

Criminal Records Bureau Acts to Stop Creating Trans Victims

By UK Trans Rights Campaigner, Christine Burns

The Criminal Records Bureau has belatedly announced special arrangements in order to prevent the routine exposure of the medical backgrounds of transsexual teachers, nursing staff, care workers and volunteers when they are required to apply for disclosures of possible criminal records.

The changes, which don't compromise the effectiveness of the checking process in any way, have been introduced in response to complaints that the standard procedure directly victimises some categories of perfectly innocent applicants. They are also part of a wider Government response to the recent judgement by the European Court of Human Rights, upholding the right to private life of people treated for Gender Dysphoria.

Problems with backlogs in the processing of so-called "Disclosure" applications have made a lot of headlines over the last few months. The news has served to emphasise the wide range of job categories in which it is now necessary for employees to consent to having their criminal record checked as a condition of getting or retaining a job working with children or vulnerable adults. All the news about the failure to process checks quickly enough has diverted attention away from the implications for certain categories of workers when required to provide personal details of their past though.

The problems for trans staff threatened to be particularly acute and distressing. The vast majority of trans people simply "disappear" into society once their treatment is completed. They appear to neighbours, colleagues and employers alike as ordinary members of their reassigned sex. This has good and bad implications.

The good result is that invisibility of this kind has been the only real protection which trans people have been able to rely upon for decades, in the face of almost-certain discrimination. Even now that it is illegal to discriminate against such people in employment, recent research

suggests that trans people are many times more vulnerable to harassment and blatant discrimination than other groups in society if their past is known.

The downside of invisibility is that most people still know too little about trans people as a diverse group of people. What people “think” they know often comes from tabloid reporting at its worst, and the visible examples of those people who are “in transition” or who are sadly condemned to always look a little bit odd.

Banished from other careers or simply motivated to care for others in society, a sizeable proportion of trans people look for work in the teaching and caring professions. Many have held and enjoyed those posts for years and, even if their past and status may have been matters for discussion in the past, time and the turnover of staff tends to mean that most eventually settle down in some semblance of quiet anonymity, with employers, staff and clients completely unaware of their medical past.

All this was threatened with the introduction of the CRB’s “disclosure” process across entire professions this Spring though.

The process of checking a person’s criminal record is heavily dependent upon the applicant’s honesty in providing details for the bureau to search upon. It is essential for the integrity of the process that the bureau can establish the identity of the applicant beyond ambiguity. In order to do that, most of the three pages of detail requested from applicants involves past names and whereabouts. Quite incredibly, criminal records are held by name. If you fail to supply a past surname and forenames, therefore, the check will be incomplete. For this reason, serious penalties attach to withholding information or giving false details.

Trans people are in a relatively unique position though. Unless your name is unisex, the fact of being once “Janet” and now “John” is a fairly obvious indication of why you might have changed your name.

The “registered persons” charged with checking disclosure applications before submission are quite rightly under threat of severe penalties if they should pass on any personal information gained from processing the forms. In most small organisations, the registered person is an employee’s immediate manager or prospective employer though. And personal details like a transsexual past don’t need to be passed to someone else in order to do damage. Ironically, Care Homes are one category of employer whom the Government decided to exempt from its trans discrimination regulations in 1999.

The CRB was at first unimpressed with the seriousness of this problem for hundreds, if not thousands, of trans workers. Their primary responsibility was, they said, to protect vulnerable people. When campaigners pointed out that the existing process turned trans staff into vulnerable people, the policy directorate was unimpressed. In the words of an official the bureau felt that it had struck “a balance between the rights of Disclosure applicants and those of vulnerable members of society, which [the process] is meant to protect”. They were “satisfied” that the current policy was “the fairest available under the circumstances”.

All this was empty rhetoric so far as the CRB’s potential victims were concerned, of course. Many considered leaving jobs in which they had been happy for years rather than be forced to have their past embarrassingly exposed to employers. None took any comfort from assurances about what would happen to employers who passed on the information revealed in this way. A fine or imprisonment for someone else is no compensation for the irrevocable loss of your own privacy. Nothing can ever give that back once it is lost.

Fortunately for all these people the summer saw the announcement of a unanimous verdict by the European Court of Human Rights, ruling on the cases of two trans women seeking action over regular threats to their privacy and the inability to marry. The court found that the two women’s rights had been violated on both counts. Article 8 of the convention guarantees the right to private life, and Article 12 the right to marry and found a family. Seventeen judges ruled in the case of “Goodwin & I vs UK” that the UK Government in their treatment of trans people violated both articles.

The immediate consequence of the ruling was that the Government conceded that the law on legal status for trans people would need to be changed. Direct instructions were also issued to all Departments of State that existing practices would need to be reviewed in the light of the Judgement, and that rules should be reinterpreted immediately wherever it was possible to do so without legislation.

Campaigners had already supplied the Criminal Records Bureau with several suggested ways in which procedures could be modified to preserve the privacy of trans people without compromising the checking process. Trans people, it was said, were not averse to giving their former identity details to the bureau. The problem was in being compelled to show that private information to employers.

From Monday 28th October 2002, a newly announced procedure therefore recognises this. Trans people are allowed to leave their former names off the relevant section of the disclosure application form, so long as they immediately send the missing information and certain other details to a special address at the CRB's headquarters. From there the staff will marry up the information so that the checks can then be completed as normal. For people without a criminal record in their former identity, no information about previous names or gender will appear in the disclosed information sent back to employers.

It is a simple procedure and begs the question why it could not have been implemented earlier, saving untold stress to innocent and undeniably vulnerable people. Senior CRB personnel should have learned valuable lessons about Diversity from the experience and maybe this will have positive implications in dealing with other minority concerns in future. Being wise after the event is a poor approach to diversity issues of any kind, however – just as it is cold comfort to the family of Stephen Lawrence.

(1300 words)

About the author

Christine Burns has campaigned for the rights of trans people for a decade, as a leader of the lobby group, Press for Change. (<http://www.pfc.org.uk>). She negotiated the 1999 change to the UK's Sex Discrimination Act, which formally outlawed discrimination against trans people in employment. She is also a member of the Parliamentary Forum on Transsexualism, has written extensively on all the issues which affect trans people's lives and integration and has provided extensive advice to Government officials and Parliamentarians examining how to change the rest of the legal framework for such people. A landmark decision by the European Court of Human Rights in July 2002 means that long-awaited legal recognition should now at last be on its way for trans people in the UK, which is one of very few countries yet to legislate for transsexual people's privacy, marriage rights and general welfare. As in other areas, merely changing the law doesn't change people's attitudes, so Christine anticipates a long career still to be spent in education. This example within a single government body illustrates the importance of better overall diversity training for all Government employees though, so that problems like this are dealt with intelligently and are preferably avoided in the first place.