

Non-Binary Myth-Busting Answers

Here are our answers to several myths we have come across about non-binary gender recognition. If you have a question or concern that is not answered below, please contact us for more information:

Vic Valentine
Scottish Trans Alliance Policy Officer
Equality Network, 30 Bernard Street, Edinburgh, EH6 6PR
Email: vic@equality-network.org
Office: 0131 467 6039

List of the myths addressed in the document:

MYTH 1: Everyone is simply a man or a woman. There are only two genders.

MYTH 2: Non-binary is the same thing as being intersex (having a variation of physical sex characteristics).

MYTH 3: All trans people should be treated as non-binary.

MYTH 4: All humans are non-binary because everyone has a mixture of masculine and feminine traits in their personality.

MYTH 5: Non-binary people should just settle for the gender on their ID being whichever of man or woman is closest to their gender identity.

MYTH 6: Non-binary people are just attention-seekers.

MYTH 7: Since Facebook allows 71 different gender options, non-binary people want a similar number of legal gender categories to be created.

MYTH 8: Legal recognition of non-binary people will prevent collection of gender disaggregated data.

MYTH 9: Non-binary legal recognition would force women's services to include non-binary people.

MYTH 10: The number of amendments needed to existing laws makes it too complicated to provide non-binary legal recognition.

MYTH 11: Non-binary documents will expose non-binary people to an unacceptable risk of discrimination

MYTH 12: Non-binary 'gender-X' passports will be impossible to use to travel abroad

MYTH 1: Everyone is simply a man or a woman. There are only two genders.

FACTS:

Somewhere between 0.005% (the 296 people that responded to our non-binary survey in 2015) and 0.3% (15000 people as estimated from USA data) of Scotland's 5 million people identify their gender as non-binary rather than simply as a man or a woman. Given that our online survey ran for just 9 weeks in 2015, it is extremely unlikely that the 296 people who responded represent even 10% of the target non-binary population. Therefore, it is most likely that several thousand people in Scotland identify as non-binary.

The idea that there are two genders, 'man' and 'woman', and that all people are one or the other of these two genders, is one of the most common and present norms in Scottish society. However, it is just a norm – much like the idea that women should get married, stay at home and look after children was for many years. There have always been people who don't fit into either of these two boxes. Throughout history, there have been various cultures around the world that have recognised more than two genders.

The way each individual person experiences and defines their gender identity can be unique to them. If you have never thought about your identity as a man or a woman, this might be because it happens to fit into society's expectations of you. Perhaps you were assigned male at birth, grew up thinking of yourself simply as a boy, then as a man when you got older, and have expressed your gender, through the way you dress, talk and behave, in ways that are considered typically masculine. Other people might have different experiences at any of these points. For some of these people, the words 'man' and 'woman' simply don't make sense for describing their sense of identity, not for how they see themselves in the world, and not for how they would describe their experiences to others. Although most people do identify as men or women, some – non-binary people – don't. Their gender identities are just as valid as the gender identities of men and women.

If these ideas and the language around them are new to you, listening to non-binary people talk about their experiences and identities will probably help you to understand more – you can read some of our non-binary work at:

www.scottishtrans.org/non-binary

MYTH 2: Non-binary is the same thing as being intersex (having a variation of physical sex characteristics).

FACTS:

Intersex is an umbrella term used specifically for people who are born with variations of sex characteristics, which do not always fit society's perception of male or female bodies. Intersex is not the same as gender identity or sexual orientation. We know from discussion with intersex organisations that most intersex people identify simply as men or as women. Only a small number of intersex people have non-binary gender identities.

Being non-binary is not about your physical body – it is about having a gender identity that is not described simply by using the words 'man' or 'woman', rather than having sex characteristics that do not fit society's perception of male or female bodies. A person can be non-binary no matter what physical body they have.

MYTH 3: All trans people should be treated as non-binary.

FACTS:

The majority of trans people strongly and consistently identify as men or as women. Most would be very unhappy if they were forced to have non-binary gender markers on their identity documents. They seek inclusion within the single sex spaces that match their gender identity, rather than needing gender neutral spaces. So, very broadly, you have:

- men, including trans men,
- women, including trans women,
- and non-binary people.

Non-binary people refers to anyone who identifies as either having a gender which is in-between or beyond the two categories 'man' and 'woman', as fluctuating between 'man' and 'woman', or as having no gender, either permanently or some of the time.

The desired change to the law would still allow trans men and women to be able to be legally recognised as who they are; men and women. What it would also do, however, is create the option for non-binary people to access legal recognition as non-binary. At the moment, this right to recognition is one that all men and women have, but is denied to non-binary people.

MYTH 4: All humans are non-binary because everyone has a mixture of masculine and feminine traits in their personality.

FACTS:

How you define your gender identity is not tied to how much you conform or don't conform to gender stereotypes – this is why there are plenty of women who have lots of masculine traits, and plenty of men who have lots of feminine traits. In fact, there are likely very many more of these people than non-binary people! Which traits are considered masculine or feminine also often differ across cultures and time, and yet in all places across all periods of history, there have been people who identify as men, people who identify as women and people who identify as non-binary (although the language they use to describe this is often culturally specific and may not easily translate into English language and 'western' ideas and understanding of gender).

Two people may be very similar in their gender expression, and yet one of them may feel their gender is best described as non-binary, whereas the other is very comfortable in their manhood/womanhood. Gender identity is something that we often can't see or assume just by looking at people, and it is much more than the sum of gender stereotypes or 'masculine' or 'feminine' traits.

Fighting for greater recognition of all trans, including non-binary people, is not about reinforcing harmful gender stereotypes but in fact about challenging them, and that includes the stereotype that the body you were born with should define the way you experience and express your gender.

MYTH 5: Non-binary people should just settle for the gender on their ID being whichever of man or woman is closest to their gender identity.

FACTS:

International human rights treaties affirm that all human beings have the right to respect of their private and family life and to hold and express their own beliefs. This includes how they define their gender identity. Therefore, non-binary people have the right to have their gender identities respected and legally recognised. It is unfair to expect anybody to be recorded or identified as a gender that does not fit the reality of how they live their life – that is why a legal gender recognition process was introduced for trans men and women.

Non-binary people have a diverse range of gender identities – many of which do not position themselves in relation to the identities of men and women. For many non-binary people, the idea of picking which gender of ‘man’ or ‘woman’ is closer to theirs would not make sense.

MYTH 6: Non-binary people are just attention-seekers.

FACTS:

Some of them might be! But really – most non-binary people would love their gender identity to be considered unremarkable so they would no longer have to keep explaining and justifying their identity to other people. Some non-binary people keep their gender identity completely secret from their friends, families and colleagues because they fear being seen as unusual.

People who don’t identify as men or women have existed across history and throughout cultures – it only seems new in Scotland because their existence was largely ignored here until really rather recently. There have always been non-binary people living in Scotland. Access to the internet has just enabled non-binary people to find each other more easily, create the umbrella term ‘non-binary’ to describe themselves, and gain confidence to be more visible.

A complete absence of recognition for non-binary people often makes things like accessing services, being out to colleagues at work or something as simple as filling in a form much more complicated than it is for men and women. Non-binary people are justifiably unhappy with the current situation, and have every right to complain about it! That is why it is so important that the Scottish government ensures improved gender recognition legislation includes all transgender, including non-binary people.

MYTH 7: Since Facebook allows 71 different gender options, non-binary people want a similar number of legal gender categories to be created.

FACTS:

Non-binary is an umbrella term for a huge range of identities. What they all have in common, is that the people who use them are people who do not feel like either of the words 'man' or 'woman' entirely describe their sense of their gender identity. After non-binary, some of the most commonly used terms in Scotland are genderqueer, agender and genderfluid.

What we are campaigning for is the introduction of one additional legal gender/sex category, which would be called non-binary. This will include everyone who doesn't feel like the words 'woman' or 'man' adequately describe their gender identity, even if the actual term they do use to describe themselves isn't non-binary. Just as not every man is the same but they are all one single legal gender/sex, and not every woman is the same but they are all one single legal gender/sex, the same will apply for non-binary people.

However, we do recognise that lots of people who may be included under the umbrella of 'non-binary' may not like or use that term for themselves. That is why we propose that people are able to include additional information describing the word(s) they use to describe their gender identity on their statutory declaration for having their gender legally recognised, and this can be printed in one of the additional information boxes of their reissued birth certificate. We want to ensure that each individual can have their gender identity respectfully recognised while still enabling legislation to be written smoothly.

MYTH 8: Legal recognition of non-binary people will prevent collection of gender disaggregated data.

FACTS:

We engage with a range of stakeholders, including National Records Scotland, the Scottish Government and a variety of public bodies to improve the way they collect and report on data. We work in partnership with Scotland's key national feminist organisations to ensure that our suggestions for inclusive gender questions are compatible with their positions on effective collection of gender disaggregated data.

Throughout this work, we always stress that to be inclusive when collecting data on gender, what is required is to add an additional answer option for non-binary people (alongside the existing two options for men and women). Ideally, when a non-binary person selects this other gender option, there should be a space to allow them to write in their preferred more specific term (for example, agender or gender-fluid). For decades already, trans men have been selecting the same gender option as other men and trans women the same option as other women and including an option for non-binary people will not affect that.

We do not want organisations stop collecting, or reporting on, the gender-specific data they need in order to plan services and to monitor equality progress. Collecting and disaggregating gender-specific data is an essential tool for ensuring we understand differences between people of all genders. Going forward, it will be an essential way of learning more about non-binary people, who have so frequently been entirely excluded from data collection and reporting. We strongly support better collection and disaggregation of gender-specific data. The percentage of the population who are non-binary is somewhere between 0.005% and 0.3% so this is not large enough to cause statistically significant impact on comparisons of gender disaggregated data for men and women.

You can read more information about our recommendations for phrasing gender questions on diversity monitoring forms at:

https://www.scottishtrans.org/getting_equalities_monitoring_right/

MYTH 9: Non-binary legal recognition would force women's services to include non-binary people.

FACTS:

Legal gender recognition of non-binary people will not give them the legal right to demand access to women only services. They would not be women legally and therefore women's services would be lawfully able to easily blanket refuse access to all legally non-binary people. Since people who had received gender recognition as non-binary would also not be men legally, a service could, if it wished, lawfully include non-binary people while still lawfully excluding men.

Some women's services in Scotland do choose to include non-binary people, and some do not. Often, we have found that asking women's services the question "Is your service just for women, or is it not for men?" helps them to think about whether or not they feel including non-binary people could be right for their organisation, or whether they still feel remaining woman-only is appropriate. We don't think there is a one-size fits all answer to this question, and it depends from service to service.

MYTH 10: The number of amendments needed to existing laws makes it too complicated to provide non-binary legal recognition.

FACTS:

We fundamentally disagree that the existence of legal complexities is a strong enough case for denying a group of people access to the same rights as everyone else. It is true that the assumption that everyone is either a man or a woman underpins some laws in Scotland, and that recognising non-binary people may therefore have a knock on impact on these laws. We see these as falling into three broad categories:

1. The law intends to treat people of different genders the same, but has specified 'men' and 'women' in the language used. Catch-all legislation could be used to make it clear that where this is the case, the law should be read as including non-binary people as well.
2. The law intends to treat people of different genders differently, in order to correct sexism. In this instance, catch-all legislation could be used to make it clear that non-binary people would be treated the same as the gender that was not given favourable treatment by the legislation. It is possible in the future, as there is more evidence gathered about non-binary people, that specific favourable treatment towards non-binary people may enter law.
3. The law intends to treat people of different genders differently, because of characteristics it considers specific to those different genders. At the moment, there is some legislation that treats men and women differently, for example, on the assumption of their ability to contribute to biological reproduction. For example parts of family and fertility law may assume that anyone who gives birth to a child is a woman, and anyone who provides sperm to fertilise an egg is a man. **This already doesn't work.** Trans men can give birth to babies and trans women can provide the sperm which fertilises and egg. This includes trans men and trans women who are legally recognised in their gender via the existing process. Over time, legislation in this category would need to be reviewed, to add in elements that reflect the reality of trans people's reproductive, family and private lives. However these particular types of legislation do not just fail to work for non-binary people, but for all transgender people. Despite this, the Gender Recognition Act passed more than a decade ago.

MYTH 11: Non-binary documents will expose non-binary people to an unacceptable risk of discrimination.

FACTS:

It is of course possible that non-binary people could face discrimination as a result of someone seeing that their documents had their non-binary gender identity correctly recorded on them. However, it is still important that non-binary people have the option of doing this if they would like to. Nobody would be forced to be legally recognised or recorded as non-binary. Each person must have the right to decide for themselves whether they consider this increased visibility to be personally worthwhile.

It is true that unlike for some trans men and women, recognition for non-binary people does not offer the same element of privacy of your trans identity – you would necessarily be out as a transgender person when showing documents with a non-binary identity. However, it could provide privacy around your gender history (e.g. the gender you were assigned at birth) and for some people, this would still be a really important part of being able to exercise their human right to a private life.

MYTH 12: Non-binary 'gender-X' passports will be impossible to use to travel abroad.

FACTS:

The International Civil Aviation Organization (ICAO) is responsible for working with countries and industry groups to reach consensus on international civil aviation standards and practices. The standards for passports that it has developed permit passports to have an M, F or X marker in the gender field. The ICAO regards the X as meaning the passport holder's gender is 'unspecified'. Therefore, the UK could start issuing gender-X passports to non-binary people tomorrow with a simple administrative change. Some countries already issue gender-X passports such as Australia, New Zealand, Canada Malta and Denmark, so it is certainly not the case that you would be unable to travel abroad entirely.

However, it is true that, despite the ICAO standards, not all countries currently accept gender-X passports for entry through their border controls. Furthermore, some countries have transphobic laws or social attitudes which could make them particularly unsafe to travel to using a non-binary passport.

We think non-binary people should still have the option of having an X on their passport if they would like to, even if such a passport may not be able to be used to travel abroad to some countries. Nobody would be forced to have a gender X passport.

There is also precedent for the UK allowing people to swap rapidly back and forth between two valid UK passports where this is needed for their particular circumstances. For example, where a country does not allow entry to people who have used a particular passport to previously enter a county it opposes. Therefore, we would like the UK to allow non-binary people with gender-X passports to apply for special access to an additional M or F passport if they need to enter a country that refuses to accept gender-X passports.