

Trans Data Position Paper

May 2009

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Acknowledgements

With thanks to internal colleagues at the ONS: Amanda Wilmot, Peter Betts, Joe Traynor, Madhavi Bajekal, and the library team. In addition, thanks to Kevin Mantle (Government Equalities Office), Kathe Browne (University of Brighton), Dee Evans and Sarah Wood (a:gender), Marguerite Celiz (Ministry of Justice), Sue Botcherby (Equality and Human Rights Commission), Ben Thom and Angela Clayton (Press for Change) and Bernard Reed (GIREs) for their input and assistance in the preparation of this paper.

Summary

- As a result of the 2007 Equalities Review by the Cabinet Office¹, the ONS undertook a wide ranging Equality Data Review (EDR). This found that a good deal of data already existed. But it also confirmed that there were significant data gaps in certain areas, including transgender data. The review recommended that **“Government agencies work with non-Government stakeholders to agree an approach to obtaining more equality information on transgender people, including those undergoing the process of gender reassignment.”**
- To meet this recommendation ONS has made an initial assessment of the legal framework, data user requirements and potential methodological constraints surrounding data collection via a review of the literature and stakeholder liaison.
- Within the trans population there are a number of sub groups, ranging from those who cross-dress, who may define themselves as transvestite, to those who describe themselves as transsexual. The umbrella also encompasses other gender variant people including individuals who are androgynous and those who identify themselves as non-gendered. Brief definitions can be found in box 1.
- At this stage of the work we have adopted the broadest definition whereby trans is taken to mean anyone who experiences gender variance.
- Three main acts protect the rights of transsexual people (who have undergone medical intervention): the Sex Discrimination (Gender Reassignment) Regulations, introduced in 1999 protects transsexual people against discrimination in employment and vocational training. The Gender Recognition Act 2004 provides a mechanism for someone to be legally recognised in their adopted gender. Sex Discrimination (Amendment of Legislation) Regulation (2008) seeks to eliminate unlawful direct discrimination and harassment on grounds of gender reassignment in the provision of goods, facilities and services. Moreover, public bodies are required to include transsexual people in their gender equality schemes and the Equalities and Human Rights Commission recommends that this requirement be extended to all trans people.
- This paper outlined a number of methodological issues including: privacy and acceptability; the law; complexity; accuracy; terminology; small sample universe and scope.
- It has also identified four main user requirements for data:
 - Community recognition
 - Population estimates
 - Expansion of the evidence base
 - Service provision and equality monitoring.
- The paper is in agreement that existing data collection and research is limited in this area as concluded by the Equality Data Review.

¹ <http://archive.cabinetoffice.gov.uk/equalitiesreview/>

- We have also outlined a number of methodological issues indicating that in monitoring the lives of trans people, originality in approach is necessary and that data collection via ONS household surveys is not the most appropriate method for collecting this data.
- It is suggested that alternative measures need to be explored by those more closely associated with the trans community as a means to fulfil the user requirements.
- There are three areas that could be considered: attitude surveys; administrative data and specialist surveys.
- Recommendations for development work in these areas have been provisionally laid out in a recent EHRC and GEO publication working towards the development of an Equality Measurement Framework²

Background

The 2007 Equalities Review³ undertaken by the Cabinet Office, set out what needs to be done to improve equality in Britain and why it is important. One key finding of the review was that there was a lack of relevant data in various equality strands, including gender reassignment and trans people in general. As a result, the ONS undertook an Equality Data Review (EDR), guided by a cross-government task force consisting of members from eight Whitehall departments and three devolved governments. The report confirmed that a good deal of data already existed, but there were significant data gaps in certain areas, including trans data. The review included 22 recommendations to improve data coordination, comparability and quality, accessibility and presentation. The most notable recommendation in this context being that: **'Government agencies work with non-government stakeholders to agree an approach to obtaining more equality information on transgender people, including those undergoing the process of gender reassignment.'**

To meet this recommendation, ONS has undertaken this scoping work to establish more specific data user requirements and clarify the conceptual and practical issues surrounding collection of data on transgender.

This paper explores:

- definitions
- legal framework
- data user requirements
- methodological issues
- current availability of data in the UK
- questions currently used

² Draft report for publication end of May 2009

³ <http://archive.cabinetoffice.gov.uk/equalitiesreview/>

Defining Trans

There are multiple definitions of transgender. At this stage of the work we have adopted the broadest definition whereby trans is: 'an umbrella term referring to individuals whose gender identity or gender expression falls outside of the stereotypical gender norms'⁴ (O'Neil et al, 2008)⁵.

There is a spectrum of terminologies under the trans umbrella, ranging from those who cross-dress to transsexual people. The term also encompasses other gender variant people, including individuals who are androgynous and those who identify themselves as non-gendered. There are few agreed definitions in this area but Box 1 attempts to define key concepts based on respected sources in the literature (including the Department of Constitutional Affairs (DCA) website; a:gender and Equality and Human Rights Commission (EHRC) publications.)

Box 1: Defining Trans

Gender Variance

A person's feelings about his or her gender identity that do not conform to the stereotypical boy/man or girl/woman category as assigned at birth. This variance is increasingly understood to derive from sex differentiation in the structure and working of the brain, which may be inconsistent with the other physical sex characteristics.

Trans

Trans is an umbrella term used to describe people whose lives appear to conflict with the gender norms of society. Whether this is in their clothing, in presenting themselves or undergoing hormone treatment and surgery.

Being trans does not imply any specific sexual orientation.

Transsexualism

This term is used to describe a person who has 'transitioned', or is in the process of 'transitioning', or intends to transition from male to female or female to male. For a transsexual person, the process of 'transitioning', may involve a variety of treatments including: hormone therapy, surgery and hair removal. People who have transitioned do not necessarily identify as trans any longer; they may identify as simply a man or a woman. Some transsexual people may not transition due to family or other social constraints.

⁴ For the sex assigned to them at birth

⁵ ONS has adopted this definition at this stage of the work but this may change with the development of the project

Transvestite

A transvestite individual feels compelled to wear clothing normally associated with the opposite sex, but does not desire to live permanently as a member of the opposite sex.

Drag

A term applied to individuals who cross dress often for entertainment purposes.

Androgynous

A person who does not fit clearly into the typical gender roles of their society. Androgynous people may identify as beyond gender, between genders, moving across genders, entirely genderless, or any or all of these. Androgynous identities include pan-gender, bi-gender, ambi-gender, non-gendered, a-gender, gender-fluid or intergender.

Ze, Hir and Hirs

Although not commonly used, these are gender neutral pronouns that some people prefer to use in place of he/she, him/her and his/hers. (O'Neil, 2008).

Acquired Gender

The 'gender' (when opposite to the sex assigned at birth) in which a person lives.

Gender reassignment

The process by which an individual reassigns their gendered appearance.

Gender recognition

The legal recognition of an individual's acquired gender as the opposite of the sex assigned at birth

Usually once a person has begun the process of transitioning, pronouns that are appropriate to the gender towards which he or she is transitioning should be used.

Legal Framework

The 1990s saw the rights of trans people being recognised for the first time. A 1996 European Court ruling rendered it unlawful to dismiss from employment an individual for intending to undergo/undergoing/having undergone gender

reassignment. This led to the Sex Discrimination (Gender Reassignment) Regulations being introduced in 1999. This was the first time trans people were specifically identified for protection by UK legislation. The act, which amended the Sex Discrimination Act 1975, protected transsexual people who undergo transition under medical supervision against discrimination in employment and vocational training. This protection begins from the time when a transsexual person makes it known that he or she intends to undergo gender reassignment, and continues when the gender reassignment is complete.

The Gender Recognition Act followed in 2004. This provides a mechanism for someone to be legally recognised in, and gain the rights and responsibilities of, their acquired gender. For example, the right to a new birth certificate, if the birth was registered in the UK, and the right to marry a person of the opposite sex to their acquired gender. There are strict privacy requirements under the Act regarding gender recognition, which reinforce those in the Data Protection Act 1988, under which transsexual identity and gender reassignment would constitute 'sensitive data'.

The Equality Act 2006 amended the Sex Discrimination Act 1975 to place a statutory duty on all public authorities, when carrying out their functions, to have due regard to the need:

- to eliminate unlawful discrimination and harassment
- to promote equality of opportunity between men and women

As part of the duty, this protection extended to people who intend to undergo, are undergoing or have undergone gender reassignment. The Equality and Human Rights Commission recommends that this protection be extended to all trans people, not just those satisfying the gender reassignment conditions.

The Equality Act 2006 introduced the Gender Equality Duty. The Duty requires public authorities to have due regard to the need to eliminate unlawful discrimination and harassment against transsexual people in the fields of employment and vocational training (including further and higher education).

In 2008, the Sex Discrimination (Amendment of Legislation) Regulations amended the Sex Discrimination Act 1975 to expand protection on the grounds of gender reassignment to cover goods, facilities, services and premises.

The Equality Bill will provide protection against direct discrimination for people who associate with transsexual people. It will extend indirect discrimination to gender reassignment and protection from discrimination in public functions; and it will change the definition of gender reassignment to make it clear that protection against discrimination on this ground is not dependent on a person being under medical supervision.

Scoping work: Methods

To date ONS has undertaken an internet trawl of academic journal databases (JSTOR, IBSS, Wiley, ASSIA, and PAIS), relevant search engines, (gaydata.org) and trans groups (press for change, GIRES), government stakeholders with an interest in this issue were also contacted for information on user requirements, potential issues and signposting to further research. Input was received from the following organisations:

- a:gender
- Equality and Human Rights Commission
- Government Equality Office
- Ministry of Justice
- Press for Change
- University of Brighton

In addition, ONS looked into practice in other countries via further internet research and contacting National Statistical Institutes (NSIs) to establish whether they had either collected or were working towards collecting information about trans people on their general population surveys. Questions were asked on the type of questioning used and the conceptual and practical issues surrounding question development and information gathering.

Methodological issues

This section outlines some of these issues associated with obtaining further equality information on trans people.

Privacy and acceptability

'Some people consider it (being trans) a very private matter and may have experienced prejudice and harassment in the past.'(EOC, p. 9)

There is a shortage of discussion on trans privacy issues in relation to social surveys. Evidence from equality monitoring guidance has been presented here, however we cannot assume that exactly the same factors apply, as in social surveys privacy may be less of a concern.

Trans people, including those undergoing the process of gender reassignment, may suffer discrimination and harassment in the community where they live and work. For this reason, trust is particularly relevant in this area of work. For transsexual people, being known to be transsexual completely changes how they are treated in society; even very simple matters such as whether they can gain access to public spaces are affected. It remains a matter of gossip and the slightest failure in keeping data confidential, can lead to serious consequences. There is deep distrust by trans people of any data held about them by any government body and the likely outcome would be simply untruthful answers.

The Press for Change website claims that trans people will not 'out' themselves unless they can see some demonstrable benefit to themselves and their peers. Indeed, in a recent informal poll undertaken by Press for Change among transsexual people, findings showed that 55 per cent of respondents would refuse to answer a question that may lead to their gender history being disclosed under any circumstances.⁶

In support of this, a:gender found that 53 per cent of respondents in their study had previously declared trans status on anonymous equality monitoring forms at work, but 25 per cent had done so when the questionnaire was not anonymous. Worryingly, trust in storage of data is low, 68 per cent of respondents thought that staff monitoring data held on computer systems could lead to the disclosure of their trans status and 75 per cent of respondents were unsure or did not believe that monitoring would lead to action being taken to prevent harassment and discrimination on the grounds of gender identity.

The law

From a legal perspective, it is crucial that any research or monitoring cannot lead to the identification of individuals as trans. Section 22 of the Gender Recognition Act⁷, states it is an offence for a person who has acquired protected information on a person's gender history, in an official capacity, to disclose the information to any other person.

It is also worth noting, that legal protections for transsexual people are less stringent than those covering lesbian gay and bisexual people (LGB) people. Transsexual people have only recently acquired partial protection in the provision of goods, facilities and services, subject to the caveat that discrimination is permitted where it is a proportionate means to achieve a legitimate aim. Press for Change claim that in practice, that means that transsexual people are never able to be sure they cannot be discriminated against unless they wish to go to court.

It is also true that only those transsexual people who, at some time, have, are, or intend, to enter a medical process for gender reassignment are protected by equality legislation. 'We are clear that transsexual people must be protected against discrimination arising from their gender reassignment, whether or not they undergo medical supervision. However, our intention is not to protect a wider group such as transvestite people or others who have no intention or commitment to live life permanently in the sex opposite to their birth sex.'⁸

Further, the employment and vocational training protections are subject to exemptions unless one holds a Gender Recognition Certificate. The goods

⁶ Details provided on request

⁷ http://www.opsi.gov.uk/acts/acts2004/ukpga_20040007_en_1#pb3-l1g22

⁸ The Equality Bill: Government response to the consultation, 2008, p.122

and services protection in direct discrimination are also subject to a caveat that discrimination is lawful if it is a proportionate means of achieving a legitimate aim. It is felt that this equates to no protection whatever and discrimination in such instances is almost universal.

Press for Change argue that asking the trans population directly about their gender history won't work, given the absence of full protections in law and continued intention by government to exclude any but those undergoing gender reassignment.

ONS would also have to consider if asking such a question, particularly on a compulsory basis, was an infringement on people's human rights, under article 8 of the European Convention of Human Rights.

The collection of data, as with all other ONS surveys, would adhere to the Data Protection Act.

Complexity

a:gender, 2007 (p.3) claim that 'Many, having undergone gender reassignment, maybe surgery and possibly having acquired legal recognition in the 'acquired gender', will no longer regard themselves as 'trans' but as men and women (with a transsexual past).'

Hence, once transition has taken place, a transsexual person would thereafter identify themselves in their acquired role and, if they have a Gender Recognition Certificate, they should be legally regarded as such. A recent a:gender, 2007 (p. 3) paper claims that: 'it is grossly insulting to them to suggest that they should be requested to tick some box other than M or F.'

In addition, transitioning to a new gender identity takes time and can be a gradual process. For example, Rhodes et al (2008) found that of a survey of 2200, only 985 were living in their acquired gender full time. This would cause obvious problems in trying to establish the demographic profile of transsexual people.

Accuracy

Anecdotal evidence suggests that non trans individuals completing questions on transgender 'mess around' giving inaccurate responses and leading to bias in the data⁹.

Terminology

Classifying fluid concepts such as identity is complex. Trans people of different generations and philosophies have their own preferences for the words to describe themselves. We need to avoid imposing pre-determined classifications as respondents may not classify themselves as such, and may

⁹ Telephone discussion with a:gender 05.09.08

not understand the terminology. Further, the TUC claim that people are more likely to respond positively if the question uses language with which they are comfortable, and more likely to refuse to answer if the language is found to be offensive.

Small sample universe

The proportion of trans people in the population is small and capturing adequate numbers of responses through current sampling methods on our suitable surveys is unlikely.

This issue is deepened by underreporting, subjectivity, misinformation and scope.

Therefore the option of applying boosts and repeating surveys several times to obtain a reasonable trans count to the sample would need to be explored.

Scope

The term trans encapsulates a wide spectrum of trans people. At present the accepted definition for this work accommodates for that. However, the level of definition required by the end users would have to be evaluated if this work was to be taken forward. For instance, the wider the definition the less use the data might be to specific organisations. For example, the inclusion of transvestite people in the definition and hence the data capture would mean the data was of less use to some Government departments, such as the Gender Recognition Panel for predicting future workloads or target populations.

Data user requirements

There are four main data user requirements highlighted in the literature.

Community recognition

There is a need to recognise the existence of a community of people whose gender identity leads to social exclusion. It is argued that increased recognition will lead to the promotion of social acceptance.

The Home Office 'Report of the interdepartmental working group on transsexual people' published in 2000 highlights that many transsexual people want to be open about their trans status. They quote: 'We are primarily seeking an administrative system which will allow us (trans people), after undertaking the difficult road of gender transition to take our place in society, whether or not openly as transsexual people.' (p. 32)¹⁰

¹⁰ This part of the report was a presentation to the interdepartmental working group by trans stakeholder groups

Population estimates

It has been argued (TUC letter dated 12.11.07) that government estimates on the size of the trans community have been too low. Though TUC recognised there was no lobbying for inclusion of a question on gender identity in the previous consultation on the 2011 Census they believe there is a strong case for work to be undertaken to begin to achieve a realistic assessment of the number of trans people in the UK.

Currently, there are huge inconsistencies in population estimates of both transsexual people and the less clearly defined trans community.

The Home Office 'Report of the interdepartmental working group on transsexual people' based on research from the Netherlands and Scotland, estimates that there are between 1,300 and 2,000 male to female and between 250 and 400 female to male transsexual people in the UK. However, Press for Change estimate the figures at around 5,000 post-operative transsexual people. Further, GIRES (2008) claims there are 6,200 people who have transitioned to a new gender role via medical intervention and approximately 2,335 full Gender Recognition Certificates have been issued to February 2009.

The figures are more diverse when looking at the trans community in the UK, where estimates range from 65,000 (Johnson, 2001, p.7) to 300,000 (GIRES, 2008). To put this in context, the former figure is close to the population of Inverness, while the latter is similar to the population of Cardiff (51,000 and 305,000 respectively).

The variation above demonstrates that it is important to find accurate measures of the trans population at local and national levels. The absence of official estimates makes it difficult to ascertain the level of discrimination, inequality or social exclusion faced by the trans community.

Service provision and equality monitoring

It is argued in the literature (Hand and Betts, 2008) that the ability of public authorities to plan and tailor services to diverse needs of the population may be inhibited without appropriate statistics. It is felt that the absence of population estimates means that the correct support, funding, services and policies are not in place for trans people. It is difficult for government departments and equality bodies to monitor outputs and resource allocations by equality strand and to monitor the recommendations from the Equalities Review published in 2007.

The Public Sector Equality Duties enforce a legal requirement to monitor some equality strands and although there is currently no specific requirement for employers to monitor staff who identify as trans, guidance is given on the value of monitoring.

As a result more organisations want to monitor the number of trans people among their staff or client group. They feel this is becoming necessary in order to show that they are complying with new equalities law such as the Public Sector Gender Duty (Press for Change website).

Increasing the visibility of trans issues

The Equality and Human Rights Commission endorses the improvement of the trans evidence base. The statistics will help the commission to meet its duty in working to reduce inequality, eliminate discrimination, promote equality and human rights and build good relations for trans people and the production of a 'State of the Nation' report on the changing face of inequalities every three years.

It is also felt that if relevant trans data was available then existing preconceptions could be alleviated, for example 'once and for all we would be able to prove how little cost we (trans people) are to the National Health Service, and how much we benefit the country in the payment of taxes and other social contributions.' (Home Office, 2000, p.34)¹¹

The provision of this information will provide the evidence required to challenge policy analysis. Leading to improvements in policies and practices that will challenge transphobia and support trans people and eventually lead to societal change.

Current availability of trans data and research in the UK

This section highlights some of the data and research available in the UK that currently seeks to address some of these data user requirements. This report has not gone into detail in this area only a very top level analysis.

Capture of data on trans people

The recent Equality Data Review data audit¹² found that trans data was the least represented of all the equality characteristics highlighted in the EDR. Data were limited to mainly administrative data and a small number of surveys (the British Social Attitudes Survey, the Mental Health Survey and the Civil Service Diversity Survey).

Research availability

In the literature available there is a wide range of commentary on the legal position (Home Office, MoJ), anecdotal discussion and best practice guidance (UNISON, a:gender, Press for Change) for employers but the amount of research undertaken is limited. Further, this research is characterised by small samples and convenience sampling. Although this has raised significant

¹¹ This part of the report was a presentation to the interdepartmental working group by trans stakeholder groups

¹² <http://www.ons.gov.uk/about-statistics/measuring-equality/equality-data-review/index.html>

awareness of the challenges the trans population face the results are not necessarily representative.

An exception to this rule is Whittle et al's (2007) report. The study investigated trans, including transsexual people's, experiences of inequality in the UK. The research was based on analysis of a large quantity of qualitative data held by Press for Change, and an online survey. The number of respondents to the survey was higher (at over 850) than in any previous survey of trans people and included an analysis of over 6,000 support enquiries to PfC since 1992.

In addition, in 2004, the Department for Constitutional Affairs conducted a survey of transsexual people via the Gender Trust website. The survey was based on over 800 responses and aimed to assess the likely future demand for gender recognition under the framework being introduced in April 2005.

Smaller scale research exists, but as highlighted above, this tends to be for lobbying or campaigning purposes and the methodology can often be dubious. Trans information also tends to be packaged with LGBT research. This has often led to trans issues being overridden by sexual orientation issues when they are fundamentally different.

Questions currently used

There are very few trans questions in the literature and they are often grouped with questions on sexual orientation. These questions are not best practice - refer to the next section for suitable question guidance.

Survey	Question Stem	Response Categories
National Mental Health Survey	Which of the categories on this card would you say describes your sexual orientation? Please give me the letter.	M. Heterosexual (like people of the opposite sex) Z. Gay male or lesbian female (like people of the same sex) P. Bisexual (like people of both sexes) C. Transgender
British Social Attitudes Survey	Which of the following best describes how you think of yourself? Please tick one box only	1. Heterosexual ('straight') 2. Gay 3. Lesbian 4. Bisexual 5. Transsexual 6. Can't choose
Civil Service Diversity Survey	Do you consider yourself to be transsexual?	

Press for Change Question Guidance

The Press for Change website strongly advises against grouping transgender with gender or sexual orientation questions. As most transsexual people do not consider themselves to be a third sex and being trans has nothing to do with who you are attracted to. They therefore advise treating trans as a separate entity and using one of the following approaches specifying that the question completion is optional:

Is your gender identity the same as the gender you were assigned at birth?

Yes No

Do you live and work full time in the gender role opposite to that assigned at birth?

Yes No

In addition Press for Change advise including a third question, in relation to whether people feel able to be open about their past in the workplace or community. This provides useful data on the propensity to give misleading answers.

GIRES also suggests a third question

Do you sometimes adopt the gender role opposite to that assigned at birth?

Yes No

Further, they recommend undertaking a pilot survey, anonymously and in guaranteed confidence.

Under no circumstance should the data ever be attributable to an individual.

Press for Change and a:gender also advise against asking if individuals are in receipt of gender recognition documents. Not only could this imply that you will discriminate against those that have not had their gender identity recognised in law, but there is no legal obligation to declare possession of a GRC.

Discussion and Recommendations

The paper finds that existing data collection and research is limited in this area, as concluded by the Equality Data Review. Yet, it is clear from this paper that to capture more data on the lives of trans people some originality in approach is necessary.

We have made an initial assessment of user requirements and potential methodological constraints. Many benefits to gathering data have been identified, such as community recognition, population estimates, service

provision and equality monitoring and increasing the visibility of trans issues. However, the emphasis on data collection should be used as a means to develop the evidence base on trans issues rather than a simple reporting of numbers.

With this in mind, and due to the difficulties outlined in this paper, such as small sample sizes, privacy and acceptability of terminology, it would seem that data collection via household surveys is not the most appropriate method for fulfilling these user requirements.

It is suggested that these user requirements can be fulfilled by exploring alternative measures. To be effective, this work would need to be led by those associated with the trans community due to issues of trust highlighted previously.

There are three areas that could be considered: attitude surveys, administrative data and specialist surveys. These would not suffice in isolation; rather a combination would be needed to fulfil the user requirements adequately.

Attitude Surveys

Age and gender suggest that using attitude surveys, aimed at potential discriminators, is a better way to assess society's acceptance of trans people. The UK has a number of surveys that explore discrimination and unfair treatment, such as the British Social Attitude Survey and the Unfair Treatment at Work Survey. A recent consultation undertaken by the EHRC and the GEO on the development of an Equality Measurement Framework (EMF)¹³ has suggested extending these to cover trans issues in a similar way as the Scottish Social Attitudes Survey¹⁴.

Administrative Data

The potential use of existing data, such as administrative data would have to be explored. Press for Change suggest that it would be preferred to use existing sources of data wherever possible.

Specialist Surveys

Even a combination of the two methods outlined above would not be adequate to fulfil all of the user requirements. Ideally a specialist survey would be necessary. Another recommendation of the recent consultation undertaken by the EHRC and the GEO on the development of an EMF was for the EHRC to undertake a triennial specialist survey of trans people.

¹³ Draft report for publication end of May 2009

¹⁴ <http://www.scotland.gov.uk/Resource/Doc/205755/0054714.pdf>

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