

Sir Patrick Vallance KCB
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Dear Minister,

During the House of Lords debate last night on the Data (Use and Access) Bill, you put down some important markers. You said that:

1. Accurate data is essential.
2. Sex data should be accurate when processed by public authorities.
3. Data must be accurate for its purpose and must not be misleading.
4. It should be clear to digital verification service (DVS) providers what information shared with them by public authorities means.

You pledged that **when information is shared through the information gateway, it will be clear what that information represents, including in relation to sex.**

But you rejected the amendments which would provide a mechanism for fulfilling this pledge by setting a clear definition for DVS service providers and carrying out an assessment of whether public authorities can reliably ascertain the accuracy of the data they collect, record and share on the sex attribute. You said that these measures would be **inappropriate and disproportionate**. Your noble colleagues were not adequately reassured by this, and the amendments to secure accurate sex data passed.

Although the government is likely to succeed in voting these amendments down in the Commons, the ball is now in the court of the DSIT ministerial team to propose an **appropriate and proportionate way to ensure that DVSs meet the aims that you have agreed are legitimate and necessary to comply with data protection.**

In order to do this you will need to face up to the inadequacy of current practice, which is based on gender-identity ideology, and which is not in line with data-protection principles. This requires some bravery, as Baroness Kishwer Falkner, Baroness Hilary Cass and Secretary of State Wes Streeting MP will tell you.

I am attaching as an annex a more detailed response to your statements in yesterday's debate. In trying to avoid cutting the Gordian knot you are inventing new, intractable and unnecessary puzzles and questions. You said that:

“before the information gateway provision is commenced, the Government **will carefully**

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consider how and when biological sex may be relevant in the context of digital verification checks, and will take that into account when preparing the DVS code of practice.”

This is a question with a simple answer, which you have already given. Biological sex is relevant to answer a question about sex accurately. There is no other accurate answer.

The aim of the DVS system is to enable people to prove facts about themselves for multiple uses. Either the data is accurate or it isn't. The DVS system is designed to enable people to share their own personal, verified data with their consent. Inquiring about the purpose of the data beyond this is impractical and would further impinge on data minimisation by requiring more data to be collected and processed.

Some people (around 8,000) have an “acquired gender” under the Gender Recognition Act. There is also an accurate verifiable answer to the question of whether someone has an acquired gender under the Act. But this is different from the sex question.

Data-protection principles of accuracy, privacy and data minimisation mean that the answers to the two questions should not be linked or substituted for each other, and that each needs a specific purpose to be collected or recorded. The answer to the “acquired gender” question has additional privacy protections, which means this question should not be asked routinely. (In fact, it is rarely necessary: among the situations where it is needed are when conducting a person's marriage or recording their death.)

In trying to avoid taking the necessary steps to exclude unreliable data sources from the DVS system you mentioned several other processes, including those being undertaken by the EHRC, the Data Standards Authority, the Office for Statistics Regulation and the Office for National Statistics. It is notable that the one agency you did not mention (and which should be held to account for the widespread flouting of data-protection principles) was the Information Commissioner.¹

None of these other processes solve the fundamental problem, which is that you have made two incompatible pledges. You said that you would make sure that DVSs accurately verify sex data. But you also said that you will not seek to “change the evidence that individuals rely on to prove things about themselves. The measures simply enable that to be done digitally.”

You have a really simple question to address without delay (and it does not rely on the Supreme Court's judgment, or the EHRC's forthcoming guidance to service providers). **Will the DVS system continue to enable people to “prove” that they are the opposite sex or will it enable people to prove their sex accurately? It cannot do both.**

Yours sincerely



Maya Forstater, CEO

¹ NB: the Information Commissioner is on record as having strong personal views which are at odds with UK law on this <https://thespinoff.co.nz/society/21-02-2019/transgender-self-identification-why-its-a-human-right>

Annex: Notes on Sir Patrick Vallance's statements in the Lords on 12th May 2025

Current practice

During the debate you made an important admission: **that passport data “does not capture biological sex” and therefore cannot be used to verify sex.**

But for most people passports are based on proof of their biological sex (from the birth register) and there is no public warning on the face of a passport, or on the HMPO website or in HMPO's metadata, which explains that where a passport says “sex” (F or M), it is making no claim that this is accurate, reliable data about a person. Nor are passport-holders told that what appears to them (and to others) to be an authoritative record in an official document attesting to a fact about them is no such thing, and that it is not intended for any purpose at all. It is difficult to see how this approach is compliant with data protection.

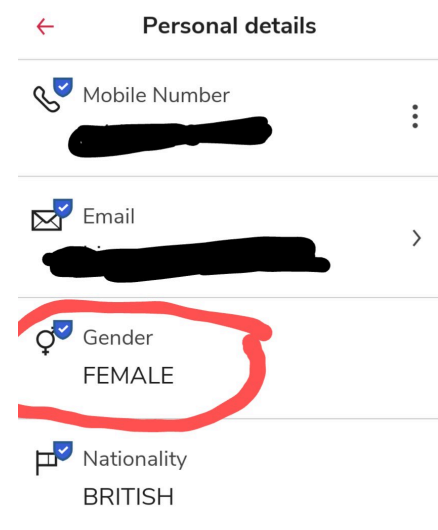
As you stressed to the House of Lords, the principle of data accuracy is already included in law. It requires that only data accurate for the purpose for which it is held can be used. People could, therefore, entirely reasonably assume that the information on the face of a passport is reliable and accurate, and that it has a purpose.

The DVS Framework is now on its “Gamma” iteration and is in use by the private sector, with apps such as Easy ID from the Post Office (with technology supplied by leading provider YOTI). So we can already see how trustmarked apps will work (albeit without the information gateway, which requires legislation).

There is nothing in the Gamma framework that tells DVS providers that passport data cannot be relied on as an authoritative source for the sex attribute. We first raised this issue with the civil servants working on the Digital Identity Trust Framework in 2021.

Digital ID services such as the YOTI/Post Office app therefore “verify” that a person is male or female based on passport sex (just as they verify a person's age based on the date of birth on their passport, because this is a trustworthy authoritative source).

The Easy ID App would verify that a male “crossdresser” who has written a letter to the passport office saying that he wished to live in his feminine persona full-time (this is a specific criterion applied by HMPO, which uses this language) is female.² YOTI/Post Office and other DVS providers are in no position to know this, and nor is a data user that relies on their apps. Indeed the Trust Framework, which is detailed and prescriptive, tells DVS providers that they *must* treat data from “authoritative sources” as having the top score for reliability, and that they cannot change this data.



² <https://www.gov.uk/government/publications/gender-recognition/gender-recognition-accessible>

Baroness Ludford raised the question of whether the principle of data accuracy had been applied in practice where sex data has been substituted with gender identity. You defended this substitution, saying:

“I am afraid the fact is that it was **accurate for 15 years** because there was a muddle about what was being collected. There was no requirement to push for biological sex, but that is the case now.”

This is falling into the very trap that you warned about in your own speech: inappropriately extending the reach of the Supreme Court judgment in the case of *For Women Scotland*. The court answered a limited question about whether a person with a gender-recognition certificate (GRC) is considered to have changed sex for the purposes of the Equality Act 2010.

Whether it is reliable (in any sense) to attach the data attribute “sex: female” to a male person could be answered long before 16th April this year. The answer is No: it was always a breach of data accuracy.

You said to Baroness Ludford that there is a “clear imperative **under the new situation** to have biological sex verified as biological sex”. In fact there was always a clear imperative to have biological sex verified as biological sex, because answering the sex question with “female” for a male person, or “male” for a female person, is false and misleading. (As the Sullivan Review makes clear, the question “what is this person’s sex?” is an entirely different question to one about “gender identity”, which is a subjective idea that may be personally meaningful but is not an objective fact that can be verified, and which should not be conflated or confused with sex).

Allowing male people to be recorded as female and female people to be recorded as male never complied with the principle of data accuracy. And as you have demonstrated, this practice has an impact not merely on those individuals who seek to have their “passport sex” changed in order to express their personal gender identity, but also on everyone else, because it destroys the accuracy of *everyone’s* “passport sex” and means that the data attribute can no longer be relied on as proof of anything.

Article 8

Any argument that this practice is required by or indeed compliant with Article 8 of the Human Rights Act, which relates to privacy, needs to consider the rights of everyone involved, not just those individuals who wish to change the sex marker on their passport.

The Article 8 arguments were legally tested in 2021 when the grassroots organisation Fair Play For Women brought a judicial review against the ONS for telling people they could answer the sex question in the census with the “sex” on their passport. Sir James Eadie (then QC) argued for the ONS that sex was an “umbrella term” that included a range of concepts such as “lived” and “self-identified” sex. He argued that asking about a person’s sex as recognised by law risked a breach of Article 8. Mr Justice Swift disagreed. He stated that Fair Play For Women had a “strongly arguable case” and granted an interim order forcing ONS to change its guidance immediately.

The government also successfully argued that Article 8 does not overrule the interest of the community as a whole in having accurate and reliable data. It did this in the case of Christie Elan-Cane, who identifies as non-gendered (and uses the pronouns per/perself). Elan-Cane challenged the Home Office on its refusal to issue per an “X” passport. In the High Court Jeremy Baker J dismissed the claim: [2018] EWHC 1530 (Admin); [2018] 1 WLR 5119. He accepted that “private life” within the meaning of Article 8 included an individual’s identification as being non-gendered, with the consequence that a person who identified as non-gendered had a right under Article 8 to respect for that identification. However, he held that when determining whether Article 8 imposed a positive obligation, and if so, what might be the scope of that obligation, the pre-eminent consideration was to **strike a fair balance between the competing interests of the individual and the community as a whole.**

In making that determination the government was entitled to pursue the legitimate aim of “maintaining an administratively coherent system of gender recognition across all government areas and legislation” and should be able to consider a change to the policy as “part of a more fundamental review of policy in relation to these issues across government”. This was upheld by the Supreme Court. Human rights are universal and the same argument would hold true for someone who has another “gender identity” that they wish to have recorded in place of their sex.

As the Supreme Court concluded in the *FWS* case, the UK enacted the Gender Recognition Act in response to the Goodwin case in the European Court of Human Rights, which concerned Article 8. The effect of gender recognition under the Act should not be extended beyond its statutory provisions, or extended to people who do not have GRCs.

The Supreme Court case of *R (on the application of C) (Appellant) v Secretary of State for Work and Pensions (Respondent)* [2017] also confirmed the limitations of Article 8. It concluded that “there is nothing in section 9 [of the GRA] to require that the previous state of affairs be expunged from the records of officialdom.” A person’s biological sex, accurately recorded, is both a previous state of affairs and the current state of affairs, as it cannot change.

As you have recognised, the only accurate answer to a question about biological sex is the right answer. A wider definition of “sex” that includes both the right answer and the wrong answer makes it impossible to maintain data integrity, and maintaining data integrity is in the interests of the community as a whole.

You cannot assure data accuracy while also assuring inaccurate data

You pledged that “when information is shared through the information gateway, it will be clear what that information represents including in relation to sex and gender”.

This requires a robust mechanism, not just a warm reassurance, particularly given the widely demonstrated failures to date.

The necessary conditions are for there to be (a) a system-wide definition, and (b) a way for DVS services to reliably and simply identify which public agencies provide accurate information to meet that definition. But these are precisely the conditions you have said it would be disproportionate and inappropriate to develop.

So what will happen is that the muddle created by public agencies flouting the principle of data accuracy in the analogue world will continue to be replicated in your new digital system. Indeed, this is what you have pledged will happen:

You said:

“The digital verification services amendments that we have discussed today are misplaced, because the Bill does not alter the evidence and **does not seek to alter the content of data used by digital verification services**. Instead, the Bill enables people to do digitally what they can do physically.”

Most people think that they can use their passport to attest to their sex, because that is what passports say on their face, and because if HMPO was complying with the data protection this would be a reasonable expectation.

Private-sector DVS providers think that they can rely on sex from a passport as an accurate fact about a person, because the Trust Framework does not explain that they cannot (and says that they must trust authoritative sources).

As you have now admitted, passports cannot be used to prove a person’s sex, and therefore “passport sex” must be excluded from the DVS system. This is also true of “DVLA sex”, “HMRC sex” and “NHS data spine sex”. None of these accurately record a person’s sex. The only current public-authority data source we have identified that can be relied on in relation to sex is the birth register (but not birth certificates, which can be changed).

The inconvenient truth is that you cannot **both** enable people to do digitally what they were able to physically (rely on misleading documents to “prove” that they are the opposite sex) **and also** enable people to verify their sex accurately within the DVS system.

People can have two different verified sexes

You reassured Baroness Ludford that “it would not be possible to have two different sources of verification that gave two different biological sexes”.

In fact, it is entirely possible for people to have two different sexes on official (apparently “authoritative”) documents. For example, a person could be male on their NHS record, female on their passport and male on their driving licence.

Currently the DVS Framework tells service providers to treat *all* these records as authoritative.

There is currently nothing to stop people “verifying” two different sexes, and your pledge that people can continue to do digitally what they can do physically is a pledge to enable them to continue to do this.

We estimate, based on the census, that there may be around 100,000 people with different sexes recorded by different “authoritative” sources.