



HOUSE OF COMMONS

LONDON SW1A 0AA

Transgender people under the sexual offences Act 2003

Thank you for contacting me about the Sexual Offences Act 2003 and how it applies to transgender people.

The UK has been a world leader for transgender rights, and I welcome the progress that we have already made. However, more must be done to help transgender people with the unique and often difficult challenges that they face. I look forward to a new action plan for transgender equality that is currently being developed, in addition to reviews across a range of Government services to see how they can better serve transgender people. We have come a long way in terms of lesbian, gay and bisexual equality. I now want to see the same for transgender people. I hope the Government will continue to work closely with transgender people to create a society where everyone is free to be themselves.

Having read the Act, I have to say, I do not agree that its wording criminalises transgender people having sex without disclosing their gender history. However, I can understand why there is a perception of ambiguity. The decision of a transgender individual to disclose their birth gender to others is a deeply personal and sensitive one. In the event that gender history is a relevant consideration for prosecutors, this will be only one of a number of factors a prosecutor will consider. Each case is considered on its facts and merits and will only be prosecuted if it meets both stages of the Full Code Test as set out in the Code for Crown Prosecutors. It is important to note that in cases where gender history is a consideration for prosecutors, this does not mean that a prosecution will necessarily follow.

Where a transgender person has received a Gender Recognition Certificate, their legal gender will therefore match their self-defined gender identity and, following the European Court of Human Rights judgement (Goodwin v UK 6 (2002) 35 E.H.R.R. 18) their right to keep private their gender history is legally established.

Thank you again for taking the time to contact me.

Kind regards,

Edward Timpson

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