

Are your AML identification policies discriminatory? CDD & transgender customers

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Changing name and title in the UK should be as easy for the transgender bank customer as for someone who marries or enters a civil partnership but too often it is not, says Nick Henderson of VinciWorks. Annoying, if not hurtful to the individual, the obstacles encountered represent reputational and possible legal risk for financial institutions.



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How many red flags does a name change set off in an AML system? If a customer is named, not shamed changing their name due to marriage or civil partnership, probably not many. Rather archaically, a woman who has taken her husband's name after marriage should only need to send off a copy of the marriage certificate to the institution that needs to update its records. Double-barrelling the last names is slightly different, as it requires a deed poll to make the change. However, those are legal documents that can be downloaded free of charge from the internet. Raised any AML red flags yet? Probably not.

So why are transgender people, who can also change their name via deed poll, being dragged through an arduous, often traumatic and probably discriminatory process for trying to do the same thing married couples do in about five minutes?

VinciWorks spoke with over a dozen transgender people about their experiences of dealing with the ID requirements of banks. Safe to say it was a mixed bag.

One respondent said: "Their [X UK high street bank*] telephone fraud department sucks. I was phoned about a purchase I made, and then my telephone banking was blocked because I "sound like a female"; the person who blocked me was extremely flustered when I said I was the card-holder. It took about 40 minutes in-person (half of that waiting) to sort the situation out, though the person who sorted it out was competent and friendly."

One common theme seems to be that while some of the banks' corporate headquarters have the right policies in place on paper, the situation in the local branches is very different. Others have had problems with different institutions requiring different documents that are only available at the end of the transition process.

"Land registry - they require you to have a GRC [Gender Recognition Certificate], or a letter from a medical professional stating that you've been living in your new gender role for at least two years. That means that, for the first two years of transition, you can't do anything that requires your property deed to match your name. So, no remortgaging for you."

Not to mention the fact that even applying for a GRC is a long and often traumatic process that many transgender people prefer not to engage with. It is expensive and requires a person to give evidence before a panel that they have lived in their acquired gender for at least two years, admit they have a so-called medical condition of 'gender dysphoria', plus have signed statutory declarations from two medical professionals to back them up.

"The introduction of the GRC seems to have complicated things." Helen Belcher, secretary of the Parliamentary Forum on Gender Identity told *The Guardian* in 2015. "Organisations are concerned about security and they misapply various things. I heard of a leisure centre that demanded a GRC for a trans person to access gender-appropriate change rooms. It's a complete mess and in all probability illegal."

Gender Recognition Certificates are in no way required in order to change a customer's title or name. Firstly, titles are not protected in law, apart from professional nomenclatures or honours such as Doctor or Lord. Secondly, changing one's name can be legally be done through a deed poll which anyone can fill in and download from the internet. It doesn't require the signature of a solicitor or court seal of approval to give it effect, but that's what many banks seem to be requiring of their transgender customers.

"If you are with [X UK high street bank], then they require your deed poll to be signed by a solicitor, which is a load of nonsense. A deed poll doesn't require a solicitor signature by law. I refused to pay out for a solicitor to sign my deed poll, when it's already fine and legal, and everywhere else has accepted it fine, including [Y UK high street bank] bank, so because I can't change my name at [X bank], I have to close my account with them."

Another respondent had a similar problem with another two of the UK's largest banks.

"[Z UK high street bank] refused my deed poll. I was told it is not a legal deed poll. I told them it is legal, it is the one from the gov.uk website and had been sent off to the courts. Still refused it.

"Went to [W UK high street bank] to open an account; they said they could open an account in my old name because the birth certificate was part of my ID. And I could not change my name to my new one till the account was sorted but I did not have two forms of suitable ID with the same name. So they would not let me open an account."

Deed poll documents have legal effect in all government departments of the UK, and other public services, including all British Embassies and High Commissions around the world. Deed polls themselves are free to do, can be witnessed by most people and include title changes. They have been a recognised part of English law for centuries. Nevertheless, this doesn't seem to satisfy the requirements of many high street banks.

"I'm a trans man who initially changed my name via a self-made deed poll. The first bank I went to with my deed poll turned it down, they advised me that it wasn't good enough and that it needed to be registered with the courts for them to accept otherwise it's not legally recognised. I tried to advise them that my deed poll had as much legal standing as one that has been registered but they would not listen to me. They were very condescending about it as well. This was in a smaller branch in my town.

"I later went to a larger branch of the same bank with the same deed poll and they accepted it. When I gave them the deed poll the staff there actually bothered to look at their rules and regulations for deed polls and found that mine was perfectly acceptable."

Other banks have not required their customers to jump through so many unnecessary hoops when changing their name or title, but this seems to be because they are following procedures properly, and their staff have been trained to provide an inclusive non-discriminatory experience.

Rosanna described her positive experience at a UK high street bank as such: "I went to the main branch of [X bank] to change my name. A lady came over and said 'New name?' We got to the cubicle and she asked what could she do for me and I said a name change. I brought out the deed poll (just a free deed poll website one the gender clinic recommended) and my bank card and she smiled and took my card. She turned the screen around and showed me what she was changing (my title, initials for my card, full name, title on card, etc.) and that went smoothly. She then got me a form and had me sign to give my new signature. She was commenting how lovely it was that I was keeping a bit of my first name. I was and still am exceptionally happy."

Another respondent said: "I printed off their name change form online, filled it in at home, sent it off along with a certified copy of my statutory declaration. Job done less than a week later. Was impressed how easy it was to be honest."

And another reported that: "My bank was really easy; just took my free deed poll and was, like, yep, we can change that right away. The clerk wished me luck in my transition and it was just an all-round pleasant experience."

But as is often the case for many transgender people dealing with banks, Rosanna, who'd had a positive experience at one bank, had a completely different one at another bank just down the road.

"I went to a local branch of [Y bank] a month later. A completely different experience. I downloaded and filled in their form and brought my deed poll. They accepted it on the day and said it was all changed. Then about three days later I receive a letter (addressed to my new name, referring to my old name, title and gender throughout the rest of the letter) saying that they haven't changed my name actually and I need full photo ID to change a name. This caused great distress and to this day I haven't gone back to sort it out, even though I have full photo ID now, due to the embarrassment and distress caused."

Misnaming or misgendering a transgender person is not the same as calling a married person by their previous name. For transgender people, the old name is known as the deadname. It can be a traumatic experience to be referred to as 'Mr' when you are 'Ms', and utterly humiliating to have a letter addressed to a female name when you are living in a male name.

It's even easier to get a new passport than to change a name at some UK banks. In 2016 the Passport Office scrapped the requirement for medical evidence to enable someone to change their name and gender. Unfortunately, many financial institutions are still doing so. Checking ID for a bank account does not need to be stricter than applying for a passport. When checking ID for AML purposes, the point is to make sure the person giving instructions for the account is the same as the person to whom the account belongs, not to make the process so difficult that the customer has to close their account.

The way some banks are applying identification verification policies to transgender customers is bordering on the discriminatory. It is unlawful under section 22 of the *Gender Recognition Act 2004* to request sight of a Gender Recognition Certificate. The GRC only exists in order to instruct the Registrar of Births to change the entry in the register.

Gender reassignment is a protected characteristic under the *Equality Act*. Transgender people are legally protected from discrimination at any stage in their transition process, from proposing to assigning their gender, to undergoing the process and afterwards. Protection from discrimination exists outwith any specific treatment or surgery because equality law views changing physiological attributes as a personal process, not something to be investigated by banks.

The manner in which too many high street banks are treating their transgender customers in the name of money laundering prevention is serious and discriminatory in many cases. Neither do they appreciate the hurt and distress it causes to their customers. One respondent recounted a terrible tale of trying to deal with two of the UK's biggest banks, even winning compensation for the hurt they had caused. But the effect of their actions had a lasting impact.

"Neither [X bank] or [Y bank] seemed to appreciate the devastating impact their incompetence had on me, making me doubt my ability to successfully transition if I could not even accomplish simple life tasks."

But it's not the fault of transgender customers. It's a failing of the financial institution to either put proper policies in place, or ensure staff in their branches know how to apply those policies.

Under the Fourth EU Money Laundering Directive, transposed into UK law as the Money Laundering Regulations 2017, banks and others are required to take a risk based approach to customer due diligence. Where a customer has been identified as being at high risk for money laundering, it is of course necessary and proper to require more arduous identification verification procedures. But for someone simply changing the name and title on their account, as married people can do by exactly the same process, erring on the side of caution is having a significant negative impact on transgender people, and in many cases is a serious breach of their rights.

Tips to make Customer Due Diligence more inclusive of transgender people

1. You don't need a Gender Recognition Certificate to change your name or title - in fact it's illegal to ask for it.
2. Titles are not protected by law.
3. You don't need to provide medical evidence to change your name or title.
4. Fraud prevention measures must take transgender people into account.
5. A deed poll is legally sufficient to change your name and title.
6. Commercial ID procedures do not need to be stricter than the passport office.
7. AML laws necessitate a risk-based approach, not blanket discrimination.
8. Staff training on equality and diversity is fundamental.

*The names of banks have been changed to protect their identities.

Nick Henderson is the Director of Course Development at VinciWorks (<https://vinciworks.com/>), which offers a number of courses on Money Laundering, the Fourth EU Money Laundering Directive and Equality and Diversity.

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