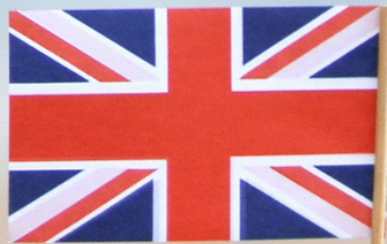


Sex and the Data Bill

– beware of building digital identities on sand



Summary report
December 2024

Contents

One-page summary	3
Introduction	4
What is a digital identity?	5
New legislation and standards	6
The problem with sex data	7
An immutable attribute	7
The data is corrupted	7
Bad data causes harm	9
The government's trust framework has not yet addressed the issue	10
A way forward	12
Principles for inclusive, accurate digital identity	13
Personal data can sometimes be kept private	13
When sex data is needed it should be accurate	14
Immediate action is needed	15
Use-cases for digital verification of sex information	16

The full version of this report is available at sex-matters.org/data-bill. It includes details of how sex is recorded currently in:

- passports
- driving licences
- NHS records
- police records
- Disclosure and Barring Service checks
- birth certificates.

One-page summary

The government has introduced the Data (Use and Access) Bill¹, which it says will boost the UK economy by £10 billion over 10 years, save millions of staff hours in the police and NHS, and make it easier for people to do business and access services. Core to this bill is a trust framework for “data verification services” (DVS) to allow people to exchange verified personal information about themselves easily without relying on paper documents.

Sex is an important fact about an individual, which is often necessary to share and record for reasons including safety, fairness, dignity, privacy and safeguarding, in situations including health and social care, sport, criminal justice and access to single-sex services.

There is a critical flaw in the design of the DVS trust framework: government data itself is not trustworthy when it comes to the core personal characteristic of sex. The Data Bill will set up a trustmark for private-sector services to handle people’s data. But government bodies such as the Driver and Vehicle Licensing Agency, Passport Office and NHS Personal Demographic Service, which are relied on as “authoritative sources”, would fail to meet the standard.

Unless the problem with these authoritative sources is addressed, the DVS system will be unreliable, costly and dangerous. It will lead to people being locked out of services they should be able to use and being treated dangerously in areas such as healthcare, and public servants having to undertake costly, inefficient and dangerous workarounds to record information outside the system. It will fail to deliver savings or facilitate economic growth.

Conversely, the shift to digital identities creates an opportunity for a simpler, more coherent system for recording sex accurately while allowing people to keep their information private when it is not needed. The problems with the incoherent data and confusion over sex and gender identity can and must be addressed to protect everyone’s rights.

The new legislation provides the opportunity to build in data protection by design and by default for sex data.

We call on the Secretary of State to ensure this risk and opportunity are addressed in the Data (Use and Access) Bill, and by the Office for Digital Identities and Attributes.

¹ UK Parliament (2024). ‘Parliamentary Bills: Data (Use and Access) Bill [HL]’.

Introduction

The government has introduced the Data (Use and Access) Bill² through which it aims to boost the UK economy by £10 billion across 10 years and free up millions of staff hours in the police and NHS, saving hundreds of millions of pounds and making it easier for people to do business and access services while protecting their privacy.

The bill provides a statutory basis to standardise how personal data is recorded, making it easier for information to flow safely, securely and seamlessly within public services and across health and social care, and between public and private data systems, based on individual consent.

The benefits the government promises include:

- **cutting down on bureaucracy for police officers** saving around £42.8 million and 1.5 million hours a year keying in data
- **making patients' data easily transferable across the NHS** freeing up 140,000 hours of NHS staff time every year
- **simplifying important tasks for citizens** such as renting a flat or entering employment by enabling a system of digital identity verification to allow people to verify their identity and facts about them without using paper documents.

The government is clear that the aim is *not* to create a new mandatory digital ID system or to introduce "ID cards", but rather to provide the basis for a decentralised system for standardised recording, verification and sharing of personal information that will protect people's privacy. For this system to work, it is crucial that **safeguards** are put in place to secure the accuracy of the data and ensure it is stored and used in ways that do not breach people's privacy.

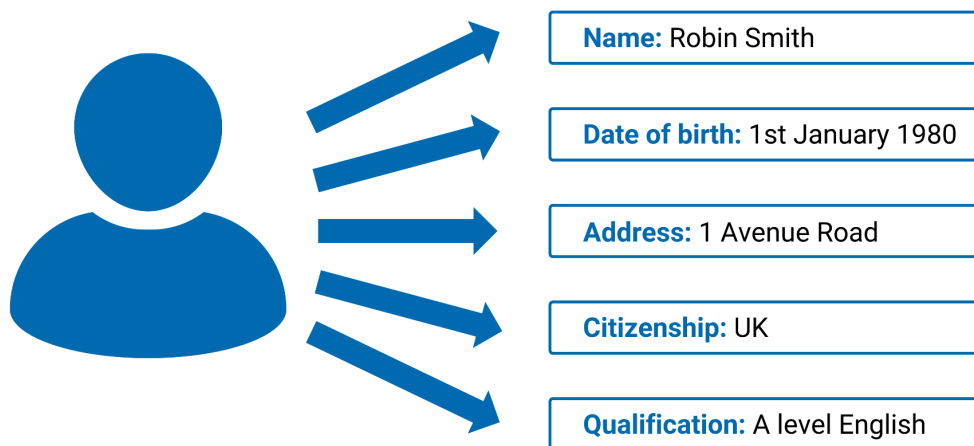
Sex is an important piece of personal identity information. It is both part of a person's **foundational identity** recorded when they were born, and an **attribute** about them which needs to be recorded accurately and shared in situations including health and social care, criminal justice and sport. **Unless the digital identity system assures accuracy in the recording of sex, it will fail to deliver savings, enable safety and convenience or secure trust.**

² UK Parliament (2024). ['Parliamentary Bills: Data \(Use and Access\) Bill \[HL\]'](#).

What is a digital identity?

A digital identity is a digital representation of a person's identity information, such as their name and date of birth. It enables people to prove who they are without presenting physical documents. At the individual's request, it can also contain other information about them such as their address, their qualifications or the fact that they have a particular bank account.

Figure 1: Digital identity example



Unlike a physical document, digital identity allows the individual to limit the information they share in any particular situation to only what is necessary. For example, if they are asked to prove they are 18 or over, they could do this by unlocking an app on their phone with their fingerprint, and showing a QR code that provides a simple Yes/No response and avoids sharing any other personal details.

Attributes are pieces of information that describe something about a person or organisation. Attributes can help people prove that they are who they say they are, or that they are eligible or entitled to do something.

New legislation and standards

Work on rules and systems for digital identity verification is ongoing. The government has set up a new **Office for Digital Identities and Attributes** within the Department for Science, Innovation and Technology to enable the development of a trusted and secure digital identity market in the UK.³

Four versions of the **UK digital identity and attributes trust framework** have been published, with the final version expected in 2025.⁴ This is a set of rules and standards in areas including privacy, data protection, fraud management, cybersecurity and inclusivity. The trust framework aims to set stringent rules.

The Data (Use and Access) Bill will establish a statutory basis for implementation of the framework. The bill will enable the Secretary of State to establish and govern a new register of service providers. These providers will be independently certified against the trust framework and will be able to get a “**trust mark**”.

The trust framework provides that identities are underpinned by authoritative data sources. Currently this most commonly involves scanning drivers licences and passports. The bill will enable the the creation of an **information gateway** so that public bodies such as the Driver and Vehicle Licensing Agency (DVLA) and His Majesty’s Passport Office (HMPO) will be able to share information directly with registered organisations to enable them to carry out identity or eligibility checks for a member of the public. This information may be released only on the request of the individual to whom the information relates.

³ UK Government (accessed November 2024). [Office for Digital Identities and Attributes](#).

⁴ UK Government (2024). [UK digital identity and attributes trust framework gamma version \(0.4\)](#).

The problem with sex data

An immutable attribute

Sex is a physiological attribute about a person that is determined at conception and observed at (or before) birth. Sexual reproduction, the generation of offspring by fusion of genetic material from two different individuals, one male and one female, evolved over a billion years ago – long before humans, words or laws. It is the reproductive strategy of all mammals as well as other higher animals and plants. Like other mammals, human females produce eggs and gestate live young. Males produce sperm to fertilise the female egg. In accordance with their respective reproductive roles, females and males have different reproductive anatomies (this is sometimes termed “biological sex” or “sex recorded at birth” to disambiguate from other uses of the word “sex”).⁵

The Gender Recognition Act 2004 means it is possible that a person’s “certified sex” as recognised in law can be changed for some purposes.⁶ However, an individual’s actual sex remains an immutable feature that is important throughout their lifetime.⁷

The data is corrupted

In practice the information that is currently recorded as “sex” (or “gender” as a synonym) by many public and private bodies is neither accurate nor reliable. In most cases it neither reflects biological sex nor certified sex, but has been replaced by information representing “gender identity” (for more detail see Appendix B of our full report⁸). For example:

- **Passport** – recorded sex can be changed with a doctor’s note indicating that the person wishes to live “as the opposite gender” – *3,188 records known to be affected over the last five years.*
- **Biometric residence card** – a person’s recorded sex can be changed if their name is changed by deed poll or if the “sex” marked on their home-country passport is changed.

⁵ See *Bellinger v Bellinger [2003] UKHL 21*.

⁶ For example for the purposes of marriage and pensions (and thus HMRC and DWP records).

⁷ Very rarely someone’s biological sex may be misdiagnosed at birth.

⁸ Sex Matters (2024). *Sex and the Data Bill – beware of building digital identities on sand*.

- **Driving licence** – a person’s recorded sex can be changed on request: it does not appear on the face of the driving licence, but is encoded in the licence number – *15,481 records known to be affected over the last six years.*⁹
- **NHS records** – a person’s recorded sex can be changed on request, after which a new NHS number is issued. It is not known how many records are affected. The problem was identified as a serious issue by the NHS as long ago as 2009, but since then has only worsened.¹⁰
- **UK birth certificate** – this records either a person’s actual sex or their sex as modified by a gender-recognition certificate – *8,464 records known to be affected over the last 20 years.*

A gender-recognition certificate (GRC) enables a person to get a new birth certificate and to change the sex recorded against their identity by HM Revenue & Customs and the Department for Work and Pensions. Around 8,500 GRCs¹¹ have been issued, by however according to the last censuses in England and Wales and Scotland there are about 100,000 people who identify as a “transgender man” or a “transgender woman”¹² (although there are some concerns about the reliability of this data).¹³ More than 15,000 driving licences were changed between 2018 and 2023 – more than four times the number of GRCs issued over the same period. What is clear is that there are people whose sex recorded on official records does not accord with their actual sex, including many people who have their sex recorded inconsistently across different official records.

Apart from the law allowing people to obtain a new birth certificate via the Gender Recognition Act, these policies of allowing changed records have happened in an ad-hoc manner outside any legislation. It has been done according to differing criteria and at the discretion of a wide range of government departments and agencies, including the Home Office, Ministry of Justice, HM Passport Office, the Driver and Vehicle Licensing Agency, the National Health Service Personal Demographics Service and NHS trusts. No systematic records have been kept, so it is impossible to tell from either the face of an identity document such as a passport or driving

⁹ Figures compiled from [freedom-of-information requests through *Who Do They Know*](#).

¹⁰ NHS (2009). [Sex and Current Gender Input and Display User Interface Design Guidance](#).

¹¹ Ministry of Justice (2024). [Tribunal Statistics Quarterly: April to June 2024](#).

¹² Office for National Statistics (2023). [‘Gender identity’, Data and analysis from Census 2021](#), and Scotland’s Census (2024). [Sexual orientation and trans status or history](#).

¹³ Michael Biggs (2024). [‘Gender Identity in the 2021 Census of England and Wales: How a Flawed Question Created Spurious Data’](#), *Sociology*, 0(0).

licence or from a simple query of the underlying records whether the sex of the person holding the identification is recorded accurately.

No-one's sex records as held by HMPO, DVLA or the NHS can currently be treated as reliable. But the digital identity and attributes trust framework treats these as authoritative sources.

Bad data causes harm

Even though someone's actual sex is usually readily perceptible in person (and a person with a transgender identity may be open about being transgender), inaccurate and unreliable records create problems, confusion and significant risks of harm and liability.

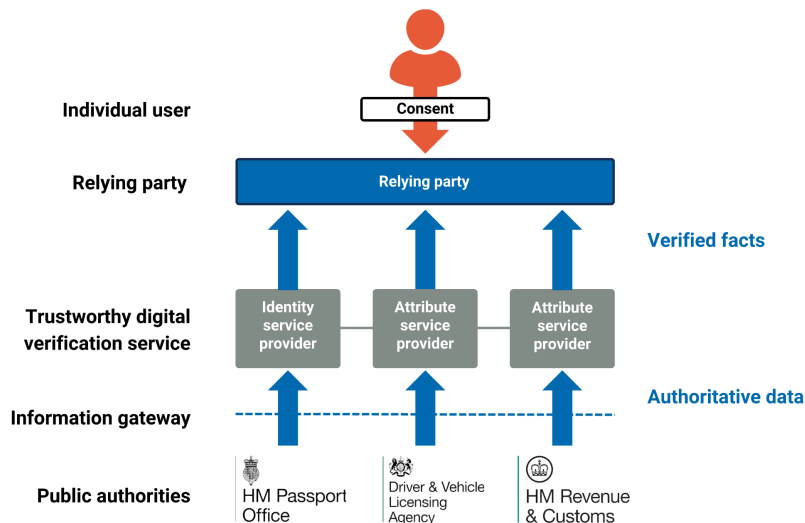
- **People with mismatched identities risk being flagged up as a "synthetic identity" risk.** This could lead to transgender people being excluded from services such as banking.
- **Authorities with statutory safeguarding responsibilities will be unable to robustly assess risk** related to the sex of children or vulnerable people, and the sex of potential abusers. Children's and vulnerable people's healthcare records can be lost if they identify as transgender and change their NHS number.
- **Illnesses may be misdiagnosed, treatments may be misprescribed and medical risks may fail to be identified** if the wrong sex is stated in a person's medical records.
- **People will be unable or less likely to access services for their sex** (such as cervical and prostate screening services) if they are recorded as the wrong sex.
- **Time wasted.** For example, everyone who is having an X-ray must be asked if they might be pregnant because the administrative recording of patients' sex is inaccurate.
- **Police and others aiding law enforcement risk being unable to identify people** who have been recorded as the wrong sex.
- **Disclosure and Barring Service checks** may fail to match an individual with their criminal record because of searching the wrong "gender".
- **Service providers will be less able to use data-verification services to create value,** because those digital IDs do not contain reliable sex information.

- **People risk being placed unexpectedly and non-consensually in intimate situations** with members of the opposite sex, causing discomfort, humiliation and exposure.
- **Official data will not be a sound basis for proving eligibility for the female sporting category**, meaning that it may be used to evade sex-based rules and undermine the fairness and safety of women’s sport.

The government’s trust framework has not yet addressed the issue

The latest version of the UK digital identity and attributes trust framework was published on 25th November 2024.¹⁴ It describes a system in which identity service providers and attribute service providers can interact to enable individuals to prove that they are who they say they are, and to prove key facts about themselves.

Figure 2: Schematic of relationship between trust framework participants



The system relies on underlying **authoritative sources** of information such as passports and driving licences.¹⁵ However, nowhere in the current guidance is it explained that neither a passport or a driving licence can currently provide authoritative information on a person’s sex. In relation to attributes, the framework simply says “gender” instead of sex, and does not recognise that this is not an adequate description of the attribute of sex.

If one attribute service provider uses “gender” to mean biological sex (male or female), another records male and female (as recognised by HMRC, including by virtue of a GRC) in a field

¹⁴ UK Government (2024). *UK digital identity and attributes trust framework gamma version (0.4)*.

¹⁵ UK Government (2024). *‘Authoritative sources’, How to prove and verify someone’s identity*.

marked “sex” and a third records “male” or “female” alongside “non-binary”, “transwoman” and several other possible self-descriptions in a field marked “gender identity”, it will be impossible for them to exchange data robustly, or for anyone to rely on it.

The UK GDPR requires organisations to consider data-protection concerns in every aspect of their processing activities, an approach known as “data protection by design and by default”. The practice of mixing immutable objective sex, legally certified sex including via a GRC, and mutable subjective gender identity in the same field is a barrier to this approach. **The Information Commissioner’s Office (ICO)** has yet to comment on the issues of data protection in relation to the sex attribute; but it has said that it will continue to provide regulatory advice to the government on data-protection matters in relation to the development of the digital verification services scheme.¹⁶ It should be asked to provide urgent advice on the problems with the sex attribute.

The Data (Use and Access) Bill provides for the development of an **information gateway**, which will provide a way for individuals to validate their personal information directly by providing consent for it to be checked using an automated process with the DVLA, HMPO or other participating public agency such as HMRC or the Registrar General. It seems likely (although this has not been acknowledged as an issue by the Office of Digital Identities and Attributes) that the information gateway, if it relies initially on HMPO, DVLA and HMRC sources, would be unable to respond to *any* request for a person’s biological sex, since none of these sources can authoritatively return an “F” only for people who are actually female, or an “M” only for people who are actually male.

The digital identity system as it is currently conceived will therefore provide a useless and dangerous mix of unreliable information and no information at all on individuals’ sex. Rather than cutting costs, it will create new costs, since anyone who needs to know and record service users’ sex will have to create ad-hoc solutions and complex workarounds. These include frontline healthcare workers, police officers, workers in women’s refuges and gym staff, who must routinely recognise and record whether a person they are dealing with is male or female.

The system is being built on sand. The Data Bill will enable the Secretary of State to establish a register of private-sector identity-verification service providers. But the reality is the public bodies that provide the bedrock of the data-verification system are currently unfit to meet the government’s own trust standard in relation to the “sex” attribute.

¹⁶ Information Commissioner’s Office (2024). [*Information Commissioner’s response to the Data \(Use and Access\) \(DUA\) Bill.*](#)

A way forward

Official data systems are in such a mess in relation to sex because of decades of ad-hoc and informal measures attempting to accommodate the wishes and protect the privacy of people who identify as transgender. A particular concern has been to allow people to access services where having an apparently mismatched identity could cause problems, embarrassment or exclusion. For example a person with a female name and feminine dress style trying to travel on a passport that stated their sex as “male” may have had difficulties in the past. **Responding to this problem by misrecording sex was an unsatisfactory solution for an analogue age. Not only did it corrupt data and create knock-on problems, but the digital revolution now makes it unnecessary as a privacy protection measure.**

The crucial difference between a system built on decentralised digital identity and one based on paper credentials is that each attribute can be treated separately in any particular situation. In a digital system the user needs to reveal only the pieces of information needed for a particular interaction. For example, there is no need to share whether someone is male or female when they are proving they are over a certain age or have a right to rent, or to use a person’s sex as matching information where other reliable checks exist such as biometrics.

But having a false or erroneous piece of information recorded in the sex field is a serious problem, which leads to unnecessary and costly system failures. Data verified for one purpose may be used for another. Unless the data definitions are standardised and information quality is assured, the whole data set becomes degraded and potentially dangerous because it cannot be relied on to be accurate.

Principles for inclusive, accurate digital identity

A digital identity framework which works for everyone would ensure that:

1. Sex remains clear and accurate as part of the **foundational identity** of every individual.
2. Every individual can validate their sex as a **functional attribute** in situations where sex matters.
3. Organisations can validate any individual's sex **when that information is needed** and they have consent (or for other overriding reasons such as criminal investigation or safeguarding).
4. Every individual can **keep information about their sex private** in transactions for which that information need not be shared.
5. People who have changed their recorded sex in some legacy systems **are not excluded** from using digital identity systems that rely on accurate sex data.

Personal data can sometimes be kept private

Article 8 of the European Convention on Human Rights¹⁷ protects the right to privacy. This does not mean a person has absolute freedom to determine what data is recorded about them.

This is illustrated by a legal case concerning a person's date of birth.¹⁸ A refugee wished to have what he claimed was an incorrect date of birth changed on a biometric immigration identity card. He was on hunger strike and suicidal, and said the data recorded was "dehumanising and corrosive of his sense of identity". Nevertheless, the judge ruled:

"A public authority's record-keeping function must respect the Article 8 rights of individuals, but that does not extend to inserting information in records which is not supported by evidence and is considered, on good grounds, to be inaccurate and misleading."

The solution for balancing individual rights and the need for robust administrative data is for sex data to be treated like all other personal information. There is no need for data to be falsified to

¹⁷ European Court of Human Rights (2024). *Guide on Article 8 of the European Convention on Human Rights*.

¹⁸ *Regina (WA (Palestinian Territories)) v Secretary of State for the Home Department [2021]*.

keep it private; it is merely not shared when not needed. The same approach should be taken for sex.

When a piece of data does not need to be seen or recorded by the relying party, it need not be shared (for example, an age-verification app does not need to reveal a person's sex, their name or other information about them). This does not stop people from noticing what sex someone else is when meeting them in person, or from acting on that information. Services that need to know a person's sex can exclude people who don't wish to provide that information, just as they may refuse to serve alcohol without checking that the person is over 18.

When sex data is needed it should be accurate

Everyone knows which sex they are, and other people can almost always tell. Where this information is needed, for most purposes an **honest answer to a straightforward question** will suffice. The trust framework should require that organisations that record data are clear about the definition of sex and do not collude in misrecording a person's sex when they know the sex that person has reported is inaccurate.

Sex can also be validated by a more formal **assessment**. A person's doctor and other healthcare professionals will know their patients' sex for certain, and should be expected to record it accurately in a clearly defined field. For female athletes, a cheek swab can be used to robustly determine sex chromosomes.¹⁹

For people born in the UK, the most reliable and straightforwardly accessible record of their sex remains the **birth register**. Sex is recorded at birth. This is done using the birth notification system²⁰, which results in the allocation of an NHS number. A baby's sex is recorded in their personal child health record (PCHR), also known as "the red book", and then in the birth register, along with place and date of birth, name, and details about the parents (the child's birth mother, and the father or second legal parent).²¹ This forms their foundational identity. An **electronic birth register** (which the Data Bill provides for) would allow the information gateway to bypass the corrupted records of the DVLA and HMPO and query an individual's birth record (with consent) in order to verify their sex.

¹⁹ Ross Tucker, Emma N. Hilton, Kerry McGawley et al (2024). 'Fair and Safe Eligibility Criteria for Women's Sport', *Scandinavian Journal of Medicine & Science in Sports* 34, no. 8 (2024): e14715.

²⁰ NHS England (2024). '[Birth notification process](#)'.

²¹ UK Government (1953). '[Births and Deaths Registration Act 1953](#)'.

Immediate action is needed

Unless the digital identity system assures accuracy in recording of sex it will fail to gain trust, deliver savings or facilitate economic growth.

Solving the problem with sex data is both urgent and doable. To avoid chaos and capitalise on opportunities, the government needs to **recognise the need for accurate sex data and design it into the Data Bill, and the digital identities and attributes trust framework.**

This will take leadership.

- **The government** must make clear that enabling accurate everyday verification of sex is a policy objective, and give clear policy direction to officials in the Office for Digital Identities and Attributes.
- **Parliament should enact amendments** to the Data Bill to ensure that sex data is defined clearly and can be verified.
- **The Office for Digital Identities and Attributes** should investigate the issue, convene stakeholders and publish a technical paper proposing a practical approach.
- **The Information Commissioner's Office** should provide detailed commentary on whether current data systems are in breach of data-protection principles, and on the proposed approach.

The fundamental problem is the need for **authoritative data sources**. This can be solved.

- The bill makes provision for **digital birth records**. When connected to the information gateway, this register can provide an accurate source of sex data.
- **HMPO and DVLA records** on sex must be excluded from the gateway and the attribute verification standard unless and until they are able to provide accurate sex data.
- The bill makes provision for a new **health and social care data standard**. This must also ensure that sex is recorded accurately, to provide another authoritative source.

This solution would mean that individuals and organisations are able to have clear records of sex, and that sex is treated like other aspects of personal identity, in line with data-protection principles.

We call on the Secretary of State to ensure this risk and opportunity are addressed in the Data (Use and Access) Bill and by the Office for Digital Identities and Attributes.

Use-cases for digital verification of sex information

Communal space

A mixed-sex group of friends are organising a walking holiday, staying in a series of youth hostels. On some nights they book to stay in a private bunk room together as a group, and on others they book beds in male and female dorms shared with other travellers. Each of the party is a member of the Youth Hostel Association and when they joined they used a digital identity to validate their details, including their sex. The YHA's online booking system uses this to allocate them to male and female dorms.

Medical records

A fracture clinic asks patients to log in with their name and their date of birth on a screen when they arrive for an appointment. It uses this to match them with their medical records. They do not need to key in their sex. Their sex is not displayed on the landing screen of their records that is seen by the receptionist; however, it is seen by their doctor, who can view their full details. Frank is a transman – that is, a female person who identifies as a man. Frank feels comfortable checking in for medical appointments. Frank receives invitations for the correct screenings, such as cervical smear tests. Healthcare professionals dealing with Frank are able to consider risk factors associated with being female (such as the possibility that Frank might be pregnant when undergoing an X-ray).

Bodily contact

Mina is a self-employed beautician who provides intimate waxing services from her home. She advertises that she will provide this service only to women. As part of the booking process, she asks clients to log in with a digital identity that includes information on their sex, and she checks their identity using an app when they arrive. This helps Mina feel safe in providing her service.

Online dating

Jamila is a lesbian. She joins a dating app. On joining she validates that she is female using her digital identity. As part of the registration process she indicates that she is only interested in being introduced to other women (female people). Saskia is bisexual. She joins the dating app and indicates that she is interested in being introduced to people of either sex. Zile is pansexual and genderqueer. Zile does not wish to disclose her sex as Zile does not believe sex is important. Therefore, on joining the dating app Zile chooses not to provide this information. Zey will not be matched with either Jamila or Saskia, but will be matched with other users of the app who have indicated that they do not need to know the sex of people they may meet for dates.

Shared space

Frieda rents out property to paying guests using an online service. She has a holiday cottage that she lets out and has guests to stay with her in her home. While anybody can book the cottage, for those staying in her home she specifies only female guests, as they are sharing her living space. The service validates the identity of all guests booking but requires information on sex only from those who are seeking to book properties that are restricted on this basis.

Workplace security

A workplace uses a digital ID system for entry and for logging onto the IT system by fingerprint. Yusuf is gender-fluid and sometimes identifies as Yasemin. The employers' data system includes both Yusuf's legal name and nickname, as well as Yusuf's sex. When entering the building the automatic gate recognises Yusuf/Yasemin's fingerprint. Both names can be seen by security staff on screen, together with a photograph. Information on Yusuf/Yasemin's sex is not immediately visible on screen, but could be accessed if needed.

Sporting categories

Selina, who is 16, is a keen athlete. She competes in her school team, trains with her local running club, competes at county level and aims to qualify for the youth national games. She is registered with England Athletics through her local running club, and her running times in heats and competitions are recorded against her registration number. Her sex and date of birth were recorded when she first registered, based on her showing her birth certificate. This allows her to enter races in her correct age and sex class. She knows that if she qualifies for the national team she will need to undertake a test by a cheek swab to confirm she has 46XX (female) chromosomes. This is a one-time test and the data will be added to her registration to secure the integrity of women's sports competitions.

Age verification

A digital ID system is available for people to validate their age at the supermarket or pub for the purposes of buying alcohol. The app generates a QR code that can be scanned by retail staff to receive confirmation that the person is over 18 years old. These staff do not see any further details such as name, sex or photograph. Stephanie is transgender: a male person who wishes to be treated socially as female. Although showing an ID that states Stephanie's sex as male would not reveal any information that is not visible to a casual observer, doing so nevertheless makes Stephanie feel uncomfortable, and has led to unwelcome comments in the past. Using the digital app avoids sparking awkward conversations.

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Published 3rd December 2024