

Shona Robison,
Cabinet Secretary for Social Justice,
Housing and Local Government,

From: Baroness Kishwer Falkner,
Chairwoman

By email only

Our ref: 847Robison

Friday 04 February 2022

Dear Cabinet Secretary,

Thank you for your letter of 31 January in response to mine on the reform of the Gender Recognition Act 2004 and other issues related to being transgender. Firstly, I strongly reiterate our commitment, and indeed our duty, to promote the human rights of trans people and to protect them from discrimination and harassment. And I welcome our shared desire to discuss these issues in ways that encourage respectful debate.

You asked how we decided that more detailed consideration is needed before changes are made to the provisions in the Act. As you would expect, the Commission bases all its decisions on the law and on evidence, including in this case from relevant UK and Scottish Government consultations, the 2018 National LGBT Survey, responses to the consultation process for our 2022-25 Strategic Plan, and evidence from a range of civil society bodies, legal experts and international organisations.

As an independent regulator, we have an obligation to set out our authoritative views on equality issues, even if they are at odds with the views held by some stakeholders. As you know, the polarised nature of the debate on issues of sex and gender has grown considerably since we first responded to the Scottish Government proposals in 2018. The divergence of views is in part related to different understandings of the effect of the law, and in part to the impact of potential changes to the law, including on service providers and data users. It is also related to disputed terminology, which has evolved significantly since the GRA was passed in 2004. This has resulted in increasing numbers of court cases to resolve contested claims, with jurisprudence still evolving around use of the terms sex and gender, for example.

We therefore considered it necessary to clarify our position on the law, in line with this ongoing debate and recent evidence. In responding to proposals from the Scottish Government, we considered it important that, should Ministers

proceed with legislation, you take the opportunity to clarify certain definitions in law and understand thoroughly the impact of any changes proposed.

I must point out that in our responses in 2018 and 2020, we welcomed the steps that the Scottish Government was making to reduce discrimination against trans people, including to remove unnecessary barriers in the process to obtain a GRC. However, we also highlighted the need for appropriate safeguards to be put in place, both to assist applicants and to address legitimate concerns about potential risks of any new system. For example, we recommended that the process must ensure that applicants demonstrate that they fully understand the legal, social and personal implications of a legal change in status. Our current position builds on these points we have made previously.

In making our unanimous decisions on these issues, the Board of the Commission drew on the expertise and insight of all Board members, including the advice of the statutory committees in Scotland and Wales.

You and I agreed when we met that we all want to work collaboratively, including with other interested parties, to foster a careful and respectful discussion of these important issues, particularly where changes to the law are proposed. Indeed we have a statutory role to foster good relations between groups. We strongly support your commitment to improve gender identity services in Scotland and we will continue to call for urgent improvements to gender identity services throughout Britain, as well as seek opportunities to use our powers to support litigation to protect trans people's rights.

Thank you again for your correspondence and for continuing to work with us as these important issues are taken forward. We will also continue to engage with you if and when other relevant policy positions are being developed or reviewed.

Yours sincerely,



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[equalityhumanrights.com](https://www.equalityhumanrights.com)

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