



Gender Identity Research & Education Society (GIRES)

Consultation: Proposed guidance for legal services regulators on encouraging a diverse profession.

Initiated by the Legal Services Board

Response on behalf of GIRES

December 2016

About the Gender Identity Research & Education Society (GIRES)

The Gender Identity Research and Education Society (GIRES) is a registered charity providing support and information to those affected by atypical gender identity development, as well as to their families, employers, service providers, regulators and government bodies.

We have worked with the Legal Services Board (LSB) for some time (e.g. attending Panel discussion in 2015 and responding to Consultations on your three year and one year business plans). We have also worked with the Solicitors Regulation Authority, The Law Society and the Bar Standards Board.

Further information can be found on our website www.gires.org.uk

Response

Our suggestions regarding the proposed guidance relate only to transgender people. Under this umbrella term we include a wide variety of gender non-conforming people: trans, non-binary, gender fluid, non-gender and the many variations arising from self-descriptions. The various forms of gender nonconformity are increasingly understood to be biological, and to be present from birth.

We are disappointed that on the first page of its consultation document, the LSB states “We have not changed our view on the scope of diversity”. There is no reference at all to the gender reassignment characteristic in your current Consultation.

You have previously indicated that you will continue to keep the gender reassignment characteristic under review and, in particular, work towards better understanding of transgender issues on the part of regulated entities as legal services providers. We wonder if we could engage with you on this.

Other categories are also omitted and the list is not in alphabetical order in accordance with the deliberate drafting of the Equality Act 2010, which is intended to avoid any implications of hierarchy between the characteristics.

The proposed guidance emphasises data collection. We have worked extensively on this matter with regard to transgender people. This has included developing a set of appropriate questions, based on 30 pilot tests in a wide variety of settings with over 700 transgender and cisgender people. These questions, appended

below, are designed to avoid the inappropriate, but all too common, conflation of “sex”, which applies to male and female biological factors, whereas “gender” applies to psychosocial and cultural factors, and is therefore applicable to gender identity, and should be described in social terms such as: man, woman, non-binary gender, non-gender. Essentially, these are individuals whose gender identity is different from the identity typically associated with their sex assigned at birth.

It would be helpful to the regulators to state a number of caveats with regard to monitoring gender nonconformity:

Privacy: Many transgender people do not wish to be detected. Some live in ‘stealth’, meaning that they wish their gender history to be secret. Monitoring may feel quite threatening to people in this position. All questions should be phrased with great sensitivity.

Qualitative evidence: Where gathering accurate quantitative evidence is problematic, qualitative evidence can be extremely valuable and may be obtained from staff consultation groups and stakeholder focus groups. It should include reports of transphobic incidents.

Estimated numbers: Before starting to monitor, organisations may estimate that 1% of their employees and service users are gender nonconforming to some degree¹. Although transgender people assigned male at birth, have historically appeared more numerous than those assigned female, the numbers over recent years appear to be becoming more equal. Recently, some specialist gender services have reported a larger number of clients who were assigned female.

A supportive culture: Before organisations attempt to gather information about gender nonconformity from their staff and service users, it is essential to have created a supportive culture. Only then will these individuals feel confident enough to reveal their backgrounds. As a precursor, organisations may consider monitoring staff attitudes towards transgender people. Achieving the culture change that this may reveal to be necessary will usually require improving: human resources policies, recruitment practices, internal and external engagement processes, and staff training.

Complete confidentiality should be guaranteed when formal monitoring is carried out. The intended use of the data should be carefully explained.

GIRES suggests use of the questions appended below, perhaps initially only to monitor staff, and if that proves successful, monitoring can be extended to service users and customers.

¹ In the EHRC’s own online survey of 10,000 people, 1% answered “yes” to a question about gender reassignment. Even higher figures are reported in New Zealand, Belgium and The Netherlands

We wonder whether you would like to engage with us further on this highly specific issue.

We are very pleased to see that the proposed guidance contains examples of outcomes that are not based on data collection:

2 – Impact assessments on policy development

3 – Work being done by others to educate the profession (which needs to concern more than the business case for diversity)

4 – Diversity initiatives/activities

GIRES monitoring questions:

Sex

(N.B. this question will be required when the intention is to ascertain the number of people covered by the sex protected characteristic or data are needed for clinical purposes)

What is your sex?

- female
- male
- intersex ?some intersex people prefer not to be monitored
- other
- prefer not to say

Gender identity

Do you identify:

- as a woman ?
- as a man
- in another other way ?
- prefer to self-describe? [.....]
- prefer not to say ?

(you may tick more than one box)

Gender non-conformity

Is your gender identity different from the gender identity typically associated with your sex as registered at birth?

- Yes
- No
- Prefer not to say

Gender reassignment

Have you gone through *any part of a process*, or do you intend to (including thoughts or actions) to bring your physical sex appearance, and/or your gender role and expression, more in line with your gender identity? This could include one or more of the following: changing your name, your appearance and the way you dress, taking hormones or having gender confirming surgery.

- Yes
- No
- Prefer not to say