

February 2016



CLINKS
RESPONSE

Clinks response to the care and management of Transgender Offenders

Clinks is the national infrastructure organisation supporting voluntary sector organisations working with offenders and their families. Our aim is to ensure the sector and those with whom it works are informed and engaged in order to transform the lives of offenders and their communities. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users.

We are a membership organisation with over 600 members including the voluntary sector's largest providers as well as its smallest, and our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we are in contact with up to 10,000 individuals and agencies with an interest in the Criminal Justice System (CJS) and the role of the voluntary sector in the resettlement and rehabilitation of offenders.

About this submission

Clinks welcomes the opportunity to engage with this important and timely review. As well as submitting this written response, we have given oral evidence through attending two roundtable discussions hosted by the review team.

We have also promoted information about the review to our members through our weekly e-bulletin Light Lunch and twitter, and have encouraged our members to engage with the review process, especially those with specialist knowledge about the issues impacting people in contact with the Criminal Justice System (CJS) who define themselves as a trans person. We have focused this response on a select few questions of most relevance to our work and that of our members.

Definitions/terminology

- **Consultation Question:** What are the issues relating to terminology (such as transsexual, transgender, intersex, trans) and their definitions? In order to ensure we meet our legal obligations, what are the terms that should be routinely used and how should definitions be applied to make sure operational decisions are consistent and the language used is appropriate and respectful?

Clinks supports the LGBT Foundation's¹ response to this question and advocate using the word 'trans' as an umbrella term to describe people whose gender identity does not match the gender they were assigned at birth. Although this term is widely accepted by many organisations with specialist knowledge

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and expertise, as well as people who would use the term to describe their identity, it is important that the MoJ and NOMS recognise that language is fluid and be alive to this changing in the future.

We would also like to stress that it is important for people to be able to self-define, and for criminal justice professionals to refer to individuals with the appropriate pronoun and name, for example, that the individual has chosen. As well as being respectful this will also support the desistance process as it will ensure an individual is empowered and able to have a voice in relation to the decisions that affect them. Desistance is a process through which an individual may lapse and relapse before they stop offending altogether.²

Data

- **Consultation Question: To better design services and plan ahead, it is necessary to have a reliable figures and data. Figures on transgender offenders have not been routinely collected. Given the data sharing boundaries set by the GRA [Gender Recognition Act], how can a clearer picture of need be created for probation, rehabilitation services and custodial services?**

Although there must be equal access to services for all, to ensure everyone is treated fairly and equally, commissioners need to be aware that some groups may suffer stigma and discrimination. To ensure that such groups are treated fairly and equally, it may be necessary to make separate provision available to ensure equality of opportunity. It is therefore necessary to identify when a service user in contact with the Criminal Justice System identifies themselves as being a trans person.

However, as recently highlighted by the Women and Equalities Committee report entitled Transgender Equality, "there is no reliable data about the number of trans people in the Criminal Justice System."³ This is a significant issue, as highlighted by the Prisons and Probation Ombudsman, who outline that without reliable data "neither NOMS, nor ourselves can be assured that the specific protections afforded to this group under equality legislation are provided to them while they are in custody, or that broader lessons from our investigations are being learned across the prison system."⁴

It is therefore essential that NOMS introduces a consistent tool by which to record a person's gender identity, which goes beyond a binary measure of male or female. This tool needs to allow for someone to self-define and we encourage NOMS to work with specialist organisations, such as the LGBT Foundation and GIRES,⁵ as well as people who identify as being a trans person, to formulate the most appropriate method of asking for and recording this information. It is not only important to record this information as early as possible but that opportunities for disclosing and recording are available throughout someone's involvement in the CJS, whether at point of arrest, sentencing, imprisonment or on probation license.⁶

Although the Gender Recognition Act (2004) prevents professionals from sharing 'protected information' relating to a person who has applied for a gender recognition certificate they are able to do this if they have expressed informed consent from the person who the information relates to. This provision under the Act should therefore not be a barrier to data sharing between professionals unless the service user has not consented to the information being shared.

It is also important to recognise that an individual may choose not to disclose that they identify as being a trans person, or will not want the information to be recorded. This is especially true if someone is concerned that disclosing this information may result in stigmatisation and discrimination towards them in the future. We therefore support GIRES' recommendation that disclosure of someone's identity as a trans person should

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only be disclosed in court with their permission, unless it is pertinent to the case.

Criminal justice staff should be trained and provided with information to help them identify someone who might define their gender identity as different to the one assigned at birth. Specialist voluntary sector organisations working with trans people may be able to provide training or information that assists staff to do this.⁷

Also, if a trans person knows that a specific support service is available for them, they may be more likely or willing to disclose. It is therefore important that the availability of these services are well publicised in criminal justice settings.

Specialist support and facilitating service user involvement

- **Consultation Question: How are voluntary organisations working in the transgender community engaged in work in prisons and through the gate services? How best can these services be commissioned, and by whom?**

Clinks' Directory of Offender Services shows that 89 voluntary sector organisations working in the CJS across England and Wales say that their beneficiaries include "lesbian, gay, bisexual and transgender people."⁸ 79 of these organisations say that they work in the community, whilst 42 work in custody. As there is overlap between these two figures, we can assume that a proportion of these organisations provide through the gate support. Due to the way we collect this data it is unfortunately not possible to determine those organisations that provide specific support to trans people.

GIRES hosts TranzWiki, a comprehensive directory of groups campaigning for, supporting or assisting trans and gender non-conforming individuals, including those who are non-binary and non-gender, as well as their families across the UK.⁹

Commissioning services

Research, including Clinks' most recent state of the sector report, shows that although the voluntary sector working in criminal justice is diverse, the majority of organisations are small and work locally.¹⁰ They are embedded in the communities that they serve, and often rely on grant funding to deliver their services. As was highlighted during the Ministry of Justice-hosted roundtable discussion on the 16th February 2016, this is also true for voluntary sector organisations providing specialist support to people who identify as being a trans person. These organisations are also likely to receive grant funding from trusts and foundations and will bring additional resource to the CJS if they are able to provide support to trans people either in custody, the community or through the gate. These organisations may require additional resources to provide a quality service to courts, prisons and/or probation services.

Specialist organisations working with trans people are unlikely to be in the supply chains for Community Rehabilitation Companies (CRCs), due to their size and the fact that the number of trans people in the CJS is likely to be small. This means that they are unlikely to be providing resettlement support through the prison gate or in the community. They are equally unlikely to be working with the National Probation Service (NPS) because they are required to purchase services through the CRC's 'rate card' which includes services they have commissioned. It is essential that this is not a barrier for specialist organisations and that they are still able to provide services, and be commissioned to do so. Clinks recommends that CRCs and the NPS grant fund or co-commission services to ensure that organisations can provide the most appropriate, resourced support, for trans people in the CJS.

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- **Consultation Question: What role can be played by services provided by the voluntary sector – either those expert on working with offenders or those supporting the wider transgender community? Frequently in rehabilitation, those with “lived experience” are highly effective in motivating others to change, as mentors for instance. How can the sector help in this regard, and how can it be organised and paid for?**
- **Consultation Question: How do CRC and NPS staff access specialist advice if they require it?**

Mentoring and peer mentoring

The voluntary sector provide a range of successful interventions to their beneficiaries, which includes but is not limited to providing mentoring and peer support. Clinks' Directory of Offender Services¹¹ and GIRES' TranzWiki directory¹² give details about where mentoring and peer mentoring services are currently being delivered by the voluntary sector and we encourage the MoJ and NOMS as well as CRCs and the NPS, to use the directories to assess where appropriate services for this group currently exist.

Receiving peer support can inspire and motivate service users on their desistance journey, as they can recognise that others who were in a similar position to themselves have been able to stop offending.¹³ Providing peer support can enable service users to develop self-belief and skills that can, for example, help them with gaining employment. Being involved in decision making in this way can also support someone on their desistance journey and help them to achieve secondary desistance; where they develop an identity and perception of themselves as a non-offender.

It is important that a trans person in the CJS is able to receive specialist support from voluntary sector organisations who work with transgender people or from organisations that provide support to offenders but are also sensitive to the issues an individual may experience if they identify as being a trans person. We recommend that CRCs and the NPS commission specialist support to enable them to meet the needs of trans people in contact with the CJS and that where services are available, they are well publicised within criminal justice settings.

Working with trans people

As well as providing peer support, it is also important to recognise the expertise service users have and to involve them throughout the commissioning cycle – from needs assessment right through to service delivery.¹⁴ Trans people in the CJS have specialist knowledge, due to their experiences, of where the gaps are in current service provision and how commissioners can work to plug some of these gaps. Trans people know what was and would have been beneficial to them during their journey through the justice system, making it crucial that NOMS and the MoJ involve them in any decision-making about additional service provision for this group. This also extends to CRCs and the NPS, who Clinks recommend also engage with trans people to determine how best they can meet their needs. Specialist voluntary sector organisations can support the engagement of trans people but they also need to be involved in the whole commissioning cycle to inform an appropriate and effective service. The voluntary sector is more than just a provider of services, and has unique knowledge about local needs and issues that is essential for ensuring appropriate services are commissioned.¹⁵

There are formal ways through which the views of trans people can be sought, including forums or working groups. One example of this is at HMP Stafford which has have established a group for anyone interested in LGBT issues, open to both prisoners and staff. The group aims to act as a safe space where the men can openly discuss their sexuality.¹⁶ The group was set up with the support and expertise of two local LGBT organisations whose specialist knowledge and expertise was cited as being vital.



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Members of the group have formulated terms of reference and they hold monthly meetings where they invite guest speakers. The group has developed a Health Charter for the prison meaning that there is now an HIV clinic, access to sexual advice and free access to condoms, rather than on request.

Another example of a forum in prison that can be used to consult with or gain the views of equalities groups is the RECOOP older prisoners' forum.¹⁷ This acts a forum through which older prisoners can raise issues and explore solutions together. An example of where consulting prisoners has resulted in a positive outcome is after prison staff reported that the older prisoners were reluctant to shower and this was becoming a hygiene issue. This was raised at the forum and through discussion it emerged that this was because the time given to get to and from the showers was not sufficient for older prisoners with mobility issues. The prisoners came up with the solution of being provided with dressing gowns, allowing them to move between the cells and the showers with dignity within the allotted time. Once implemented this resulted in all the men showering regularly.

A national focus

Engaging with trans people in the CJS and seeking their views on a local or prison level is important, but it is also essential that there is strategic, national oversight too. CLINKS would like to highlight two examples of strategic boards, the advisory board for female offenders¹⁸ and the Young Review advisory board¹⁹, which were both formed in response to a recognition that women, and young men from black, Asian and minority ethnic (BAME) backgrounds, have distinct needs and experiences of the CJS and that national oversight was essential for ensuring these needs are met. Consideration should be given as to whether a similar form of national oversight could be granted to trans people in the CJS.

When introducing a national focus it is important that the MoJ and NOMS implement an approach which includes testing and reviewing progress.

- **Consultation Question: How are transgender offenders best involved in decisions that affect them? What weight should be given to their preference on issues including location for supervision, interventions or on allocation to a custodial establishment?**

To support an individual on their desistance journey it is essential that interventions and decisions about sentence planning and location for supervision are done with the involvement of the individual. This helps to ensure that they feel empowered and also makes it more likely that someone will comply with these decisions as they have been part of the decision making process.²⁰

It is crucial that transgender people in contact with the CJS are involved in all decisions that affect them, and where possible their preferences are adhered to. This process needs to be transparent, making it important that when professionals are not able to support someone's preference they inform the person of why that is the case and what alternative provision they will have access to. It is important for professionals to be aware of the impact this might have on an individual and be able to refer them to specialist support, such as those provided by the voluntary sector.

The NPS and CRCs should also be flexible in terms of where the supervision of trans people in the community takes place. CLINKS recommends they explore options for co-locating staff at specialist voluntary sector organisations as trans people may feel safer and better able to access these locations.

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Training

- **Consultation Question: What training and support is appropriate to make sure that community rehabilitation and NPS staff assess and manage transgender offenders well, engaging them in a way that reduces their likelihood of reoffending and protects the public in the long term.**
- **Consultation Question: How should staff training be delivered and, given the infrequency of a transgender offender being on the case-load, to whom should staff look to for support and expert advice when the need arises?**

As was highlighted in our Tackling Inequalities report, staff working in the CJS are not always equipped to understand the experiences of offenders from equality and minority groups and, in some cases, staff may employ stereotypes and negative labels towards certain groups. This issue is likely to be exacerbated in relation to the needs and experiences of trans people in the CJS, due to their relatively small numbers of practitioners caseloads.²¹

It is important that where training is delivered, that this is done either in partnership with or led by specialist organisations working to support trans people. Trans people who have experience of the CJS need also to be involved in designing or delivering training so that their experiences and perspectives can be directly communicated to practitioners. This can also help to break down any barriers between staff and service users and can help to support someone on their journey to desistance as they will feel empowered and that they have a voice.

Where it is considered necessary to have specialist support for individuals in the CJS, relevant agencies should have pre-arranged agreements with specialist services to provide time-limited support to probation staff in the NPS and the CRC. This will require pre-arranged agreements with local specialist, likely voluntary sector, organisations that can provide the most appropriate support. This relationship could be arranged through a type of 'spot purchase' arrangement that allows the organisations to be brought in under special circumstances to deliver a particular type of support to trans people in the CJS.

Future policy

- **Consultation Question: Are oversight provisions adequate? For example, should Inspections conducted by HMCIP and HMIP, Ofsted and the CQC pay closer attention to these issues and are the expectations set and questions asked sufficient?**

Many equality and minority groups in contact with the CJS face some form of discrimination or disadvantage,²² making it essential that these bodies take into consideration the needs and experiences of these groups during their inspections as a matter of course. Clinks recommends that HMCIP and HMIP carry out thematic inspections into the needs and experiences of trans people in contact with the justice system.

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- **Consultation Question: What arrangements need to be made for future policy development in this area?**

This response outlines policy developments that Clinks recommends take place to ensure the needs of trans people in contact with the CJS are met, and that they are able to receive appropriate services to support them on their desistance journey. A summary of our main recommendations is as follows:

- The MoJ and NOMS adopt the word trans as an inclusive term for someone whose gender identity does not match the one they were assigned at birth but are also alive to this terminology changing in the future.
- The MoJ and NOMS develop a consistent tool, in partnership with trans people in the CJS and specialist voluntary sector organisations, to record a person's gender identity which goes beyond a binary measure.
- People need to be able to self-define their gender identity but statutory organisations also need to be able to recognise that there may be some instances where people do not want their status as a trans person recorded due to a concern that this could lead to discrimination.
- Criminal justice staff should receive training about the needs of trans people in contact with the CJS and this should be delivered in partnership with specialist voluntary sector organisation and their service users.
- CRCs and the NPS should grant fund or co-commission services to ensure that voluntary sector organisations can provide the most appropriate, resourced support for trans people in contact with the CJS. Where services are available, they need to be publicised in criminal justice settings.
- Professionals need to consult trans people about their views and experiences at every opportunity, and take this into consideration when making decisions about their supervision or allocation to a custodial establishment, for example.
- Trans people and specialist voluntary sector organisations need to be involved at every stage of the commissioning cycle, as they have unique knowledge about what services need to be commissioned to meet the needs of this group.
- To ensure appropriate accountability, there needs to be national oversight focused on the needs of this group. We recommend NOMS and the MoJ explore the options for what form this should take.

We welcome this review into a complex issue that has not yet received a specific focus from the MoJ and NOMS. We recommend that there is a long term commitment not only from the MoJ and NOMS but also other relevant government departments to develop policy that will ensure the needs of trans people in contact with the CJS are met. This should be done alongside specialist voluntary sector organisations and trans people themselves.



Clinks supports, represents and campaigns for the voluntary sector working with offenders. Clinks aims to ensure the sector and all those with whom they work, are informed and engaged in order to transform the lives of offenders.

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Author: Nicola
Drinkwater
Clinks is a registered
charity no. 1074546 and
a company limited by
guarantee, registered
in England and Wales
no. 3562176.

Tavis House
1-6 Tavistock Square
London WC1H 9NA
020 7383 0966
info@clinks.org
@Clinks_Tweets
www.clinks.org/policy

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Endnotes

- 1 More information about the LGBT Foundation can be found here: <http://lgbt.foundation/>
- 2 Clinks (2013) Introducing desistance: a guide for voluntary, community and social enterprise sector organisations, Online: <http://www.clinks.org/resources-dij-desistance> (last accessed 23.02.2016)
- 3 Women and Equalities Committee (2015) Transgender Equality, Online: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/transgender-equality/> (last accessed 23.02.2016)
- 4 *ibid*
- 5 More information about GIRES can be accessed here: <http://www.gires.org.uk/>
- 6 Clinks (2014) Tackling inequality in the Criminal Justice System, Online: <http://www.clinks.org/resources-reports/tackling-inequality-criminal-justice-system> (last accessed 23.02.2016)
- 7 Clinks (2014) Tackling inequality in the Criminal Justice System, Online: <http://www.clinks.org/resources-reports/tackling-inequality-criminal-justice-system> (last accessed 23.02.2016)
- 8 Clinks Directory of Offender Services can be accessed here: <http://www.clinks.org/directory>
- 9 The TranzWiki directory can be accessed here: <http://www.gires.org.uk/the-wiki>
- 10 Clinks (2015) The state of the sector, Online: <http://www.clinks.org/eco-downturn> (last accessed 23.02.2016)
- 11 Clinks Directory of Offender Services can be accessed here: <http://www.clinks.org/directory>
- 12 The TranzWiki directory can be accessed here: <http://www.gires.org.uk/the-wiki>
- 13 Clinks (2013) Introducing desistance: a guide for voluntary, community and social enterprise sector organisations, Online: <http://www.clinks.org/resources-dij-desistance> (last accessed 23.02.2016)
- 14 Clinks (2014) More than a provider: the role of the voluntary sector in the commissioning of offender services, Online: <http://www.clinks.org/resources-reports/more-provider-role-voluntary-sector-commissioning-offender-services> (last accessed 23.02.2016)
- 15 *ibid*
- 16 Clinks (2014) Tackling inequality in the Criminal Justice System, Online: <http://www.clinks.org/resources-reports/tackling-inequality-criminal-justice-system> (last accessed 23.02.2016)
- 17 *ibid*
- 18 <https://www.gov.uk/government/groups/advisory-board-for-female-offenders>
- 19 <http://www.youngreview.org.uk/>
- 20 Clinks (2013) Introducing desistance: a guide for voluntary, community and social enterprise sector organisations, Online: <http://www.clinks.org/resources-dij-desistance> (last accessed 23.02.2016)
- 21 Clinks (2014) Tackling inequality in the Criminal Justice System, Online: <http://www.clinks.org/resources-reports/tackling-inequality-criminal-justice-system> (last accessed 23.02.2016)
- 22 *ibid*