going to take a lot of work, but our recommendations are a good place to start.

Our Recommendations

Health

We are glad that the Scottish Government is taking steps to improve healthcare for trans and non-binary people. The system has been broken for a long time and fixing it is a big priority for us. We need this process to be ambitious: our healthcare requires a total transformation (2). The national standards for our healthcare should be clear, and we should be able to change things when they are not working (3). Our services should be properly funded into the future (4), we should have equal access to healthcare services (5), and we should be able to get healthcare quickly (6). We should also have good quality mental health support (7) and fertility preservation (13 and 14). In all of this, we should be treated in the same way as cisgender people (12).

We need professionals to be trained in our healthcare needs (8, 11 and 15), and we need policy changes which centre our experiences and consult with us (9). We also simply need the IT systems which the NHS uses to stop causing problems for our healthcare (10 and 21). Across all of these recommendations, we need our healthcare to be based on equality, desegregation and informed consent, with trans and non-binary people empowered to be part of our own healthcare.

Data

At the moment, non-binary people are often excluded from government surveys and research through bad questions and unclear advice. We need to be included in government surveys (16 and 22), which means empowering us to be part of developing new guidance (23). We also need to get a better understanding of our lives from the current research (17 and 18). Similarly, the services we use need better advice on how to gather data well (20), and on how to support us when our personal information changes (19). If non-binary people aren't counted properly in official research, it gets harder to make all the other changes we need, because we don't get good quality information about our lives.

Law

We know that non-binary people are not going to be included in the current reforms to gender recognition laws: the Non-Binary Working Group was set up when that decision was made. However, we also know that legal status for non-binary people is important, so we want proper research to begin now about how to recognise us in law (24). Without that research, Scotland will keep falling behind other countries. We also need to make sure that future laws don't exclude us (25), and that state-issued IDs and documentation don't either (26). We're not asking for everything to be gender neutral, but we do know that lots of things are gendered when they don't need to be, and that changing that will improve all our lives.

Services

Often the services non-binary people use in moments of crisis don't understand our needs, which makes getting help even more difficult. LGBTI+ people, including non-binary people, experience really high rates of homelessness, so we need specific plans and resources to end LGBTI+ homelessness (28). Similarly, we need specific support when we're victims or witnesses of abuse and violence (29 and 30), and we need better information on how we're currently getting support (31).

Sometimes the very buildings we use exclude us in how they're designed, so we need new building regulations to support inclusive design across public services (27). Like so much of what we're recommending, improving services for non-binary people means improving services for everyone.

Sport

Over half of trans people, including non-binary people, have been excluded from participating in sport – that's not mainly professional sport, but just regular public sports activity. We want to make it much easier for us all to join in, but the current UK-wide sports guidance about trans people is making participation harder instead. We want the Scottish Government to agree better principles for our participation (32), and to fund specific projects to support non-binary and trans sport (33). We should be able to take part in sport like everyone else.

School

Our recommendations for the education system come directly from non-binary young people. They want to see changes to school IT systems so that non-binary students are not excluded or outed without their consent, and can be properly recognised (34). They also want to make sure that non-binary young people are part of improving LGBT Inclusive Education in the future (35). Just like in many of our other recommendations, our lives improve when we have the power to shape our own services, and that's true for non-binary young people too.

Future Work

These recommendations are just the start. We know that our work here is incomplete, and that we needed more time, resources and people to come up with the best ideas. The community members in the working group were unpaid and gave a lot of time to the process, but it's very difficult to do this when you're facing all of the barriers you're trying to change. As a result the most marginalised people were often not in the room when they needed to be. We did not include non-binary people of colour properly, and we were often frustrated by the limits of the process.

All this means we have one more recommendation to make that underpins everything else: future work the Government does to improve non-binary people's lives needs to empower people who are marginalised in multiple ways (1). This

requires doing the work to find people who can participate, building trust with communities, compensating people for their time, and enabling communities to design their own ways of working.

We believe that it is possible to improve non-binary people's lives in Scotland, and that the ideas in this report are a good start. We need to be empowered to make that happen, and, like so much of this report, that's simply as true for us as it is for everyone else. The more non-binary people are supported to do the work to improve our lives, the better the results will be.

Lived Experience Reflections: "Anndra"

Three of the community members who took part in the Non-Binary Working Group wrote reflections on being part of the process. These are their words.

Being non-binary is, at its simplest, an inner recognition that my gender exists outside of binary identities. In recognising this simple fact, I have found a much more honest understanding of myself, and with it acceptance, community, and inner freedom – which I hope becomes wider freedom with the end of the group.

I joined the working group through LGBT Youth Scotland, after being involved in advocating for the GRA reform with them. As a non-binary person, the GRA reform falling short of offering non-binary recognition was a disappointment, and safety, security and freedom felt far off.

The working group presented an opportunity to continue to advocate for the basic rights and recognition we, as humans, deserve.

Better still, the working group allowed people with lived experience – like mine, and the other non-binary people on the team – to lead the discussions and make recommendations that truly give us the same freedoms as others, and protect us where needed, in place of people speaking for us and guessing what our needs may be.

I have hope, as we end this working group and make our recommendations, that people will start to recognise that the urgent calls for support, recognition and respect that non-binary and transgender people have made are just that – calls for respect – and not outlandish requests, as some present them.

I worry we may not be taken seriously, or that the vital calls we have made may be pushed to the side or buried under other policies. However, I am proud of what the group has achieved overall and I'm choosing to remain hopeful that non-binary recognition and support is a vital step in Scotland's ongoing choice to be a leader in equality.

Report

About the Group

Who was involved?

The Working Group for Non-Binary People's Equality (the working group) was convened by the Scottish Government to make recommendations to Scottish Ministers on action to improve non-binary people's lives.

Membership of the group included academics in relevant fields, staff from LGBTI+ charities across Scotland, and non-binary people, each of whom was nominated by the LGBTI+ organisations involved. This was to ensure that lived experience was included in the membership, and that this was reflected in the discussions and recommendations made.

Details of the group membership, terms of reference, and minutes from group meetings can all be found at: <https://www.gov.scot/groups/non-binary-working-group/>

All of the recommendations in our report reflect the consensus of discussions in the working group, and are based on the expertise offered in the working group and at community forums.

Who are we talking about?

A non-binary person is a person who experiences their gender as in-between or beyond the two categories "man" and "woman", as fluctuating between "man" and "woman", or as having no gender, either permanently or some of the time. A trans person is someone who does not identify with the sex assigned to them at birth.

Many but not all non-binary people are also trans, and some, but not all, trans people are also non-binary: the two categories have a big overlap. Many of the issues faced by non-binary people are inseparable from those faced by trans people who are not non-binary, so many of our recommendations are of value to all trans people. Because of these considerations, we have used "trans and non-binary people", where relevant, throughout this report.

Some of our recommendations will be of wider benefit to LGBTI+ people of all genders, and indeed to everyone. We highlight where positive benefits would be felt more broadly throughout the report.

What did we talk about?

We split our meetings into three broad themes:

- Healthcare
- Where are non-binary people missing in data and the law?

- Access to services

These themes are overlapping and interrelated, and so some recommendations could sit comfortably in any of the sections. For example, when talking about negative experiences of healthcare, the group discussed the need to be recorded as either male or female on health records, which is an example of a situation in which non-binary people are "missing". Bearing this in mind, it is important to read the recommendations in full, and each section highlights the ways in which it is related to others.

Who gets to decide?

Throughout our discussions and development of recommendations, we felt that necessary change could only be achieved by involving non-binary people meaningfully in Scottish Government decision-making. As such, the first recommendation of the working group, which applies across all subsequent recommendations, is:

1. Meaningfully include marginalised people in decision-making by making processes accessible, including through financially compensating individuals for their time and contributions, and by prioritising the participation of people who are marginalised in multiple ways

This recommendation is crucial to ensuring that future work to improve non-binary people's lives, and the lives of all marginalised people in Scotland, is successful.

We reflected on the process of the non-binary working group itself when deciding to centre this recommendation. The group membership was limited in the lived experience it was able to contribute. All group members were white, and the community members involved were those who were able to make themselves available for meetings during working hours without being paid for their contributions.

There were significant barriers to community members participating meaningfully. The process required extensive voluntary time from participants, and the organisation and scope of the work was managed by Scottish Government officials and paid staff at LGBTI+ equality organisations, meaning that community members were not equal participants in defining the potential of the group's work.

We centred this recommendation as many of the barriers discussed by the group were the result of non-binary people not being included in decision-making processes. If you are not in the room when decisions are being made, then your needs will be neither understood nor addressed. This applies to all marginalised groups, who are not adequately included in decision-making processes, and who do not have equal power to shape policy-making or legislation. This exclusion is exacerbated further for those who are marginalised in multiple ways.

The Scottish Government must ensure that marginalised people can genuinely participate in shaping decisions that will affect their lives. This should include accessible and supported participation processes which involve marginalised people in shaping the scope of what is discussed, financially compensating them for their time and contributions, prioritising the participation of those people who are marginalised in multiple ways, and ensuring that marginalised people have greater access to power.

Lived Experience Reflections: "Bay"

Being agender means that I don't relate to any notion of gender. To me that also means I'm trans, since I don't have the gender assumed of my sex assigned at birth. The non-binary and wider trans community is not a homogenous group, both in our relationships to gender and in broader demographic factors such as class, disability, ethnicity, religion and sexuality. Despite this I'm confident our recommendations cover a range of the key issues caused by binary structures in Scotland. Addressing the issues we highlight would be a step towards ensuring trans people have the same level of access, representation, and legal recognition as cis people in Scotland. We are not asking for luxuries: we are demanding fairness.

I'm pessimistic that the Scottish Government will take meaningful steps towards our recommendations. Not due to the recommendations being particularly difficult or unreasonable. I believe these recommendations are well within our government's ability to meet, and that they would see benefits for the whole of Scotland. No, I'm pessimistic because we have seen delays and inaction from the Scottish Government in their support of trans people before, which has often felt like a response to the increase in transphobia we have seen in recent years. I desperately hope that they prove me wrong and show that my home can be somewhere people like me can thrive free from transphobia.

On the other hand, I'm hopeful that our report and recommendations can help people from across Scotland to be more inclusive. From highlighting ways to address the trans healthcare crisis, to emphasising the importance of respectful data representation for non-binary people, our recommendations can have applications across almost all industries, and within both the public and private sector.

Healthcare

The first substantive meeting of the working group looked at non-binary people's access to healthcare. We identified four key themes:

- Transition-related healthcare
- Mental health
- Primary care
- Fertility preservation

Initially, all four topics were discussed at a full meeting of the working group.¹ Each theme was then discussed at subgroup meetings, which were attended by members with a particular interest, and by invited participants with relevant expertise. Scottish Trans and LGBT Health and Wellbeing, two of the organisations represented on the working group, also held community engagement events on the topic of healthcare with non-binary people. The views shared at these were fed into discussions of the group.

¹ <https://www.gov.scot/publications/non-binary-working-group-minutes-june-2021/>

Transition-related healthcare

For transition-related healthcare to truly meet the needs of trans and non-binary people, its design and delivery must be transformed.

We welcome the review of the current Gender Reassignment Protocol² as part of implementing the NHS Gender Identity Services Strategic Action Framework 2022 – 2024.³ These processes will be important levers for achieving transformation. As this work began while the working group was still underway, we were unable to make recommendations to shape the design of the process. Therefore, these healthcare recommendations should be taken as our contribution to the current process.

We refer throughout to "transition-related healthcare" as a general term. Currently, most transition-related healthcare is accessed via Gender Identity Clinics. This approach cannot achieve effective transformation of services. Our recommendations need to be implemented not only in Gender Identity Clinics, but across all healthcare. Our first healthcare recommendation is therefore:

2. Transform the way transition-related healthcare is delivered in Scotland, moving to a system based on informed consent, desegregating services so that they are not exclusively accessed via specialist clinics, and designing services collaboratively with trans and non-binary people

Throughout the working group meetings and community consultations, the overwhelming view was that the current transition-related healthcare system is not fit for purpose. Some of the key issues discussed were long waiting times, arbitrary assessment criteria, negative experiences at Gender Identity Clinics, and the requirement that all trans healthcare be accessed via specialist clinics and psychiatric assessments. The need for change is urgent. These problems cannot be solved simply by providing more resources to the current system, but require a transformation of the way that transition-related healthcare is delivered.

We welcome the commitments to improve services in both the Programme for Government and the Scottish Government and Scottish Green Party Co-operation Agreement. We also welcome the NHS Gender Identity Services Strategic Action Framework (the strategic action framework).⁴ However, if this opportunity for transformation is not fully embraced, and does not centre and empower trans and non-binary service users, the proposed framework could fail to address existing problems, or might even exacerbate them.

² Gender Reassignment Protocol (GRP) 2022 <https://www.ngicns.scot.nhs.uk/information/grp/>

³ NHS Gender Identity Services Strategic Action Framework 2022-2024
<https://www.gov.scot/publications/nhs-gender-identity-services-strategic-action-framework-2022-2024/>

⁴ NHS Gender Identity Services Strategic Action Framework 2022-2024
<https://www.gov.scot/publications/nhs-gender-identity-services-strategic-action-framework-2022-2024/>

We recommend, in the strongest terms, that the strategic action framework is used to drive a transformation of services that is ambitious, desegregated, led by principles of informed consent, and designed and delivered collaboratively with trans and non-binary people.

Informed consent means that, "instead of a mental health practitioner assessing eligibility for and granting access to services, transgender patients themselves are able to decide on whether they are ready to access transition-related health services. In this model, the role of the health practitioner is to provide transgender patients with information about risks, side effects, benefits, and possible consequences of undergoing gender confirming care, and to obtain informed consent from the patient."⁵ Informed consent is thus compatible with the "Realistic Medicine" approach adopted by the Scottish Government and NHS Scotland, but further empowers the service user within that framework.

Trans and non-binary people need to be able to access the healthcare they need in a timely manner. This healthcare needs to be evidence-based and high quality, and most care should be accessible in community settings, rather than specialist clinics. Services for trans and non-binary people should be desegregated, so that they can be accessed equally to, and in the same way as, cisgender people.

Decisions about transforming services should be made in meaningful collaboration with trans and non-binary people. For example, decisions made about how to allocate the funding commitments in the strategic action framework must empower trans and non-binary people at all stages of the process, including in shaping the criteria used to assess applications for funding, and in making decisions about what is funded.

We urge that the work already underway brings about substantial, long-lasting transformation of transition-related healthcare.

3. Develop national standards for gender identity services that are accountable and enforceable

We welcome the commitment in the strategic action framework to "develop national standards for adult and young people's gender identity services". However, these standards must be accountable and enforceable.

Currently, there are no national standards in Scotland for transition-related healthcare. The existing Gender Reassignment Protocol (protocol) has been in place since 2012, and functions as an outline of the clinical pathway and health interventions available, but does not set standards of care that patients should be

⁵ Schulz, S. (2017) "The Informed Consent Model of Transgender Care: An Alternative to the Diagnosis of Gender Dysphoria" *Journal of Humanistic Psychology* pp. 72-92

able to expect. Many trans and non-binary people experience care that diverges significantly from the pathway outlined in the current protocol.

ScotPHN's 2016 healthcare needs assessment found that 30% of respondents experienced care that differed from the protocol, most often through additional delays and difficulties in accessing treatment.⁶ People using gender identity services may not know what to expect from the care pathway, with 43% of respondents saying that they were unaware of the protocol before their first appointment at a Gender Identity Clinic.⁷ Relatedly, while the 2012 protocol was initially intended to be revised on a regular basis, it has taken 10 years for a formal review.

Enforceable standards would ensure that trans and non-binary people receive good quality care, and an accountable process would empower trans and non-binary people in a regular revision of the standards.

4. Fund transition-related healthcare sustainably, in the long term, and beyond the existing Gender Identity Clinics

We warmly welcome the commitment to three years centralised funding to urgently improve gender identity services. However, given the current crisis in transition-related healthcare, improvements achieved during this time may be short-lived, and services may regress to the current unacceptable level, particularly if this process results in temporarily increased resourcing of the status quo rather than service transformation.

In the past, improvements at the policy level have not led to material improvements in accessing healthcare on the ground. For example, a previous update to the Gender Reassignment Protocol removed breast augmentation and facial feminisation surgery from the highly-restrictive Adult Exceptional Aesthetic Referral Protocol, and recommended that specific pathways be set up to provide these procedures. However, better access to these interventions has failed to materialise in many areas of Scotland. This is due to a lack of funding from health boards, which means that provision in these areas has decreased, rather than improved.

Whether healthcare is funded and commissioned at national or local health board level, the Scottish Government should ensure that long term sustainable funding enables trans and non-binary people to access the healthcare they need, wherever they live in Scotland. This funding should not be confined to the existing Gender

⁶ Scottish Public Health Network *Health Care Needs Assessment of Gender Identity Services*
https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services-1.pdf

⁷ Scottish Public Health Network *Health Care Needs Assessment of Gender Identity Services*
https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services-1.pdf

Identity Clinics, but support the delivery of transition-related healthcare across primary care and the community-led sector.

5. Ensure that trans and non-binary people have equal access to transition-related healthcare, regardless of gender identity, gender presentation, race, disability, neurodiversity, financial resources, postcode, or other characteristics

All trans and non-binary people should have equal access to treatment pathways. A large proportion of trans people identify as non-binary,⁸ but medical practitioners still often consider non-binary patients to be inherently more complex, meaning that they experience greater difficulties and delays in accessing treatment.⁹ People of colour and disabled people face racism and ableism when accessing services, and trans people whose presentation does not conform to masculine or feminine gender norms are also likely to be seen as more complex cases.¹⁰

We welcome the letter from the Chief Medical Officer recommending better inclusion of non-binary people in the update of the Gender Reassignment Protocol, but further action must be taken to ensure equality of access to transition-related healthcare. Any update to the protocol must ensure that all trans and non-binary people should have equal access to appropriate care, and there should not be pre-determined pathways for transition-related healthcare that assume all patients will need the same care. Medical interventions for trans and non-binary people should be person-centred and focus on the needs of the patient, not on the label that they use to describe their identity. Trans and non-binary people who are marginalised in multiple ways, such as trans people of colour or disabled trans people, should also have equal access to all treatment pathways.

To ensure equality of access, service design and delivery must be in collaboration with trans and non-binary people, including those marginalised in multiple ways. This will also require improved mechanisms of accountability that empower service users who have experienced discrimination to seek redress.

⁸ See for example the UK Government Office *National LGBT Survey: Research Report* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf

⁹ Scottish Trans *Non-binary people's experiences of using UK Gender Identity Clinics* <https://www.scottishtrans.org/wp-content/uploads/2016/11/Non-binary-GIC-mini-report.pdf>

¹⁰ TransActual *Trans Lives Survey 2021: Enduring the UK's Hostile Environment* <https://static1.squarespace.com/static/5e8a0a6bb02c73725b24dc9d/t/6152eac81e0b0109491dc518/1632824024793/Trans+Lives+Survey+2021.pdf>

6. Require transition-related healthcare to meet referral-to-treatment standards

Many trans and non-binary people wait for several years simply for a first appointment at a Gender Identity Clinic. At the largest clinic, the Sandyford in Glasgow, people can currently expect to wait longer than 44 months for an initial appointment.¹¹ Throughout both working group meetings and community forums, trans and non-binary people highlighted the extreme distress, and detriment to well-being, that such long waiting times cause.

Research has found that the length of waiting times meant that:

- 67% of people experienced poorer mental health
- 62% of people experienced lower self-esteem
- 58% of people felt more isolated and excluded
- 30% of people were less likely to access other services
- 29% of people self-harmed
- 13% of people attempted suicide¹²

This research was conducted in 2016, when reported waiting times were 260 days for adults and 314 days for young people. As waiting times have significantly lengthened since then, the impact on trans and non-binary people has likely worsened.

Gender identity services are not currently required to meet the referral-to-treatment standards, largely due to recognition that they would be unable to do so. An important step to meet the commitment in the strategic action framework to reduce waiting times and reach referral to treatment standards¹³ would be formally mandate services to meet the standards.

¹¹ All figures from National Gender Identity Clinical Network Scotland (NGICNS) Waiting List and Workload Quarterly Reports

¹² Available in Scottish Public Health Network *Health Care Needs Assessment of Gender Identity Services* https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services-1.pdf

¹³ <https://www.gov.scot/publications/nhs-gender-identity-services-strategic-action-framework-2022-2024/>

Mental health

Trans and non-binary people need to be well served by mainstream healthcare services, but also to access specific services they can trust to meet their needs. Across our mental health recommendations, we call both for the mainstreaming of understanding about our healthcare needs, and for the development of specific programmes in collaboration with trans and non-binary people.

7. Make person-centred, specialised gender identity counselling services available for trans and non-binary people, separate from the assessment pathway for transition-related healthcare

Scotland lacks specialist mental health services and support for trans and non-binary people. While it is important that mainstream services are able to support trans and non-binary people, there is also an important role for specialist services.

In particular, trans and non-binary people should be able to access support for exploring their gender identity, and for dealing with their distress around gender dysphoria, separately from the assessment pathway for accessing gender-affirming treatment. When therapeutic support is only available as part of the process for accessing treatments like hormones and surgeries, this often prevents the development of a therapeutic relationship, as the patient may not feel they can be open and honest with the clinician for fear of being denied the medical interventions they seek. Research shows that more than half of respondents who have experienced uncertainty about their gender, or who felt emotionally distressed or worried about their mental health, had not discussed this with clinicians at Gender Identity Clinics out of fears that it would delay their access to treatment.¹⁴ People experiencing distress around their gender should have supportive therapeutic environments to explore their gender identity.

One way to take this forward is the co-commissioning of services delivered jointly by the third sector and the NHS. This would provide trans and non-binary people with specialist, community-based mental healthcare, which they could access confidently and trust to understand their identity.

8. Fund mandatory training for mental health providers on trans and non-binary healthcare needs

Lack of knowledge and understanding in general mental health services is a major barrier to trans and non-binary people receiving competent care, and this was discussed often in community forums. For many, disclosing their trans or non-binary

¹⁴ Available in Scottish Public Health Network *Health Care Needs Assessment of Gender Identity Services* https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services-1.pdf

status in mental health settings could derail appointments from a necessary focus on mental health needs. Many people are inappropriately labelled as too complex or referred to specialist services simply because they are trans or non-binary.

Trans and non-binary people who are marginalised in multiple ways often face even greater barriers to accessing competent mental health support. For example, trans people of colour find it difficult to access support that can adequately address their experiences of both racism and transphobia, and how these intersect with one another. Autistic trans people find it difficult to access support that can adequately engage with both their neurodiversity and their trans status, and how these intersect with one another.

Mainstream mental health services should have a high enough baseline knowledge of trans and non-binary people to be able to provide them with care. It is vital that mental health professionals receive training on trans and non-binary healthcare needs, including the knowledge and skills needed to provide support to non-binary people marginalised in multiple ways. Training should be designed and delivered in collaboration with trans and non-binary people.

9. Conduct robust Equality Impact Assessments for mental health policies and actions, ensuring that they address the specific needs of trans and non-binary people

We are glad that the Scottish Government has committed to increase spending on mental health services. However, current national mental health policy often fails to acknowledge the disproportionate mental ill-health experienced by trans and non-binary people (and indeed all LGBTI+ people),¹⁵ and so the resulting policies could further entrench mental health inequalities.

Where EQIAs are used to ensure that national mental health policies have positive impacts across multiply marginalised groups, such exercises tend to analyse protected characteristics in isolation from each another. This means that policies are often unable to address the potential impacts for people who are marginalised in multiple ways, such as non-binary people of colour, who will experience racism intersecting with transphobia. Without understanding intersecting marginalisation, policies cannot understand multiply marginalised people's barriers to accessing care.

For example, increased funding for suicide prevention is welcome, but needs to take account of specific challenges facing trans and non-binary people. Trans and non-binary people are at increased risk of suicide, but we can experience ignorance of our identities or outright transphobia when accessing mental health support. In some

¹⁵ *LGBTI People and Mental Health Inequalities* <https://www.lgbthealth.org.uk/wp-content/uploads/2018/08/LGBTI-Populations-and-Mental-Health-Inequality-May-2018.pdf>

cases, this can lead to a worsening of suicidality. Therefore, suicide prevention and awareness training must equip mental health first aiders to respond to trans and non-binary people appropriately. Mental health policy should also consider targeted interventions for multiply marginalised populations, such as specific suicide prevention support for trans and non-binary people of colour.

Programmes for improving the population's mental health should be subject to robust EQIAs, so that they can target spending and design to improve the mental health of multiply marginalised people, including non-binary people.

Primary care

10. Review the use of a sex code in Community Health Index (CHI) numbers, and enable non-binary people to be recognised in medical records

Sex is currently hard-coded into Scottish patient data through CHI numbers, which raises significant problems for trans and non-binary people.

This recommendation is not about removing sex from medical records. Indeed, it is important that this sex is recorded relevantly in health information, and that trans and non-binary people continue to be able to update their records to reflect their lives. Instead, the issue is with how sex is coded into CHI numbers, and the barriers and problems this causes for accessing healthcare.

There are significant limitations of having sex embedded into CHI numbers, and inaccurate recording of trans and non-binary people's sex leads to situations where access to healthcare can be restricted. Often, your sex code is used to determine how a health service interacts with you, such as in which cancer screening programmes you are invited to, how labs interpret your test results, and what kinds of referrals are made for you.

For example, some transfeminine people may not be automatically invited to breast cancer screenings, though they are at increased risk, and some transmasculine people have experienced labs refusing to analyse their pap smears, as their system had no way of accounting for a male-coded pap smear. Similarly, some trans and non-binary people were initially unable to access COVID-19 vaccines, due to discrepancies between the sex recorded with their GP, and the sex coded into their CHI numbers.

These problems cannot be solved by preventing trans and non-binary people from updating the sex on their medical records. This would breach privacy of gender history, and create records that conflicted with trans and non-binary identities. In any case, trans and non-binary people have diverse bodies, and usually do not have healthcare needs that can be captured by being coded as their sex assigned at birth. Being unable to update sex records would still result in inappropriate treatment.

Presuming medical needs based on sex codes has an impact beyond trans and non-binary people. For example, women who have previously undergone a mastectomy may be inappropriately called for breast screening. We recommend an alternative approach in which all patients are encouraged to opt in and out of screenings and similar programmes. This could include an automatic opt-in of patients on the basis of the sex recorded on their medical records, but with the ability to opt-out for those who no longer need to be called, and to opt-in those who have been excluded based on the sex on their record but who do require that specific screening. A similar

approach could be taken across the NHS administrative system. This way the system could still make sex-based assumptions at the broadest population level, but these assumptions would not create barriers to anyone receiving appropriate care.

Because sex is coded into CHI numbers, when a trans or non-binary patient changes the sex on their medical record they are given a new CHI number. In some cases, this creates problems around access to their medical records: some trans and non-binary people have lost all access to previous records held on their previous CHI number, and others have continued to receive notifications for two different CHI numbers, as if they were two different people.

Medical records should also be able to describe patients as non-binary. Being recorded as male or female can create barriers to accessing all forms of healthcare for non-binary people. Some healthcare professionals take non-binary identity less seriously as a result, and many non-binary patients feel they are forced to make a choice between two imperfect options in order to be able to access healthcare.

The CHI number system should be reviewed, and sex should no longer be hard-coded within patient numbers. Instead, sex should simply be included on medical records, should continue to be updateable by trans and non-binary people, and should include an option to record patients as non-binary. The sex on a medical record should not then place limitations on how individual patients are able to interact with healthcare services due to this being hard-coded into IT systems and patient markers, nor should changing the sex on a medical record require the creation of a new CHI number for a patient.

11. Fund mandatory training for primary care providers on trans and non-binary healthcare needs

Throughout the working group meetings and community forums, participants highlighted the lack of knowledge of trans and non-binary healthcare needs among primary care providers. Many reported that GPs often have poor knowledge, and that, while knowledge of trans people is generally low, understanding of non-binary needs is particularly lacking.

The need for GP referral to access Gender Identity Clinics in some areas of Scotland can provide a significant barrier to accessing transition-related healthcare, particularly if a GP is ignorant of trans and non-binary healthcare needs, or resistant to meeting them.¹⁶ Many trans and non-binary people lack confidence in approaching their primary care providers for support. For example, in one survey of

¹⁶ Scot PHN *Health Care Needs Assessment of Gender Identity Services* https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services-1.pdf

non-binary people's experiences, 50% of respondents said they "never" felt comfortable sharing their non-binary identity with their GP.¹⁷

Community members often raised the issue of "trans broken arm syndrome". This is when healthcare providers, particularly GPs, assume that trans people's healthcare needs are always specialised, and always require referral to Gender Identity Clinics, even when the issue is not related to transition.

Training for primary care providers must include adequate information on trans and non-binary healthcare needs, and funding should be available to improve existing training programmes. Training must provide the knowledge and skills needed to support trans and non-binary people marginalised in multiple ways, and it should be designed and delivered in collaboration with trans and non-binary people.

12. Desegregate treatment pathways so that interventions that are available via a GP referral for cisgender patients are similarly available via a GP referral for trans patients

As part of transforming transition-related healthcare in Scotland, trans and non-binary people should be able to access medical interventions via a GP referral in the same way that cisgender people are able to access equivalent interventions.

For example, speech and language therapy for trans and non-binary people should be accessible via primary care. Currently, some trans and non-binary people can be referred for speech and language therapy via their GP, but this depends on where you are in the country and whether your GP is willing to provide a referral. For many, this intervention can only be accessed via a referral from a Gender Identity Clinic, with all of the issues this raises around excessive waiting times and barriers to being referred. However, a cisgender person who needed to access speech and language therapy would be able to do so via a referral from their GP. Although the two people may require speech and language therapy for similar reasons – mental distress related to voice, and barriers to participation in public life – a trans or non-binary person first needs to be referred by a GP to a Gender Identity Clinic, then wait to be assessed by this clinic, then wait for an additional referral to therapy. This causes a difference in waiting times of several years, as well as an unnecessary and distressing administrative burden. This is unequal access to care.

As much transition-related healthcare as possible should be removed from a specialist pathway and integrated into primary care. This is so that trans and non-binary people do not face additional barriers to accessing medical interventions that are much more readily available to cisgender people. While in some cases, such as

¹⁷ Scottish Trans *Non-binary people's experiences in the UK* <https://www.scottishtrans.org/wp-content/uploads/2016/11/Non-binary-report.pdf>

hormone therapy, this will require considerable work with GP groups to build the capacity for taking on additional responsibilities, in other areas, such as speech and language therapy, or hair removal, where the only responsibility of the GP need be referral, significant change could be made relatively quickly to drastically improve trans and non-binary people's access to healthcare.

Fertility preservation

13. Ensure that trans and non-binary people have equal access to fertility preservation treatments, including access to the information needed to make informed choices

Fertility preservation is often poorly-handled for trans and non-binary people. Some clinicians in Gender Identity Clinics can be very focussed on fertility preservation, particularly for young trans and non-binary people, which leads to unnecessary delays in accessing other medical interventions. On the other hand, some clinicians can pay too little attention to fertility preservation. There are issues concerning not raising the possibility of fertility preservation with trans patients in a timely manner, particularly for transfeminine people. Overall, information about the impacts of transition-related healthcare on fertility is poor, and poorly available.

Only being able to access fertility preservation via a Gender Identity Clinic is a significant barrier, and means that trans and non-binary people do not have equal access to treatments. Not all trans and non-binary people access transition-related healthcare via a Gender Identity Clinic, and so may be unable to access fertility preservation before beginning treatments that affect fertility. Some trans and non-binary people may have been discharged from a Gender Identity Clinic before accessing fertility preservation, and so need to be re-referred in order to access treatment.

Trans and non-binary people should be able to be referred for fertility preservation directly by a GP. Additionally, healthcare providers should have clear guidance on fertility preservation options for trans and non-binary people.

14. Work with the UK Government to provide clarity to trans and non-binary people about their legal rights regarding fertility preservation, access to assisted reproduction services, and status when creating families, and work to prevent discrimination in realising these rights

Trans and non-binary people face uncertainty about fertility preservation options and their rights as potential parents. Services and laws across birth registration, assisted reproductive technology, and legal recognition, rarely recognise non-binary people, or diverse parents and families in general.¹⁸ The legal uncertainty around trans and non-binary people's rights to access assisted reproductive technologies forms more barriers to creating families.

¹⁸ Equality Network *Trans People's Experiences of Reproductive and Fertility Services in Scotland*
<https://www.equality-network.org/wp-content/uploads/2021/08/Repro-report-Trans-final-web.pdf>

The Scottish Government should liaise with the UK Government around reserved legislation, such as the Human Fertilisation and Embryology Act 1990 (HFEA 1990), to seek clarity on trans and non-binary people's legal rights relating to assisted reproductive technologies and creating families. Recent litigation and legal commentary has raised important concerns about the legality of trans and non-binary access to such treatment services intended to help in carrying children, and about their legal status as a parent of their children post-birth.¹⁹ This could hinder the capacity of trans and non-binary people in Scotland to found a family.

While acknowledging the reserved nature of the "subject-matter of the Human Fertilisation and Embryology Act 1990" (Scotland Act 1998, Schedule 5, Pt.II), we nevertheless encourage the Scottish Government to give these issues appropriate attention. This should include working with the UK Government, in order to ensure clarity for trans and non-binary people in Scotland about their ability to access fertility services, and their ability to create in law parent-child relationships that reflect the reality of their family life.

15. Fund mandatory training for fertility preservation providers on trans and non-binary healthcare needs

As in mental health and primary care settings, fertility preservation providers – including counsellors, nurses and doctors providing care – often do not understand trans and non-binary healthcare needs.²⁰ The Scottish Government should fund mandatory training for healthcare providers in fertility preservation on trans healthcare needs. As with mental health and primary care, training must provide the knowledge and skills needed to support to trans and non-binary people marginalised

¹⁹ The recent observations of Sir Andrew McFarlane, President of the Family Division of the High Court of England and Wales, in *R (on the application of TT) v Registrar General for England and Wales* ([2019] EWHC 2384 (Fam)) are particularly relevant. *TT* involved a dispute regarding the legal status of a trans man who, subsequent to obtaining a Gender Recognition Certificate, gave birth to a child using assisted reproduction services. In finding that the individual had to be registered as his child's "mother" for the purposes of English law – a decision subsequently confirmed by the Court of Appeal in England and Wales – the President questioned whether the provision of treatment to the individual in this case had been lawful. In particular, he noted that, under s. 2 of the HFEA 1990, "treatment services" are defined as "medical, surgical or obstetric services provided to the public or a section of the public for the purpose of assisting *women* to carry children" [emphasis added]. The HFEA 1990 empowers the Human Fertilisation and Embryology Authority to grant licences to fertility clinics to provide "treatment services" and it prohibits the provision of certain services without a licence. While not determinative in *TT* (and not substantively addressed by the Court of Appeal), the President suggested that it was "questionable whether the provision of treatment services to a man is within the range of activities that the HFEA is permitted to authorise by licence" [155].

²⁰ Equality Network *Trans People's Experiences of Reproductive and Fertility Services in Scotland* <https://www.equality-network.org/wp-content/uploads/2021/08/Repro-report-Trans-final-web.pdf>

in multiple ways, and it should be designed and delivered in collaboration with trans and non-binary people.

Data and Law

The second substantive meeting of the working group asked, "Where are we missing?" We looked at data and research, and where non-binary people are missing in the law. We identified four key themes:

- Data collection for research
- Data collection by service providers
- Sex and gender data guidance in Scotland
- Legal recognition and gendered law

Initially, all four topics were discussed at a full meeting of the working group.²¹ Each theme was then discussed at subgroup meetings, which were attended by members with a particular interest and by invited participants with relevant expertise. Scottish Trans and LGBT Youth Scotland also held community engagement events on the topic with non-binary people. The views shared at these were fed into discussions of the working group.

Between the initial meeting of the whole working group and subsequent subgroup meetings, the finalised sex and gender in data guidance was published by the Chief Statistician. This had changed significantly between meetings, with the change most relevant to the group being the removal of a non-binary response option from the recommended question for public bodies and service providers, which had been included in the draft guidance. Discussions of the whole group meeting on this topic should be understood in this context.

²¹

<https://www.gov.scot/publications/non-binary-working-group-minutes-june-2021/>

Data collection in research

16. Reintroduce a non-binary response option in Scottish Government core surveys, and introduce a non-binary response option in the next Scottish Census

A non-binary response option in data collection is the key way to ensure that non-binary people are well-represented in data. The Scottish Government should include a non-binary response option in sex questions in both the core surveys (Scottish Health Survey, Scottish Household Survey, Scottish Crime and Justice Survey) and the Scottish Census. A non-binary response option to sex questions worked well when tested by National Records Scotland (NRS),²² and the resulting data would enable evidence-based policymaking to meet our distinct needs.

The current situation is that there is no non-binary response option in current Scottish Government data collection, and the following recommendations are pragmatic responses to this situation. However, the most effective solution to this problem is to reintroduce a non-binary response option where it has previously existed and to introduce it where it has not.

17. Develop a plan to use the data from the trans status question used in Scottish Government core surveys and the Scottish Census to produce evidence on non-binary people in Scotland that can better inform policymaking

The current Scottish Census includes a new question which offers a textbox for people to describe their trans status, and similar questions will be used in Scottish Government core surveys. This textbox enables respondents to say that they are non-binary, but they will use a range of different terms to describe their non-binary identity.

Relevant parts of Scottish Government, including NRS, should develop a plan for analysing and using this data to produce evidence on non-binary people. This is particularly important given the decision to exclude an option for non-binary people in the sex question on the Scottish Census, and the Chief Statistician's publication of a recommended sex question that does not include a response option for non-binary people,²³ meaning that existing Scottish Government core surveys that were providing this response option are expected to remove it. Without these questions, the trans status question is the only source of information on the non-binary

²² <https://www.scotlandscensus.gov.uk/documents/sex-question-recommendation-report/html/>

²³ <https://www.gov.scot/publications/data-collection-publication-guidance-sex-gender-identity-trans-status/>

population, and it will require careful and specialised analysis to ensure accurate and useful data.

18. Support specific research and evidence-gathering with non-binary people in the absence of high enough response rates from non-binary people in population-level surveys

It can be difficult to use population-level surveys to produce statistically significant information on non-binary people in Scotland. As an example, the Scottish Household Survey found that 0.01% of respondents had described their gender identity 'in another way' in 2018, and 0.04% had done so in 2019. This is likely to be even more difficult in the future, given the removal of this response option from the core question set of Scottish Government surveys, and thus the need to rely on analysis of the free textbox at the trans status question to identify non-binary people among respondents. Similarly, as the Scottish Census question on trans status will only be for those aged 16 and over, this will create an evidence gap around non-binary young people.

Where there is insufficient evidence from population-level surveys to inform policy making, the Scottish Government should undertake specific research and evidence-gathering with non-binary people. This should be part of the Scottish Government's work to improve equality evidence, and to mainstream better equality data throughout policy development.

Research should consider a range of ways of gathering evidence on non-binary people, including more qualitative approaches which hear directly from people about their lived experience. This will require work to include the voices of a range of marginalised groups, who may be small in number, and so hard to represent in quantitative data gathered at population-level.

Specific research will help to address some of the issues with current Scottish Government EQIAs, which often do not include suitable levels of evidence or detail for those with the protected characteristic of gender reassignment, particularly non-binary people.

Data collection by service providers

19. Produce clear guidance about name changes for trans and non-binary people, and for public bodies and service providers

Trans and non-binary people often face uncertainty as to how to change their name legally, with government services, and with public and private service-providers. They sometimes face prejudice when updating personal details too. Scottish Trans and LGBT Health and Wellbeing are both frequently asked for assistance by the community in this area.

The Scottish Government should produce clear guidance for trans and non-binary people as to how to change their name. This should include specific information for trans and non-binary young people and those working with them, outlining the role that those with parental rights and responsibilities have in supporting a young person to record a name change.

The Scottish Government should provide guidance for public bodies and service providers on the need for them to have quick and accessible ways for people to update their names and details, with reference to relevant legislation, including data protection. The guidance should include a recommendation that public bodies and service providers should, as a minimum, provide an option for gender-neutral titles, or the option to have no title recorded.

This proposal has benefits well beyond the trans and non-binary community, as people change their name for a variety of reasons, and should have access to respectful and efficient means of doing so.

20. Produce clear guidance for service providers on the gathering of sex/gender information

Being asked unnecessarily about sex/gender can present barriers to trans and non-binary people accessing services. Where people are aware that the first thing that they may be asked when interacting with a service is "Are you male or female?", or that their gender identity and presentation are likely to be questioned, trans and non-binary people may simply choose not to engage at all.

This recommendation is not that services should never ask about sex/gender. There are a range of important reasons to ask these questions, and to produce gender-disaggregated data. Where this is the case, we are strongly in support of services asking sex/gender questions, while also providing an option for non-binary people to be recorded.

However, service providers and public bodies often treat asking about sex/gender differently than asking about other sensitive personal data. Sex/gender data is often

collected by custom, as one of the first questions, and often with no clear purpose for using or analysing the data. This creates barriers for non-binary people, particularly in services that only provide a male or female response option.

The barriers created by asking unnecessary sex/gender questions are much more significant than simply feeling that you are "missing" on a form. These questions can require trans and non-binary people to disclose their status to a service provider before they may be ready to do so, or can require non-binary people to present themselves as simply a man or a woman in order to access the service they need.²⁴ Asking these questions with no clear purpose, and often at the point of accessing a service, creates an expectation that the service may not understand or provide appropriate support for trans and non-binary people. For people who have had previous experiences of transphobia when accessing services, this can raise fears that their identity and presentation is more likely to be scrutinised and challenged by that service, which can negatively impact their experience of using it, or prevent them from using it at all.

It is important that questions on trans status and sexual orientation are voluntary, as they are in the Scottish Census, and are asked only when necessary. While it is important to improve data on trans status and sexual orientation across services, this should always be on a voluntary basis. Requiring people to answer these questions can create additional barriers to accessing services. This is particularly the case for trans and non-binary people who have previously faced discrimination in services, who will have well-founded fears that they will face further discrimination if they disclose that they are trans or non-binary at the point of accessing a service.

The Scottish Government should show leadership in this area, by ensuring that whenever people interact with the state, they are not required to provide information about sex/gender at the point of initial contact, unless explicitly relevant. Decisions on collecting sex/gender data should be taken in the same way as decisions to collect other sensitive personal data, with these questions not being asked as a default without a clear purpose. Future revisions of the Sex and Gender in Data Guidance, published by the Chief Statistician, should also stress this approach.

21. Review IT systems, particularly in healthcare settings, to identify and remove barriers to non-binary people accessing services

This recommendation is linked in many ways to the recommendation within the health theme to review the use of a hard-coded gender marker in Community Health Index numbers.

²⁴ Scottish Trans *Non-binary people's experiences in the UK* <https://www.scottishtrans.org/wp-content/uploads/2016/11/Non-binary-report.pdf>

When databases with personal information have a "mismatch", this can cause problems when IT systems communicate. This is a significant barrier to trans and non-binary people accessing services. For example, in many healthcare systems, gender fields and title fields are "locked" to one another, so a person may be unable to update either their gender or their title, if they wish to do so in a way that the IT system codes as "incorrect". This is not simply a question of recognition: such administrative hurdles can sometimes lock trans and non-binary people out of services when an IT system cannot process their records.

The Scottish Government should conduct an audit of how and where gendered information about an individual is linked across IT and administrative systems, and ensure that there are adequate, robust, and accessible procedures in place for ensuring that no one is denied access to services due to problems with data linkage, and that all trans and non-binary people are able to update their details in a timely and simple manner.

Sex and gender data guidance in Scotland

22. Include a non-binary response option in the recommended sex question in the next update to the Chief Statistician's Sex and Gender in Data Guidance

We are disappointed in the change between the draft guidance produced by the Chief Statistician, which included recommending a non-binary response option in questions on sex/gender, and the finalised guidance, which removed the non-binary response option. This was particularly disappointing as it represented a backwards step for the equality and inclusion of non-binary people. The publication of the guidance is likely to mean that a non-binary response option may be removed where it currently exists, such as in the Scottish Household Survey and in demographic questions asked by Social Security Scotland. As discussed throughout this report, this will lead to poorer data on non-binary people in Scotland, and it will create barriers to non-binary people participating in surveys.

We do welcome the inclusion of a "prefer not to say" option in the recommended question set, and we also welcome other aspects of the guidance, such as the recommendations that trans men and trans women should continue to be able to respond to sex/gender questions in line with how they are living, and that a trans status question should be asked where appropriate.

A non-binary response option should be included in the recommended sex question in the next update to the Sex and Gender in Data Guidance.

23. Review the Chief Statistician's Sex and Gender in Data Guidance regularly, and ensure better inclusion of trans and non-binary people in the review process

Trans and non-binary people should be better consulted in reviews of the Sex and Gender in Data Guidance than in its initial development. Although there were public stakeholder events during the development of the guidance, these were for the general public, rather than for specifically affected groups. This led to the potential for public hostility at events, which made confident participation by trans and non-binary people difficult.

Reviews of the guidance should examine the impact that the trans status question has had, and the degree to which trans people have felt confident to disclose their trans status or history when asked. They should include specific consideration of non-binary people's views, both on using the trans status question, and on the impact of the removal of the non-binary response option in the recommended sex question.

Legal recognition and gendered law

24. Commission expert research on non-binary legal recognition, with the view to introducing it in Scotland

In the working group's terms of reference, it was noted that it had been set up following an announcement in July 2019 by the previous Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville, in which she stated:

"I do not intend at this time to extend legal gender recognition to non-binary people, but we recognise the need to address the issues that non-binary people face. I intend to establish a working group to consider possible changes to procedures and practice and what we can learn from best practice internationally as well as from within Scotland and the rest of the UK."²⁵

The group began meeting two years later, following the May 2021 election in which a new Scottish Government was elected. That new government introduced a Bill to reform the Gender Recognition Act to the Scottish Parliament in 2022, and this Bill does not propose the legal recognition of non-binary people.²⁶

All working group meetings and community forums held the shared view that legal recognition of non-binary people is a crucial step in ensuring non-binary people can fully realise their rights and live equally in Scottish society. Currently, the lack of legal recognition leaves non-binary in the same position as trans men and trans women before the Gender Recognition Act 2004: with no way to change their birth certificates to reflect how they live their lives, and with no way to be legally recognised as who they are. Indeed, in many ways, the position of non-binary persons is more legally and socially precarious, as there are no alternative identity documents, such as passports, on which they can obtain correct sex markers.²⁷ Even if not currently unlawful under the European Convention on Human Rights (ECHR),²⁸ the absence of legal gender recognition for non-binary people in Scotland negatively impacts their right to private life (under article 8 of the Convention).

In the first of the previous Scottish Government's consultations on reform of the Gender Recognition Act 2004, they asked a range of questions about improving non-binary people's rights. 62% of respondents agreed that Scotland should take action

²⁵ <https://www.gov.scot/publications/statement-gender-recognition/>

²⁶ https://www.parliament.scot/bills-and-laws/bills/gender-recognition-re-form-scotland-bill?fbclid=IwAR2J9MdmfFbgztX_wa-NXgAZsy1Da1LoaY934-iuIF9HDuVaODwNw2nvNYw

²⁷ See: *Goodwin v UK* (1996) 22 EHRR 123, [65] and [73].

²⁸ The question of whether the European Convention of Human Rights requires State Parties to legally recognise sex categories beyond 'male' and 'female' has not yet been definitively answered by the European Court of Human Rights. In 2021, the UK Supreme Court found that art. 8 of the Convention does not currently require the UK Government to issue non-gendered passport documents; see: *R (on the application of Elan-Cane) v Secretary of State for the Home Department* [2021] UKSC 56.

to recognise non-binary people, and 75% of those respondents thought that the action taken should be full legal recognition using the posed self-declaration model for gender recognition.²⁹

We are profoundly disappointed that there is no intention to legally recognise non-binary people in the current plans to reform this law, and that a recommendation to do so in this report is likely to be rejected by Scottish Ministers. We are therefore making a recommendation that would allow non-binary people and policymakers to move forward from the current position, with a view to achieving legal recognition of non-binary people as soon as possible in the future.

Meaningful work must be done to investigate the need for non-binary legal recognition, how it might work, and the necessary evidence to make informed decisions. Such work would reflect that:

- There are a range of views among non-binary people, policymakers and academics about the most desirable way of providing legal recognition to non-binary people.
- There is the need to explore the potential impacts of such a change on the Scottish legal system, where the idea that all persons are either men or women is deeply entrenched.
- This is a fast-changing area of law, and there are a range of cases currently being heard at both the UK and Council of Europe levels, which consider whether and when states must provide alternative gender markers on a range of identity documents.³⁰

The question of how best to legally acknowledge non-binary identities is being explored by legislatures and courts in other European and common law jurisdictions. Although no case in this area has yet been decided in a way that would require the Scottish Government to legally recognise non-binary people, this may change in the future, as more European jurisdictions do provide legal recognition and, in the specific context of the ECHR, the margin of appreciation owed to State Parties in this area changes. Preparatory work must be done now, both to lay the groundwork for future changes, and to ensure that, should the national and international legal context require change, the Scottish Government will be in the best position to take effective action.

²⁹ <https://www.gov.scot/publications/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/pages/7/>

³⁰ See e.g. *Y v France* (App. No 76888/17, European Court of Human Rights, *pending*), which concerns an individual who experiences intersex, and who wishes to have a 'neutral' or 'intersex' sex marker in the birth registration system.

Current Scottish Government understanding of non-binary legal recognition is underdeveloped, and public institutions in other jurisdictions, such as Belgium,³¹ have recently commissioned expert reports in this area. The Irish Gender Recognition Act 2015 (the Act) required ministers to commence a review into the operation of the Act no later than two years after it came into operation, as well as a requirement to report on the review within one year of its commencement.³² The subsequent review included a specific focus on non-binary legal recognition.³³

The Scottish Government should undertake a detailed scoping exercise, and commission and complete a detailed piece of expert research into non-binary legal reform. This work should be wide-ranging, should involve policymakers, academics and non-binary people. This work should enable a full exploration of how to legally recognise non-binary people in Scotland.

25. Ensure that future legislation does not further entrench unnecessarily gendered terminology or assumptions across the law

Gendered legislation can produce barriers to non-binary people being fully included and recognised in the law and, as a result, in society. The idea that all people are either men or women is deeply entrenched in law, which is a central reason that the Scottish Government decided against legally recognising non-binary people through current reforms. The first consultation on the Gender Recognition Act 2004 reform outlined a range of areas of law which might be affected by non-binary legal recognition, including family law, marriage law, and laws regarding the victims of crime.³⁴

The gendering of law creates barriers for non-binary people, as it makes it less clear that they are able to access key legal rights and protections. For example, the language in the Equality Act 2010, in defining the protected characteristics of "sex"³⁵ and "gender reassignment",³⁶ creates uncertainty about whether non-binary people enjoy protection against sex or gender reassignment discrimination alongside trans

³¹ See e.g. Emmanuelle BRIBOSIA, Isabelle RORIVE and Hania OUHNAOUI, *Rapport au sujet de l'arrêt n° 099-2019 de la Cour constitutionnelle du 19 juin 2019 annulant partiellement la loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres, et de ses conséquences en droit belge à la lumière du droit compare* (Institut pour l'Égalité entre les Femmes et les Hommes, 2019).

³² <https://www.irishstatutebook.ie/eli/2015/act/25/section/7/enacted/en/html#sec7>

³³ <https://www.gov.ie/en/consultation/001721-review-of-the-gender-recognition-act-2015/>

³⁴ https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/user_uploads/sct1017251758-1_gender_p4--3-.pdf

³⁵ <https://www.legislation.gov.uk/ukpga/2010/15/section/11>

³⁶ <https://www.legislation.gov.uk/ukpga/2010/15/section/7>

men and trans women.³⁷ This makes it harder for non-binary people to address discrimination and harassment in the workplace and in services. The uncertainty in the law also makes employers and service providers uncertain about their rights and responsibilities towards non-binary employees and service users.

The Scottish Government should ensure that future legislation does not further contribute to this problem by using gendered terminology or assumptions in ways that do not provide benefit or value. **This recommendation is not a call to make the law gender-neutral.** Legislation serves a range of purposes and deals with diverse areas of life, and there will be many areas where it is necessary and important for the law to be gendered. However, ensuring that the law is not unnecessarily gendered would have a positive impact on many more people than non-binary people, and trans people of all genders. In many instances, the gendering of law is on the basis of assumptions about the lives of men and women, or about typical family lives. This can often disadvantage women, as well as LGBTI+ people of all genders.

Broadly, there are three approaches to gender and the law:

- Where the law intends to treat everyone the same, language used should be universal and inclusive. For example, in situations where the law does not intend to draw gendered distinctions, it is appropriate to use more generally applicable statutory language (e.g. "all people", "everyone", etc.) in place of "men and women".
- Where the law intends to treat men and women differently, but aims to deal with the whole population, gender additive language should be used where trans and non-binary people may have different needs from the broader population. For example, legislation that refers to "mothers" could refer to "mothers and birth parents".
- Where the law intends to treat men and women differently and it is aimed at a specific issue, there would likely be no need for change. Similarly, where the law intends to treat trans and non-binary people differently, then language

³⁷ In the recent Employment Tribunal decision, *Taylor v Jaguar Land Rover Ltd* (304471/2018), Employment Judge Hughes (Sitting with Mr T.C. Liburd and Mrs R.J. Pelte) suggested that non-binary experiences of gender would fall within the protected characteristic of 'gender reassignment'. At para 178 of the Full Reasons, the Tribunal states: "We thought it was very clear that Parliament intended gender reassignment to be a spectrum moving away from birth sex, and that a person could be at any point on that spectrum. That would be so, whether they described themselves as "non-binary" i.e. not at point A or point Z, "gender fluid" i.e. at different places between point A and point Z at different times, or "transitioning" i.e. moving from point A, but not necessarily ending at point Z, where A and Z are biological sex. We concluded that it was beyond any doubt that somebody in the situation of the Claimant was (and is) protected by the legislation because they are on that spectrum and they are on a journey which will not be the same in any two cases. It will end up where it does. The wording of section 7(1) accommodates that interpretation without any violence to the statutory language Consequently, there is jurisdiction to hear the gender reassignment claim."

explicitly naming trans and non-binary people would be appropriate. In such cases, law should also be subject to an analysis of how trans and non-binary people's needs may differ from the broader population. For example, legislation dealing with the gender pay gap should continue to address differences between men and women, and it should also address the pay gap between cisgender people and transgender people.³⁸

The Scottish Government should ensure that future legislation is subject to robust gendered analysis that does not further entrench unnecessarily gendered terminology or assumptions across the law.

26. Review the use of, and take action to remove, unnecessary gender markers from identity documents, including by working with the UK Government to take action where ID is administered on a UK-wide basis

During their daily lives, non-binary people often have to show ID with a gender marker that does not reflect who they are. This can force a non-binary person to disclose their gender history, as the marker on their ID may be in contrast to how they are perceived by others. This can lead to not having their identity believed or respected, due to having to provide a document that is seen as authoritative and which contradicts their stated identity. This creates barriers for non-binary people accessing services and entering the workplace.

It is not always necessary for ID to disclose gender, in the same way as ID does not need to disclose information on other protected characteristics. The Scottish Government should review the use of, and take action to remove, unnecessary gender markers from ID. Many types of ID are governed and administered on a UK-wide level, such as driving licences and passports, and where this is the case, the Scottish Government should collaborate on a review with the UK Government.

³⁸ Kristen Schilt and Matthew Wiswall (2008) "*Before and After: Gender Transitions, Human Capital, and Workplace Experiences*," *The B.E. Journal of Economic Analysis & Policy*: Vol. 8: Iss. 1 (Contributions), Article 39. Available at: <http://www.bepress.com/bejeap/vol8/iss1/art39>

Access to Services

The third substantive meeting of the working group looked at non-binary people's access to services. We identified four key themes:

- Support services – particularly services dealing with housing and homelessness
- Crisis services – particularly services addressing gender-based violence
- Sport
- Education

Initially, all four themes were discussed at a whole meeting of the working group. Each theme was then discussed at subgroup meetings, which were attended by members with a particular interest, and by invited participants with relevant expertise. Scottish Trans and LGBT Youth Scotland also held community engagement events on the topic with non-binary people. The views shared at these were fed into discussions of the group. We have grouped recommendations in a way not entirely aligned with the subgroup meetings, as some recommendations relate to the provision of all services.

Non-binary people who are marginalised in multiple ways, such as non-binary people of colour, and disabled non-binary people, face even greater barriers to accessing services. Throughout these recommendations, it is important that actions to improve non-binary people's access to services reflect this reality, and meaningfully engage with non-binary people who experience multiple forms of marginalisation.

Building design

27. Review building regulations to ensure that public spaces are useable and accessible for all, and provide funding to ensure that modern accessible buildings are available across Scotland

Building design is a common barrier for non-binary people accessing services and participating in public life. For example, spaces used for sport and leisure are often highly gendered, such as through providing exclusively male or female changing facilities and toilets. These spaces often embed gendered assumptions in their design and use, such as in which gym equipment may be used by men and women.³⁹ Similarly, in education settings, facilities are often designated as exclusively for girls/women or boys/men. This can provide barriers to non-binary young people's participation.

While there are specific impacts of building design on non-binary people, this is of course also the case for many marginalised groups, many of whom will not have been centred, consulted, or considered in the development of building regulations. Women, disabled people, and people of certain faiths or beliefs can face barriers to participation in building design. Review of building regulations should consult broadly to make improvements.

Some of the changes that would benefit non-binary people would benefit other groups as well. For example, the provision of more gender-neutral toilets can benefit disabled people with carers of a different gender, as well as single parents with children of a different gender.⁴⁰

The Scottish Government should engage with a broad range of stakeholders to explore what needs to change in building design to ensure that all people can truly access and use public spaces, including leisure facilities and schools. Necessary changes to building regulations should be made, and funding should be provided to ensure that refurbishments can be made to existing buildings, so that all spaces are accessible.

³⁹ <https://leapsports.org/files/4225-Non-Binary%20Inclusion%20in%20sport%20Booklet.pdf>

⁴⁰ <https://aroundthetoilet.files.wordpress.com/2018/05/around-the-toilet-report-final-1.pdf>

Crisis and support services

28. Introduce a homelessness prevention pathway specifically focused on LGBTI+ young people

LGBTI+ people, particularly young people, are at increased risk of homelessness. In 2017, Stonewall found that 18% of LGBT people had experienced homelessness at some point in their lives, rising to 24% of trans people.⁴¹ Research in 2015 from the Albert Kennedy Trust found that 24% of homeless young people in the UK are LGBT, and that 69% of them will be homeless due to familial rejection, abuse and violence.⁴² Albert Kennedy Trust's more recent research found that trans young people can face specific issues around family abuse before becoming homeless, such as being prevented from expressing their LGBT identity or having abusive content published about them online.⁴³ LGBT Youth Scotland's Housing and Homelessness Commission found a range of related issues, such as LGBTI+ young people having negative experiences of coming out, trans young people being turned away from single-sex accommodation, and professionals in the sector lacking confidence in their ability to support LGBTI+ young people.⁴⁴

Current legislation on housing and homelessness, and the Scottish Government's "Ending Homelessness Together: updated action plan October 2020", both fail to address the specific vulnerabilities and barriers that LGBTI+ young people face. For example, in assessing need for accommodation, local authorities may seek to determine if someone is "intentionally" homeless, but in doing so may exclude an LGBTI+ young person who left a family home in which they experienced rejection and abuse. Similarly, while the focus on domestic abuse within the strategy is vital, it does not consider the specific ways in which LGBTI+ young people and adults experience abuse, especially when they are living with family members who subject them to homophobic, biphobic or transphobic rejection.

A specific homelessness prevention pathway focused on LGBTI+ young people should be introduced into the Ending Homelessness Together: updated action plan October 2020. This should include work to explore and understand the specific risks faced by LGBTI+ young people, updates to the action plan to reflect these, and funding to ensure that these issues are addressed and LGBTI+ youth homelessness is ended.

⁴¹ https://www.stonewall.org.uk/sites/default/files/lgbt_in_britain_home_and_communities.pdf

⁴² <https://www.akt.org.uk/Handlers/Download.ashx?IDMF=c0f29272-512a-45e8-9f9b-0b76e477baf1>

⁴³ <https://www.akt.org.uk/Handlers/Download.ashx?IDMF=b49dc34a-5ae9-4919-9041-2d4d75534642>

⁴⁴ <https://www.lgbtyouth.org.uk/national-programmes/youth-activism/youth-commission-housing-and-homelessness/>

29. Embed the needs of non-binary children, and all LGBTI+ children, into the delivery of a Bairns' Hoose in Scotland

The Scottish Government's vision of a "Bairns' Hoose" is that "all children in Scotland who have been victims or witnesses to abuse or violence, as well as children under the age of criminal responsibility whose behaviour has caused significant harm or abuse, will have access to trauma-informed recovery, support and justice."⁴⁵

Non-binary children, and indeed all LGBTI+ children, can face specific barriers when accessing such crisis support.⁴⁶ These include:

- Not having transphobia or rejection from family members being counted as types of violence and abuse.
- Services disclosing a child's trans or non-binary status against their wishes when sharing information between professionals and parents/guardians, which may place children at greater risk.
- Encountering services and support, such as temporary foster care, that are poorly equipped to understand and support LGBTI+ children, sometimes furthering their experiences of transphobia, homophobia, or biphobia.

The Scottish Government should include stakeholders specialising in LGBTI+ equality, and centre the needs of LGBTI+ children themselves, in further developing their vision for a Bairns' Hoose in Scotland. This should include a scoping exercise to understand the specific detriment that non-binary children (and all LGBTI+ children) may experience, both as victims or witnesses to abuse or violence, and when accessing services as a result. This will ensure that when this vision is delivered by 2025, non-binary children, and all LGBTI+ children, will truly benefit.

30. Include non-binary people in Scottish Government strategies, policy frameworks, and resource allocation designed to eradicate gender-based violence

Trans and non-binary people can face significant barriers when accessing gender-based violence services.⁴⁷ Trans people of all genders experience higher rates of

⁴⁵ <https://www.gov.scot/publications/bairns-hoose-scottish-barnabus-vision-values-and-approach/>

⁴⁶ For further discussion of some of these, see LGBT Youth Scotland's Youth Commission on Care Experience: <https://www.lgbtyouth.org.uk/national-programmes/youth-activism/youth-commission-care-experience/>

⁴⁷ For further discussion of some of these barriers, see the trans survivor-led project from Survivors Network and Switchboard in Brighton: "I am not alone: How can survivor support services meet the needs of trans and non-binary survivors" <https://survivorsnetwork.org.uk/wp-content/uploads/2021/08/I-am-not-alone..pdf>

gender-based violence than the general population, and as such it is crucial that they are able to access services and support for survivors.⁴⁸

Services, information, and support for survivors are designed and described as either "for women", or less frequently "for men", in almost all circumstances. This means non-binary survivors are often unsure whether they are entitled to access specific services. Additionally, and even more significantly, it means that non-binary survivors are often unsure whether services will provide suitable support or address their specific experiences of gender-based violence.

Such barriers are exacerbated by the current Scottish Government policy framework to tackle gender-based violence in Scotland. Typically, this names gender-based violence experienced by women and girls on the one hand, and men and boys on the other, distinctly and exclusively, and therefore leaves the experiences and needs of non-binary survivors obscured and unaccounted for.⁴⁹

We are not calling for the policy framework to eradicate gender-based violence to be made gender-neutral. We wholly support the entirely appropriate focus on women and girls, which is a result of taking a necessarily gendered analysis of gender-based violence. However, we also seek to include non-binary people and wider gender diversity in this gendered analysis, so that actions to eradicate gender-based violence in Scotland are taken with a fuller picture. This would include the understanding discussed here that gender-based violence structurally targets gender minorities (including trans men and non-binary people) alongside women and girls.

Because the current incomplete picture of gender-based violence impacts survivors attempting to access services or support, as discussed above. It also means that there is no specific resourcing of specialist services focused on gender-based violence experienced by trans and non-binary people.

The Scottish Government should work with relevant expert stakeholders, especially survivors of gender-based violence, to widen the gendered analysis the Scottish Government uses in policy frameworks and strategy in this area. This could be done through a specific short-life working group, commissioning research, or by any other steps considered necessary. This work should be used to ensure that trans and non-binary people are included in Scottish Government policy frameworks to eradicate gender-based violence, and that resources are made available to ensure that specific specialist support services are available where appropriate.

⁴⁸ Peitzmeier, S.M., Malik, M., Kattari, S.K., Marrow, E., Stephenson, R., Agénor, M., Reisner, S.L. (September 2020) "Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates" *American Journal of Public Health* Vol. 110, Iss. 9: E1-E14

⁴⁹ For example, in the latest Scottish Government Programme for Government p.101-102: <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/>

Any funding of specialist services should be in addition to, and alongside, an improvement in access to "mainstream" services for trans survivors. It vitally important that trans and non-binary survivors are not forced to access only segregated services, which would be discriminatory and could exacerbate existing issues, but that both mainstream and gender minority specific services are available and well-resourced.

31. Improve data collection on sex/gender, sexual orientation and trans status within support and crisis services

There is a lack of data available across support and crisis services relating to LGBTI+ people. This contributes to poor experiences in these services and poor resourcing of specialist services. Factors contributing to this lack of data across support and crisis services include:

- Only providing male/female response options when asking about sex/gender
- Not routinely monitoring sexual orientation
- Not routinely monitoring trans status or history

A crucial step to addressing trans and non-binary people's increased vulnerability to homelessness and gender-based violence is ensuring there is good quality information about our use of services. As outlined in recommendation 18, questions on trans status should be voluntary, to ensure that people are not obligated to disclose this information in order to be able to access a service, which would create significant barriers for many people in doing so.

Scottish Government should ensure that crisis and support services are collecting the appropriate data they need on sex/gender, sexual orientation, and trans status and history. This should include a question on sex/gender that allows non-binary people to be recorded as non-binary.

Sport

32. Agree key policy principles, underpinned by equality and human rights considerations, on how to improve participation in sport and leisure for trans and non-binary people

Trans and non-binary people face consistent barriers to participating in sport and leisure. Sport is often heavily gendered, built on the assumption that all people taking part are either men or women. This can cause specific barriers to non-binary people, who may have their identity ignored or disbelieved by organisations, or who may have experienced discrimination and abuse in the sporting community, rather than an open welcome.^{50,51} 54% of trans people feel excluded from particular sports, or have at some point stopped participating in a sport as a result of discrimination around their gender identity.⁵² 46% of trans people active in sport report negative experiences over the preceding 12 months.⁵³

Sports governing bodies, sports clubs and leisure services are often unsure about how to treat non-binary people, and both LEAP Sports Scotland and Scottish Trans are often asked to provide support and advice on this topic. According to sportscotland research, gender reassignment is the protected characteristic which sports governing bodies understand the least.⁵⁴

When talking about trans and non-binary people in sport, focus tends to be given to elite-level competition and eligibility requirements. However, for most people, participation in sport and leisure happens far from these concerns: rather, their interests are in joining a local running club or using their nearest gym. Policy support and advice about trans and non-binary people's participation in sport and leisure should reflect this reality.

The UK-wide Sports Council Equality Group's "Review into transgender inclusion in domestic sport in the UK" was published in September 2021.⁵⁵ We agree with LEAP Sports that this guidance is harmful, and would increase, rather than decrease,

⁵⁰ <https://leapsports.org/files/4225-Non-Binary%20Inclusion%20in%20sport%20Booklet.pdf>

⁵¹ <https://www.scottishtrans.org/wp-content/uploads/2016/11/Non-binary-report.pdf>

⁵² <https://www.equality-network.org/wp-content/uploads/2013/03/Transgender-specific-companion-report.pdf>

⁵³ <https://leapsports.org/files/1741-Outsport%20Scotland%20Report.pdf>

⁵⁴ https://sportscotland.org.uk/media/6403/equality-and-sport-research-2020-technical-report_final.pdf

⁵⁵

<https://equalityinsport.org/docs/300921/Guidance%20for%20Transgender%20Inclusion%20in%20Domestic%20Sport%202021.pdf>

barriers to trans and non-binary people, particularly trans women, participating in sport.⁵⁶ The Sports Council Equality Group's guidance should be withdrawn.

Instead, the Scottish Government should agree key policy principles on how to improve participation for trans and non-binary people, and place equality and human rights considerations at the heart of the policy framework.

33. Fund specific work to reduce barriers to trans and non-binary people's participation in sport

We welcome the commitment in the Scottish Government's 2021 Programme for Government to increase investment in sport and active living, and the stated intention to work with sportscotland and other partners to ensure that this will address existing unequal access to sport and active living.⁵⁷ Given the range of barriers that trans and non-binary people can face to participating in sport and active living, and given the widespread lack of awareness and understanding of these barriers identified by sportscotland, it is important that the equal access of trans and non-binary people be properly considered.

Decisions around this increased investment must be driven by meaningful consultation with relevant communities, including trans and non-binary people. This will ensure that the benefits of the additional investment are felt by all, and that specific targeted funding can be made available to address existing inequalities in trans and non-binary people's access to sport and active living, such as by providing training for sports groups and service providers on how to welcome trans and non-binary people into sporting communities.

⁵⁶ <https://leapsports.org/news/review-into-transgender-inclusion-in-domestic-sport-in-the-uk>

⁵⁷ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/>

Education

These recommendations were shaped by a paper submitted to the subgroup by LGBT Youth Scotland. This paper summarised the results of LGBT Youth Scotland's survey about non-binary experiences, which was sent out to 20 schools they work with, largely in Edinburgh and Glasgow, for non-binary pupils to complete. It also included reflections from LGBT Youth Scotland's wider consultation work with LGBTI+ young people, and their experience of working with both young people and schools to improve all LGBTI+ young people's inclusion and experience while learning. As much as possible, these recommendations reflect the experiences and priorities of these non-binary young people themselves.

34. Work with the developers of SEEMiS to (a) ensure that there are options other than male or female for recording pupils, alongside a field for recording pronouns; (b) review automatic linking from SEEMiS; and (c) produce updated guidance for schools to reflect these changes

Non-binary young people frequently point out that the requirement to be recorded as male or female on SEEMiS is a considerable barrier to them participating equally at school. This issue has been raised for many years, both by non-binary young people themselves, and by schools and local authorities across Scotland.

This issue means that teachers and staff can be unaware of a pupil's gender identity, and so the pupil may be required to come out repeatedly, and to many members of staff, in order to have their identity recognised and respected. Being recorded as either male or female means that pupils are much more likely to experience misunderstanding or misgendering from teachers and staff, who are interacting with them on the basis of accessing incorrect information about them on SEEMiS.

An update to SEEMiS should also include a new optional field in which pupils may have their pronouns recorded. This would give pupils who want teachers to be aware of their pronouns the ability to do so more easily, and it would give teachers the confidence that they are addressing pupils in a respectful way. Pupils should be able to have the details recorded in this field updated on request.

The functionality of automatic linking from SEEMiS should also be reviewed. This review should include working with SQA to ensure that any update to allow pupils to be recorded as something other than male or female is compatible with their administrative systems. If the current administrative systems used by SQA present barriers, then the Scottish Government should also work with SQA to ensure that pupils can be recorded as something other than male or female when completing their exams.

As a further issue, if pupils use a different "known as" name at school, or if their pronouns are recorded in the register, this information may be shared with

unsupportive parents or guardians, disclosing pupils' trans or non-binary status when it is not safe to do so. A review of when and how information recorded on SEEMiS is shared with parents or guardians should identify such issues, and consider making information sharing of a small number of fields, such as the "known as" and recommended pronouns field optional. If a review concluded that this was genuinely not suitable due to safeguarding, then schools should ensure that non-binary pupils (and indeed all trans pupils) are aware of how details on their SEEMiS record would be shared with parents or guardians, so that young people are able to make informed decisions about whether they wish to request updates to their information.

There should be updated guidance produced on how to use the new functionality on SEEMiS once the above changes have been implemented. This could be done via updating the relevant sections of "Supporting Transgender Pupils in Schools: Guidance for Scottish Schools",⁵⁸ but should be communicated to all schools across Scotland using SEEMiS, to ensure that teachers and staff are confident in using the updates, and that all non-binary pupils can benefit from the changes.

35. Evaluate the ongoing work of implementing LGBT Inclusive Education after one year, collaboratively with non-binary pupils, to investigate the specific impact of the work for them, and any changes needed to ensure that they equally benefit from the work in the future

We welcome the work of the Scottish Government and partners to embed LGBT Inclusive Education across the Scottish curriculum. Many of the issues raised by the non-binary young people LGBT Youth Scotland consult with and support should be addressed by the implementation of this programme.⁵⁹ For example, non-binary young people raised issues such as being unable to come out due to a lack of a supportive whole school environment, experiencing prejudice-based bullying, and having their identities and experiences excluded from the Relationships, Sexual Health and Parenthood curriculum.

Non-binary young people's identities are particularly poorly understood by teachers and staff at schools, as well as by their peers, and non-binary young people are not always well-represented in information and resources aimed at LGBT inclusion. The work of implementing LGBT Inclusive Education should therefore be evaluated after one year, in collaboration with non-binary pupils themselves. This evaluation should consider the specific impact of the work for non-binary young people. If needed, again in collaboration with non-binary young people, changes and improvements to resources, training modules, advice, and information for schools should be made, to

⁵⁸ https://education.gov.scot/media/xpgo5atb/supporting-transgender-pupils-schools-guidance-scottish-schools_.pdf

⁵⁹ <https://www.gov.scot/news/milestone-for-equality-in-schools/>

ensure that non-binary young people can equally benefit from embedding LGBT Inclusive Education across the curriculum.

Lived Experience Reflections: "Cameron"

As an agender non-binary person, my life experiences have been shaped by a gender most people do not understand, include, or even know about. Nobody ever expects to meet a non-binary person, and they are not looking for us even when they know we exist. Unless I say "I'm non-binary" people assign a binary gender based on appearance and assume binary pronouns, which are always wrong for me. It makes a big difference to my mental health when people use they/them pronouns for me, but the education and coming out process is tiring and never-ending.

The world is currently a very binary environment, with a historical and ongoing obsession with describing, organising, and categorising everything as male or female, masculine or feminine. So, when you don't fit into either of the categories, it can leave you feeling isolated and excluded. There's no need for it to be this way, but the systems are set up to perpetuate it, and taking part in society often means making a choice between female and male categories, which to me always feels like lying.

The working group is one of the biggest opportunities I've ever known to effect focused change for the better at government level and to feed back detailed and extremely important information about non-binary people's lived experiences to ministers. We have discussed many scores of issues at length and come up with realistic recommendations that would improve people's lives. It was a privilege to be part of that, and to represent a marginalised minority in a process that could reduce our marginalisation.

My biggest fears for the outcomes of the group's recommendations are that ministers pay them no more than lip service and effectively ignore us, or that our recommendations are deliberately misunderstood by those who either don't understand, or don't want to understand, the genuine barriers and exclusion faced by non-binary people, and all trans people, in Scotland. There's also the risk of well-meaning people starting 5-year studies into some of the recommendations that eventually result in no action.

However, the potential for real and meaningful change is huge. Our recommendations cover some of the most significant areas of government policy that affects non-binary lives, and every single one that results in change would be hugely beneficial. If all the working group's recommendations are taken forward in full, we would realise a step change in equality and inclusion for non-binary people, all trans people, and major gains for several other groups, and we could propel Scotland into a role as a world-leading force for equality for others to follow.

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