



Sex Matters response to

Law Commission proposal on reform of Hate Crime

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1. Introduction

1. Sex Matters is a not-for-profit organisation that campaigns and advocates for clarity about sex in language, policy and law, in order to safeguard everybody's human rights, health, safety and dignity.
2. Sex matters in many areas of life, including in relation to single services, healthcare, relationships, sexual orientation, religion, sexual consent and the protection of human rights and non-discrimination. It is crucial that the words man and woman, male and female, and other associated terms such as "same sex" and "opposite sex" have clear meanings that are stable in different areas of life.
3. In recent years people have been called "hateful" simply for making ordinary, everyday statements about the material reality of people being male or female. They have been visited by police, arrested, discriminated against at work, harassed and publicly pilloried. (see Annex 1: the chilling effect)
4. We are concerned that the push to extend hate crimes legislation is being driven by disproportionate perceptions of hate crime prevalence being promoted by organisations that are seeking to close down debate, particularly on competing rights around sex and gender identity. Based on police reports, around 6 in 1,000 transgender people experienced hate crime and reported it to the police in 2018/19. But the consultation paper quotes Stonewall research which suggests levels 70 times greater than this: "Two in five trans people (41 per cent) have experienced a hate crime or incident because of their gender identity in the last 12 months."¹ As our calculations in Annex 2 show, if the Stonewall figures were representative then *reported* transgender hate crimes would be more than ten times higher than they actually are.
5. We are concerned that the Law Commission's proposal uses language and definitions which are not in line with existing law, basic science or everyday usage. Language such as saying that sex is "assigned at birth" and that people who do not identify as trans or non-binary are "cisgender" comes from gender identity ideology. It is associated with an approach which seeks to ban and punish the ordinary use of words about the two sexes.² **In short, the Law Commission's proposal is akin to a blasphemy law, set out in the language of a religion.**

¹ https://www.stonewall.org.uk/system/files/lgbt_in_britain_-_trans_report_final.pdf quoted at para.13.57 of Law Commission consultation paper.

² TransActual (2020) What is transphobia? <https://www.transactual.org.uk/transphobia>

2. Overall response

6. We do not support the proposed reform, which we believe extends hate crime legislation unnecessarily, based on weak concepts, without evidence of need, or consideration of harm caused by the law itself. We believe that this law is likely to be deployed in a political manner and not equitably.
7. While Hate Crime designation is applied to give an uplift in sentencing for underlying criminal action, this proposal when combined with the proposal on Communication Offences (based on potential to cause “serious emotional harm” through social media) would criminalise online expression and restrict freedom of expression through prosecutions and fear of prosecutions.³
8. A government which legislated so that the ordinary words which people use to describe reality and navigate everyday life are rendered ambiguous, with official meanings that change depending on which branch of government or officialdom you are dealing with, would rightly be labeled Kafkaesque and authoritarian.
9. The proposal for a specific freedom of speech protection for “the discussion or criticism of gender reassignment; treatment for gender dysphoria; provision of and access to single-sex facilities and activities” (18.276) is not an adequate safeguard. People need to be able to talk about sex in all aspects of everyday life.
10. The proposed law, and the proposal to create a Hate Crime Commissioner, would foster an escalating perception of hate crimes as people are encouraged to feel offended, and to report offence-taking as caused by hostility and causing emotional harm.

³ See our separate submission on Online Communication

3. Consultation Q 2

Should the characteristic of “sex or gender” be added to the characteristics protected by hate crime laws?

11. We do not think it should. Sexually motivated crimes, and violence against women and girls, should be a priority for policing using existing laws. We do not think there is an additional need for the category of misogyny, sex or “women” to be added as a hate crime.
12. It is sometimes argued that it is not fair that sex is not included as a protected characteristic for hate crimes, and that those concerned with women’s rights should advocate for a hate crime category that specifically protects women. This may appear superficially attractive to “level the playing field”, particularly given that hate crime laws protect transgender identity and not sex. However we do not think this is wise. We think it is freedom of speech that protects women and other vulnerable groups from those who are more powerful. Indeed, we would advocate for an evidence-based review of current “hate crime” legislation with consideration for how it can be scaled back, not extended.
13. Another argument for “sex” to be included in hate crimes is a tactical one - since there is a proposal on the table that sex, gender, women or misogyny should be included in the hate crimes legislation, it should be made clear that the correct term is “sex”. However, although we support clarity on the use of the term sex and not gender, we do not support the introduction of any of these options.
14. The correct place to have the debate over whether “man” and “woman” mean the two immutable, binary sexes or are just two possibilities amongst a fluid range of gender identities on a spectrum, is not in relation to hate crimes specifically but across society and in general legislation. Until then, any new laws that reference men and women, or male and female, should reflect the current legal definitions of these as the two sexes.

4. Use existing definitions in law

15. Any new laws should be clear about language and definitions around sex. **Sex, Gender reassignment and Sexual Orientation** are protected characteristics defined and covered by the Equality Act. **The Law Commission should adopt the same definitions** (although we do not argue for sex to become a protected characteristic for hate crimes).
16. While we recognise that not every protected characteristic covered by the Equality Act needs to be covered by hate crime legislation, **where the same protected characteristic is mentioned the same categories, words and concepts should be used.**
17. Biologically, sex is a binary category. Individuals are classified by reproductive function as male or female. Sex is determined in utero, and is immutable.⁴ There are no other sexes and people cannot change from male to female or vice versa.
18. In UK law, “sex” is understood as binary, with a person’s legal sex - male or female - generally reflecting their biological sex (apart from in the rare cases where someone has obtained a “Gender Recognition Certificate” to change their legal sex). In common law, sex is determined according to a person's biological sex; i.e. chromosomes and endogenous sex organs (internal and external) (*Corbett v Corbett* [1971] P 83, followed by *R v Tan* [1983] QB 1053 and *Bellinger v Bellinger* [2003] 2 AC 467).
19. Consistent with this, “sex” is defined as a protected characteristic under Section 11 of the Equality Act 2010. It relates to the terms man and woman:
 - (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;
 - (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

The Act further defines “man” as a “male of any age” and “woman” as a “female of any age”. We give specific responses on the particular issues that relate to sex.

⁴ Kashimada, Kenichi, and Peter Koopman. 2010. "Sry: the master switch in mammalian sex determination." *Development* 137(23):3921-30.
Sobel, Vivian, Yuan-Shan Zhu, and Julianne Imperato-McGinley. 2004. "Fetal hormones and sexual differentiation." *Obstetrics and Gynecology Clinics* 31(4):837-56.

5. The proposed new language

In this section we look at the key new definitions and proposed protected characteristics that relate to sex, and explain the problems with them in more detail.

“Sex/gender”

We recommend that the Law Commission use the word “**sex**” to refer to men and women, male and female, in line with common law and the Equality Act.

Legislating by the backdoor for gender self-ID through hate crimes legislation is not acceptable.

20. The proposal talks about sex / gender and argues for using “gender” rather than sex as it is “more inclusive”. In effect what they are doing here is putting “gender self-ID” into law via the backdoor of hate crime legislation after the government rejected the idea of reforming the Gender Recognition Act. This is not acceptable.
21. According to the consultation document, the Law Commission considers that the UK government has described gender and sex as two distinct concepts. This is based on an article by two members of staff at the Office for National Statistics which was developed in the context of the UN Sustainable Development Goals (which use “gender” to mean sex).⁵ The ONS article does not have status as law or general policy. It gives the impression that sex and gender are two separate, defined statuses related to individuals in UK law. This is not the case, as outlined in paragraphs 19-22.
22. “Gender” is nowhere defined in UK law, but the word is sometimes used as a synonym for sex. This creates confusion. The Equality and Human Rights Commission (EHRC) states:

The term is often used interchangeably with “sex”, partly in recognition that much of the inequality between women and men is driven by underlying social and power structures rather than by biological sex. Although the Equality Act protects people from discrimination because of their sex, other

⁵ Tolland, Laura and Joanne Evans (2019) What is the difference between sex and gender? ONS <https://www.ons.gov.uk/economy/environmentalaccounts/articles/whatisthedifferencebetweensexandgender/2019-02-21>

UK legislation (such as the regulations requiring employers to publish their gender pay gap) refers to gender. This may cause confusion in some circumstances. To avoid any ambiguity, we are reviewing our use of language across our website and publications to ensure clarity and consistency. However, it is important to note that any mistaken or structural use of the term gender does not affect how the law works in practice.⁶

23. Responding to a plea for clarity on single sex services, MSPs recently voted overwhelmingly in support of an amendment to the Bill on Forensic services (Victims of Sexual Assault) (Scotland) to allow survivors of rape and sexual assault to request the sex (rather than the “gender”) of the medical professional who examines them. In its stage one report on the Bill, Holyrood’s Health and Sport Committee warned that the definition of gender “could be ambiguous...which has the potential to cause distress to individuals undergoing forensic medical examination.”⁷
24. The Scottish Police Federation has said in response to the Hate Crime consultation in Scotland:

The use of language to distinguish between sex and gender is often conflated, in what can appear as an attempt to infer outrage or discrimination simply because of irreconcilable fundamental beliefs.⁸

“Gender identity”

We recommend that the Law Commission does not use the term “**gender identity**” in its proposals. It is not legally defined, has no objective basis, causes confusion and is unnecessary.

We recommend that it does not use the term “**cis gender**”, as it is insulting or incomprehensible to most of the people it refers to.

⁶ EHRC (2018) Our statement on sex and gender reassignment: legal protections and language <https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>

⁷ Learmonth, A. (2020) MSPs overwhelmingly vote to replace gender with sex in rape support law. The National, December 10 2020 <https://www.thenational.scot/news/18936441.msps-overwhelmingly-vote-replace-gender-sex-rape-support-law/>

⁸ Scottish Police Federation (2020) Hate Crime & Public Order (Scotland) Bill - response to consultation. July 2020. <https://spf.org.uk/wp-content/uploads/2020/07/Hate-Crime-Media-Release.pdf>

25. The phrase “gender identity” appears 35 times in the document, including as a sub-concept to other definitions, but is not in the glossary and is not defined. Developing laws based on novel terms that are not defined is a bad idea.
26. According to Stonewall, the definition of gender identity is: “A person’s innate sense of their own gender, whether male, female or something else, which may or may not correspond to the sex assigned at birth.” As philosopher Kathleen Stock notes, not everyone believes in the notion of a free-floating innate sense of gender.⁹
27. Cisgender or Cis is defined as “Someone whose gender identity is the same as the sex they were assigned at birth”. As we have noted above, sex is not assigned at birth. The idea of “cis” gender is that women (if they don’t identify as men or as nonbinary), have an innate gender identity aligned to to feminine stereotypes and roles in society (and vice versa for men). There is no evidence for this and many women find the idea that men and women are defined by sex stereotypes offensive. As Helen Saxby writes:

Calling me cisgender does not just say I am someone who is ‘not trans’, it ties me in to a belief system I don’t share and which I see as actively harmful, especially to women and girls.¹⁰

Furthermore, while this term may be comprehensible to gender-studies students, most women and girls do not know that they have been relabelled “cis” and understand instead that being female is what makes them a woman.

“Transgender / gender reassignment”

(Question 8) We recommend that the Law Commission **use the existing definition of “gender reassignment”/ transsexual** in the Equality Act.

“transgender” is also widely used as a synonym:

A person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

⁹ Kathleen Stock (2019) Stonewall’s LGBT Guidance is Limiting the Free Speech of Gender Critical Academics <https://quilllette.com/2019/07/06/stonewalls-lgbt-guidance-is-limiting-the-free-speech-of-gender-critical-academics/>

¹⁰ Saxby, Helen (2020) Objections to Cis <https://notthenewsbriefs.wordpress.com/2020/07/16/objections-to-cis/>

28. The Equality Act 2010 includes a protected characteristic of “gender reassignment”, which is separate to sex. Section 7 of the Equality Act provides that a person has the protected characteristic of gender reassignment if the person:
- is proposing to undergo, is undergoing or has undergone a process for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex
29. Such a person is referred to in the Act as “a transsexual person.” The Criminal Justice Act 2003 was amended in 2012 to provide for increased sentences for crimes that are aggravated in relation to “transgender identity”. In both cases, these protected characteristics are separate to sex.
30. The process of gender reassignment does not have to involve medical treatment, and may be simply a matter of changing how you wish to be addressed or adopting a style of dress and mannerisms. It is already a broad category which includes anyone who has so much as declared they are considering starting to transition. In addition, people harassed or abused on the perception of being transsexual/ undergoing gender reassignment are covered.

“Intersex”

(Question 8) We recommend that the Law Commission does not include “**Intersex**” under Transgender or as a category for hate crimes at all.

We recommend that the Law Commission does not use the language “**assigned at birth**” for either sex or gender, since neither sex nor gender is assigned at birth.

31. The Law Commission proposes including Intersex under transgender. We reject this.
32. The Law Commission quotes the Stonewall definition of Intersex: “Having biological attributes which do not align with societal assumptions about what constitutes male or female biological attributes”. Stonewall is not a medical organisation. This definition is not used by medical experts or by intersex organisations.¹¹ For example DSD Families states “DSD (or intersex) is an umbrella name for some 40 different

¹¹ For example <https://www.medicinenet.com/intersex/definition.htm> states “Intersex” is group of conditions sometimes referred to as disorders of sexual development (DSDs) in which there is a discrepancy between the appearance of the external genitalia and the type of internal (testes and ovaries) genitalia.

conditions that affect the development of the reproductive organs and of the genitals. These biological conditions become apparent due either to genital appearance or different development at the time of puberty. DSD (disorders of sexual development) conditions are understood in terms of specific health diagnoses involving chromosomes, hormones, the development of the reproductive organs and puberty”.¹²

33. These are relatively rare medical conditions or “disorders of sexual development”. For example, the most common is Congenital Adrenal Hyperplasia (CAH) which causes anomalies in development of the clitoris and atrophy of the vagina in girls.¹³ Conditions where chromosomal sex is inconsistent with phenotypic sex, or in which the phenotype is not classifiable as either male or female, are estimated to apply to 0.018% of births.¹⁴ Sometimes other conditions that are not truly “intersex”, but which involve variations in sexual development or transmission via X and Y chromosome anomalies are sometimes included, such as Klinefelter syndrome, Turner syndrome, and late-onset adrenal hyperplasia.
34. Having an intersex condition or DSD does not mean that someone is not a man or a woman. Specific conditions affect men and women. They may be diagnosed at birth, or later in life, or go undiagnosed.
35. People with DSD conditions are not a “third sex” and their conditions do not relate to transgender identity. Their conditions are sometimes used to argue that binary sex is not a biological reality, but a social construct (as suggested in the Stonewall definition “social assumptions”). In this paradigm, sex is not determined at conception and observed at birth, but administratively “assigned at birth”. It is argued that birth certificates do not simply note sex, they actually create it.¹⁵ The use of DSD conditions in the service of an ideological cause that is unrelated to these conditions has caused offence and upset to many DSD families and campaigners.¹⁶

For example DSD families responded to the Scottish Government’s Policy Memorandum accompanying the Census 2021 Bill which stated: “The umbrella term

¹² https://www.parliament.scot/S5_European/Inquiries/CensusBill_DSDFamilies_CTEEAS518CB33.pdf

¹³ Indyk, J (2017) Disorders/differences of sex development (DSDs) for primary care: the approach to the infant with ambiguous genitalia, *Translational Pediatrics* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5682373/>

¹⁴ Sax, Leonard. 2002. "How common is Intersex? A response to Anne Fausto-Sterling." *Journal of sex research* 39(3):174-78. <https://www.leonardsax.com/how-common-is-intersex-a-response-to-anne-fausto-sterling/>

¹⁵ Holzer, Lena. 2019. "Sexually Dimorphic Bodies: A Production of Birth Certificates." *Australian Feminist Law Journal* 45(1):91-110.

¹⁶ Dreger, Alice. 2016. *Galileo's middle finger: Heretics, activists, and one scholar's search for justice*: Penguin Books.

„trans“ can include trans women, trans men, non-binary gender people, people who cross-dress and intersex people” about their concern about the conflation between physical characteristics and sexual/gender identity

DSD/ intersex is not a ‘third’ biological sex, it is a series of different biological pathways which produce different anatomical characteristics among people who are female or male. A very small number of babies (estimated 7/8 per year in the UK – possibly one every other year in Scotland) have the biology that means they could be raised either male or female and a legal sex assignment is made.¹⁷

National Records of Scotland confirmed that the inclusion of intersex under the trans umbrella was ‘an error’.

36. The Law Commission states: “We do acknowledge the very limited data that exists in relation to the prevalence of crime targeted towards people who are intersex specifically. However, we consider there to be sufficient similarity in the hostility that intersex people are likely to experience that it is appropriate that the law includes this group in addition to people who are transgender and non-binary.” (11.82) No evidence is provided for this.
37. Intersex conditions are not related to transgender identity. They are rare medical conditions, mainly not perceptible to others. Where they are perceptible, such as, for example, in the case of Turner Syndrome, which results in a short stature and a characteristic facial look, this might be associated with hate crime under the category of disability (in the same way that someone with Down Syndrome or another visible congenital growth disorder might be attacked and called a “freak”). The fact that Turner Syndrome is caused by an anomaly in the X chromosome does not make it a fundamentally different kind of condition in relation to hate crimes, from a growth disorder caused by a different chromosomal anomaly.
38. There is no rationale for including the particular set of rare medical diagnoses associated with the X and Y chromosomes or sexual anatomy and endocrine systems under hate crime legislation. The only reason for doing this is to promote the gender ideology that sex is not binary.¹⁸

¹⁷ DSD Families (2019) CENSUS (AMENDMENT) (SCOTLAND) BILL SUBMISSION
https://www.parliament.scot/S5_European/Inquiries/CensusBill_DSDFamilies_CTEEAS518CB33.pdf

¹⁸ Also see: Sullivan, Alice (2020) Sex and the Census: Why Surveys Should Not Conflate Sex and Gender Identity, International Journal of Research Methodology
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3557822

39. The Law Commission asserts in several of its definitions, such as cisgender, transgender, trans man, trans woman, that sex (or alternatively gender) is “assigned at birth”. This is language appropriated from the medical description of people with the very rarest of intersex conditions, where sex is truly ambiguous. For everyone else (including the vast majority of people with intersex conditions), sex is observed at birth (if not before).

“Non-binary”

(Question 8) We recommend that “non-binary” is not included under the definition of transgender, as it is not defined and not needed.

The definition of transsexual (or presumed transsexual) as set out in the Equality Act already covers someone who is targeted for harassment because they are, or are perceived as transitioning, even if they have not reached (or specified) a final destination.

40. The Law Commission proposes including non-binary under transgender. We reject this.
41. The Law Commission defines “Non-binary” as
- “An umbrella term for people whose gender identity doesn’t sit comfortably with “man” or “woman”. It can include people who identify with some aspects of binary gender identities, and others who completely reject binary gender identities. Non-binary people may also identify under the transgender umbrella.
- “Gender identity” is not defined. Nor are “binary gender identities”.
42. Legislating and criminalisation based on things that have not been defined (and cannot be) is a bad idea.
43. This definition seems to suggest that “man” and “women” are “binary gender identities”, when in fact they are the words for the two sexes, as defined in common law and under the Equality Act.
44. There has been much discussion about whether “non-binary” identities should be recognised and validated through reform of the Gender Recognition Act. The

government has decided not to pursue this. Introducing “non-binary” into hate crimes legislation would be introducing this concept by the back door.

45. The consultation notes that, in a recent first instance judgment, *Taylor v Jaguar Land Rover* [2019], the Employment Tribunal recognised a person who identified as non-binary as coming within the protected characteristic of “gender reassignment” for the purpose of the Equality Act 2010.
46. This case concerned a male engineer at the Jaguar plant who was undergoing a transition changing name from “Sean” to “Rose” (at first part time, and then full time) wearing female clothing to work, adopting the pronouns “she and her”, and taking female hormones.
47. While Taylor at the time identified as “genderfluid”, the Employment Tribunal recognised that they were being harassed and discriminated against on grounds of “gender reassignment” as defined under section 7 of the Equality Act. As the judges in that case found:

“We thought it was very clear that Parliament intended gender reassignment to be a spectrum moving away from birth sex, and that a person could be at any point on that spectrum. That would be so, whether they described themselves as ‘non-binary’ i.e. not at point A or point Z, ‘gender fluid’ i.e. at different places between point A and point Z at different times, or ‘transitioning’ i.e. moving from point A, but not necessarily ending at point Z, where A and Z are biological sex. We concluded that it was beyond any doubt that somebody in the situation of the Claimant was (and is) protected by the legislation because they are on that spectrum and they are on a journey which will not be the same in any two cases. It will end up where it does. The wording of section 7(1) accommodates that interpretation without any violence to the statutory language. Consequently, there is jurisdiction to hear the gender reassignment claim.”

48. In other words, rather than establishing the need for a new category, the Employment Tribunal found that “gender reassignment” as defined in the Equality Act could already cover someone who describes themselves as “non-binary” if they are undergoing or proposing to undergo a process of transition.

“Cross dress”

(Question 8) We recommend that the Law Commission does not include “**cross dress**” under the category of transgender.

The category “transsexual”/gender reassignment as established in the Equality Act already covers people who change their style of dress as part of a social transition, which does not have to involve surgery or medication.

It would also include people targeted for hate crime based on the perception of being transsexual.

49. The Law Commission proposes including “People who cross dress (or are presumed to cross dress)” under the category transgender. We oppose this.
50. The Law Commission does not define what cross dressing means. Proposing to protect something in law which has not been defined is a bad idea.
51. The dictionary definition of cross dressing is “wear clothing typical of the opposite sex.” It is not clear why this would be included under “transgender”. For example, a woman who wears jeans, a flannel shirt and workboots is not transgender; she is simply wearing comfortable clothes.
52. The Department for Education has recently issued guidance to schools telling them not to conflate wearing clothes associated with the opposite sex with being transgender:

You should not reinforce harmful stereotypes, for instance by suggesting that children might be a different gender based on their personality and interests or the clothes they prefer to wear.

and

Materials which suggest that non-conformity to gender stereotypes should be seen as synonymous with having a different gender identity should not be used and you should not work with external agencies or organisations that produce such material¹⁹

¹⁹ <https://www.gov.uk/guidance/plan-your-relationships-sex-and-health-curriculum>

53. As the US organisation GLAAD makes clear, the term “cross dresser” is not in fact used symmetrically to relate to men and women, but is

typically used to refer to men who occasionally wear clothes, makeup, and accessories culturally associated with women.²⁰

54. Doctors note that the most common reason for such crossdressing amongst adult men is as a sexual paraphilia (i.e. a fetish).²¹ Transvestic fetishism is having a sexual or erotic interest in cross-dressing. It is a relatively common paraphilia amongst heterosexual men, ranging from wearing women’s underwear to dressing in women’s clothing, make-up, wigs and having fake or hormonally enhanced breasts.

55. This erotic rationale for cross dressing is recognised, for example, by NHS Lanarkshire, which defines cross-dressing in the terms below:

Cross-dressing people simply wear, either occasionally or more regularly, clothing associated with the opposite gender (as defined by socially accepted norms). Cross-dressing people are generally happy with the gender they were labelled at birth and do not want to permanently alter the physical characteristics of their bodies or change their legal gender. They may dress as the opposite gender for emotional satisfaction, **erotic pleasure**, or just because they feel more comfortable doing so. (page 17, emphasis added)²²

56. There is debate over whether sexual paraphilias or fetishes should be considered medical disorders (since they can be associated with mental distress and obsessive behaviour) or a lifestyle choice by consenting adults.²³ Other fetishes that may be considered lifestyle choices include BDSM (Bondage, Dominance, Sadism, Masochism), which is typically associated with the wearing of leather, rubber, collars and other restraints, straps and harnesses; dressing up and role playing as “pups” or “furies” (in animal costumes;) and “age play” (which includes role playing as an adult baby for erotic pleasure and emotional satisfaction).

57. These groups are increasingly arguing that they should be seen as “rights groups” and part of mainstream public life. For example, a *Guardian* article profiled “The

²⁰ <https://www.glaad.org/reference/transgender>

²¹ Barrett, James (2007) “Transsexual and Other Disorders of Gender Identity: A Practical Guide to Management”. Radcliffe Publishing Limited.

²² NHS Lanarkshire (2020) Supporting Trans Staff in the Workplace Policy
<https://forwomen.scot/wp-content/uploads/2020/08/NHS-Lanarkshire.pdf>

²³ Yakely, Jessica and Heather Wood (2018) Paraphilias and paraphilic disorders: diagnosis, assessment and management. Published online by Cambridge University Press: 02 January 2018
<https://www.cambridge.org/core/journals/advances-in-psychiatric-treatment/article/paraphilias-and-paraphilic-disorders-diagnosis-assessment-and-management/8DA2119F2AE98194BDFD48D7FC883D67>

Secret Life of the Human Pups: a sympathetic look at the world of pup play, a movement that “grew out of the BDSM community”:

While the pup community is a broad church, human pups tend to be male, gay, have an interest in dressing in leather, wear dog-like hoods, enjoy tactile interactions like stomach rubbing or ear tickling, play with toys, eat out of bowls and are often in a relationship with their human “handlers”.²⁴

58. Some paraphilias – such as paedophilia, voyeurism and exhibitionism – are illegal if enacted, because they necessarily involve the non-consenting involvement of others. Other paraphilias, such as cross-dressing, BDSM or dressing as animals, are not illegal, but social norms encourage people to keep these activities, like other adult sexual behaviours, to appropriate settings. Where it is suspected that a person is involving others (including potentially children) as an audience or non-consenting participant in an erotically motivated fetish role play it is legitimate for a person to feel violation, fear, hostility and disgust.²⁵ Such social norms are now sometimes referred to as “kink shaming”, with the implication that those who object are prudish and phobic.
59. For example, in 2019 there was a minor scandal when feminists on Mumsnet noticed that an employee of the NSPCC had posted a video entitled “Cub Pisses and Wanks in Rubber at Work”, which showed the man, who was wearing rubber pants under his work clothes, masturbating in work toilets.²⁶ A link to the video accessible from his LinkedIn professional profile stated that he worked at the children’s charity. When women raised this on social media as a safeguarding issue, they were accused of homophobia and transphobia, including by three *Guardian* journalists, and of bullying by the NSPCC (who later investigated and concluded that it was not in fact appropriate for an employee of a childrens charity to make pornography in the workplace).^{27 28}
60. It is not clear why any particular sexual fetish should be a protected category in law. Conversely, if men dressing up in women’s clothing for erotic pleasure becomes a protected category, why not men dressing up in gimp masks and rubber, or as animals or babies?

²⁴

<https://www.theguardian.com/tv-and-radio/2016/may/25/secret-life-of-the-human-pups-the-men-who-live-as-dogs>

²⁵ Bartosch, Jo (2020) Pups, Furies & Kinksters have no place in Pride

<https://medium.com/@jacquelineard/trying-to-understand-adult-babies-and-furies-c6a253136a6a>

²⁶ <https://uncommongroundmedia.com/nspcc-employee-films-himself-masturbating-at-work/>

²⁷ <https://glinner.co.uk/a-week-in-the-war-on-women-saturday-12th-october-saturday-13th-october/>

²⁸ <https://www.civilsociety.co.uk/news/nspcc-dismisses-celebrity-management-staff-member.html>

“Asexual” and “pansexual”

(Question 7) We recommend that the Law Commission does not include **asexuality**. There is no evidence that identifying as asexual makes someone a target for hate. Most people don't want to have sex with most other people. Sexual harassment and sexual assault are already covered in law.

There are no combinations of the two sexes other than those already covered. There is therefore no need to include **pansexuality** or any other variation

We recommend that the Law Commission use the definition of **sexual orientation** given in the Equality Act. i.e. orientation towards:

- (a) persons of the same sex,
- (b) persons of the opposite sex,
- (c) persons of either sex

61. The Law Commission suggests adding asexuality to the definition of sexual orientation. It states: “in our 2014 report we stated that we ‘had not been provided with evidence to show that individuals suffer hate crime due to being asexual’, and declined to recommend a change to the definition to include this group. However, since this time, awareness of asexuality, and the challenges asexual people face, has grown.” (para.11.67)

62. Evidence given for this is a 2012 academic survey of 148 Canadian students on their hypothetical attitudes towards asexual people, and a single interview in the *Independent* which states:

“Celine struggled with her asexuality while growing up and was bullied at school for being a virgin and uninterested in having sex. At 16, she claims she was attacked by a peer who said she was ‘gagging for it’ and that sex would fix her.”

To say that experiences like this are sadly commonplace among 16 year old girls regardless of how they identify would be an understatement. And while some adults may identify as “asexual”, a 16 year old virgin (or anyone) who does not want to have sex yet does not require a specific identity label in order to say no, and it is not progressive but frankly retrogressive to suggest that they do.

63. Sexual harassment is already covered in law, whereas the mildly less favourable attitudes demonstrated in the Canadian study towards people who identify as asexual are not a basis for criminalisation. The Law Commission should be cautious of the push to recognise and protect ever-growing numbers of categories of people on the basis of sparse evidence.

64. The Law Commission raises “pansexuality”, although it does not define it, saying

“However, the increasing recognition of the complexity of human sexuality, and the emergence of new identities such as pansexuality would likely render a stark binary distinction somewhat difficult in practice.”

What “pansexuality” means is not made clear (other than a fashionable term for bisexuality). Presumably the Law Commission is suggesting that there are sexual orientations other than towards persons of the same sex, persons of the opposite sex, and persons of either sex. But since these three options exhaust the possibilities available with just two sexes, it is not at all clear what complexity they are referring to.

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Annex 1: The Chilling Effect

Organisations promoting gender ideology argue that there should be “no debate” on questions of trans rights, using tactics of social and economic “cancellation” and legal prosecution to target those who seek to challenge gender ideology.

They promote the view that any disagreement with the dogma that “trans women are women, trans men are men and non-binary people are non-binary”, or use of ordinary language based on sex, is seen as hostile and transphobic.

Stonewall’s definition of “transphobia” is “The fear or dislike of someone based on the fact they are trans, including denying their gender identity or refusing to accept it.” Implied in this is accepting that gender identity overrides sex.

Another, more detailed, definition of “transphobia” is that developed by “Transactual”, a group associated with the NGO Trans Media Watch.²⁹ The Transactual definition has been endorsed by signatories including Patrick Harvie MSP, as well as a number of prominent activists (Christine Burns MBE is the lead signatory), councillors, journalists, academics and other public figures.³⁰ It specifies a long list of allegedly transphobic behaviours, including:

- a. **Misgendering** - “Calling trans women ‘men’ or trans men ‘women’, or non-binary people ‘men’ or ‘women’ is transphobia. Using the wrong pronouns, such as ‘she’ for trans men and ‘he’ for trans women is misgendering. Not using ‘they/them’ (or similar) pronouns for non-binary people is transphobic as is using these terms for binary trans people.”
- b. “Claiming there is a ‘conflict’ between trans people’s human rights and those of any other group”.
- c. “Claiming that there is a ‘debate’ about a conflict between ‘women’ or ‘feminists’ and trans people” (this is termed “**misrepresenting those who oppose trans people’s human rights**”). Transactual claim that the correct designation should be “hate groups”.)
- d. Asking for single sex spaces to be respected (termed “**Encouraging or facilitating proxy violence against trans people**”).
- e. Making statements such as “Woman: an adult human female”. “When the context for the statement is that the group in question believe that trans women can never be female the transphobic intent is clear.”

²⁹ <https://www.transactual.org.uk/transphobia>

³⁰ <https://www.pinknews.co.uk/2020/11/30/scotland-transphobia-open-letter-crisis-independent-inquiry/>

- f. Refusing to adopt the term “cisgender”.
- g. Using the terms “man” and “woman” for biological sex.
- h. Concern about the medicalising of children as trans (termed “**deliberately endangering the lives of trans children and young people.**”) Using terms such as “contagion” is called “exclusion bullying by proxy”.
- i. Defining transphobia more narrowly than Transactual does.³¹

“Trans rights” organisations have actively worked to silence dissent:

- **Stonewall** wrote to schools and local authorities in 2018 warning them not to use guidance provided by the gender-critical organisation Transgender Trend, calling their schools’ resource pack “dangerous” and saying “It is a deeply damaging document, packed with factually inaccurate content.”³²
- **Mermaids** has stated that sharing JK Rowling’s essay on sex and gender online where colleagues at work could see “mightn’t necessarily be treated as an act of transphobia”, but could, “if an employee shared it in a deliberate act of aggression and cruelty...be a severe case of harassment”.³³
- **Mermaids** told a publisher of a magazine for A-level law students that it should edit a report on the case of Harry Miller v Humberside Police. The article was heavily cut, with the editor giving the explanation: “The claimant’s [Harry Miller’s] views and the judge’s [Mr Justice Julian Knowles’s] comments about transgender issues would be offensive to most of our readers and our staff.” The author, Ian Yule, protested: “If the judgment of a respected High Court judge is likely to upset such students and their teachers, they have no business studying or teaching this subject.” He resigned as chairman of the editorial board of *A-Level Law Review*. He wrote to colleagues: “In the process of ‘reviewing’ my article [Mermaids] effectively destroyed it.”³⁴
- **Gendered Intelligence** argued that Transgender Trend should not be allowed to raise funds via the online Crowdfunder platform. It said that the organisation’s aim is “to

³¹ <https://www.transactual.org.uk/transphobia>

³² Stonewall (2019) Creating a trans-inclusive school environment - response to Transgender Trend <https://www.stonewall.org.uk/node/62946>

³³ The New Rules of What You Can Say in the Office, Financial Times <https://www.ft.com/content/c96647db-65e9-457c-9940-1975ea61979c?>

³⁴ <https://www.thetimes.co.uk/article/jk-rowling-publisher-asked-mermaids-trans-group-to-censor-legal-article-on-free-speech-ruling-2dl7t5g9g>

spread incredibly harmful and untrue claims about what it means to be trans". Crowdfunder investigated and exonerated Transgender Trend.³⁵

- **Trans Media Watch** wrote an open letter to the BBC to complain when it featured feminist author Joan Smith in a report on JK Rowling's tweets.³⁶
- **Equaliteach** published a guide for schools on tackling homophobic, biphobic and tranphobic bullying that contained a "warning" box calling Transgender Trend an "anti LGBT+ organisation". It says: "the work they do encourages schools to reject the identity of transgender pupils and create an environment that may be unsafe for gender-questioning and transgender young people."³⁷
- **The Labour Campaign for Trans Rights** put out a pledge during the last Labour leadership election calling Woman's Place UK and LGB Alliance "Trans Exclusionist Hate Groups".³⁸ This pledge, which called for members of these groups to be expelled from the Labour Party, was signed by four out of five contenders.³⁹
- **Transgender Equality Network Ireland** published an open letter, signed by several NGOs including Amnesty International Ireland, arguing against the LGB Alliance and saying: "We call on media, and politicians to no longer provide legitimate representation" for those they designate as holding "bigoted beliefs".⁴⁰

Individuals targeted at work

Using these expansive definitions of transphobia, individuals are targeted with complaints and organisations as "hate groups". These are just a few examples:

- **Suzanne Moore** wrote a Guardian column about women's rights and transgender issues.⁴¹ A person (who had already resigned) rendered their resignation at an editorial meeting. 338 colleagues signed a letter saying they were "deeply distressed" by the resignation and called for the Guardian to "do more to become a safe and welcoming workplace for trans and non-binary people". Moore has now left the Guardian and stated that she feels she was forced out.

³⁵

<https://www.independent.co.uk/news/uk/home-news/transphobic-booklet-school-campaign-crowdfunder-reinstate-d-fundraising-transgender-trend-gendered-intelligence-fox-owl-fisher-a8389346.html>

³⁶ <https://hiyamaya.files.wordpress.com/2020/06/letter.pdf>

³⁷ <https://equaliteach.co.uk/for-schools/classroom-resources/free-to-be/>

³⁸ https://twitter.com/Labour_Trans/status/1226939313264394241/photo/2

³⁹ <https://www.bbc.co.uk/news/uk-politics-51465800>

⁴⁰ <https://gcn.ie/irish-lgbtq-community-stand-irishsolidarit-transphobia-trans-day-remembrance/>

⁴¹

<https://www.theguardian.com/society/commentisfree/2020/mar/02/women-must-have-the-right-to-organise-we-will-not-be-silenced>

- **Selina Todd**, a professor of modern history at Oxford, has been accused by students of being “transphobic” on the basis of her tweets and speeches. They argued that: “The power dynamics of providing a platform to Selina Todd in the name of “academic free speech” means putting trans and non-binary members of our community into the position of having to defend their right to exist. Her views refuse to acknowledge that trans women ARE women, that trans women’s rights ARE women’s rights.”⁴²
- **Allison Bailey**, a criminal defence barrister, feminist, lesbian, lifelong campaigner for racial equality, lesbian, gay, and bisexual rights, and survivor of child sexual abuse, opened a crowdfunder to finance the legal costs in a discrimination case that she is pursuing against her chambers and Stonewall. After receiving complaints, the platform she was using to raise funds to support her case, CrowdJustice, closed her crowdfunder, saying that her background information breached its policy against “discriminatory or hateful content”, with “gratuitously violent language and accusations regarding trans people”. In fact, it consisted of careful, factual statements citing government statistics and an account of her own experience of sexual abuse as a child.⁴³
- **Maya Forstater**, a researcher, lost her job at the Centre for Global Development after colleagues expressed concern about her writing and tweeting about gender identity and sex. She is pursuing a belief discrimination case in the Employment Tribunal. An appeal on the question of whether her belief is a protected belief is due to be heard in the Employment Appeal Tribunal in April.⁴⁴
- **Dr Eva Poen** of the University of Exeter was accused of “abhorrent bigotry” after she posted on social media that only women can have periods. In response to a post on Twitter calling for a fitness app to change its wording from “female health” to “menstrual health”, she said: “Only female people menstruate. Only female people go through menopause. ‘Female health’ is exactly what this is about.” A student complained to the university, claiming that her comments were making transgender people “live in fear” and demanding that she “stop spreading vitriol”.⁴⁵

Those cases are the tip of an iceberg. Professor Michael Biggs maintains a list of academics

⁴²

<https://www.inquiremedia.co.uk/single-post/2020/03/10/University-under-fire-for-planned-talk-by-anti-transgender-feminist>

⁴³ <https://www.legalfutures.co.uk/latest-news/censored-or-offensive-crowdjustice-trans-row-rumbles-on>

⁴⁴ Karon Monaghan (2020) The Forstater Employment Tribunal judgment: a critical appraisal in light of Miller, UK Labour Law Blog

<https://uklabourlawblog.com/2020/02/19/the-forstater-employment-tribunal-judgment-a-critical-appraisal-in-light-of-miller-by-karon-monaghan/>

⁴⁵

<https://www.dailymail.co.uk/news/article-8083431/Exeter-University-economics-lecturer-branded-transphobic-LG-BT-feminist-students.html>

targeted for their views on sex and gender whose stories have made it into the public domain.⁴⁶ Professor Kathleen Stock has collected additional testimonies from academics and others working in universities.⁴⁷ They include managers demanding that staff defend their Twitter histories; institutions failing to protect staff from student and public harassment; staff facing complaints for signing letters to newspapers about academic freedom; a lost editorship of an academic journal and a lost membership of an editorial board; research rejected from publications on vague suspicions of transphobia; no-platforming; and researchers being warned by managers not to pursue gender-critical research in the first place. Many respondents were too fearful of the professional consequences to put their names to their testimonies.

The Feminist blogger Wild Woman Writing Club has collected testimonies from artists and writers hounded out of commissions and publications.⁴⁸ Over 700 people shared their concerns about sex and gender in a survey of “Gender Dissidents” in 2020. These included parents, teachers, social workers, lawyers and healthcare workers. Many highlighted that they remain publicly anonymous because of fear of consequences at work.⁴⁹ 9 out of 10 of those who responded were women.

Oppressive application of the law by the police and the CPS:

- **Harry Miller** posted a number of tweets between November 2018 and January 2019 about transgender issues as part of the debate about reforming the Gender Recognition Act 2004. In one tweet Mr Miller wrote: “I was assigned mammal at birth, but my orientation is fish. Don't mis-species me.” This tweet was among several reported to Humberside Police as “transphobic” by a Mrs B. Humberside Police told Mr Miller that although the tweets were not criminal, “they were upsetting many members of the transgender community who were upset enough to report them to the police”. It later turned out that this was not true. There was only one report. Mr Miller sought judicial review. Giving judgment, Mr Justice Julian Knowles said:

I hesitate to be overly critical of Mrs B [the complainant] given she has not given evidence, but I consider it fair to say that her reaction to the Claimant's tweets was, at times, at the outer margins of rationality. For example, her suggestion that the Claimant would have been anti-Semitic eighty years ago

⁴⁶Academics and others at British universities targeted for questioning transgender orthodoxy <http://users.ox.ac.uk/~sfos0060/GCtargets.shtml>

⁴⁷ Are academics freely able to criticise the idea of 'gender identity' in UK Universities? <https://medium.com/@kathleenstock/are-academics-freely-able-to-criticise-the-idea-of-gender-identity-in-uk-universities-67b97c6e04be>

⁴⁸ <https://wildwomanwritingclub.wordpress.com/2020/06/10/what-it-costs-women-speak-out/>

⁴⁹ Gender Dissidents <https://gender-dissidents.net/tag/work/>

had no proper basis and represents an extreme mindset on her behalf.⁵⁰

(The public response from Mrs B was to accuse Mr Justice Julian Knowles of “transphobia”.⁵¹)

- **Sarah Phillimore** is a barrister and a campaigner on sex and gender issues. She was contacted by an account on Twitter informing her that she had a “record for life” of “hate”, as her tweets had been reported and recorded by the police under “Hate Crimes Operational Guidance”. She requested information from the police and received 12 pages of tweets they had recorded as a transphobic and religiously aggravated “non-crime hate incident”. Phillimore says: “The tweets I posted contained nothing that any reasonable person could describe as 'hatred' - for example one is discussing that my dog likes to eat cheese!”⁵²
- **Miranda Yardley**, a transsexual, was prosecuted for a transgender hate crime after a complainant, who worked on behalf of the charity Mermaids, alleged harassment by potentially exposing her and her transgender child to bullying and abuse. Helen Islan frequently campaigns on transgender issues via social media on the basis that she is the mother of a transgender child. The defendant had tweeted a message linking Islan’s full name to her Twitter handle and stating that the “self-interest of Helen Islan is in justifying to herself her decisions to trans her daughter”. The information was contained in a screenshot of a Google search which had also brought up an image of Helen Islan and her children. The CPS unsuccessfully applied for reporting restrictions to prevent the complainant’s full name being published (on the basis that this was necessary to send a message to future victims of “transgender hate crime” that the courts would protect them by granting anonymity). The judge stated that there was no evidence of harassment, that issues of freedom of speech enshrined in Article 10 of the ECHR were clearly engaged and that it was a case that the CPS should never have brought.⁵³
- **Caroline Farrow** was reported to police after she referred in a tweet to the child of Mermaid’s CEO Susie Green, who was taken to Thailand at the age of 16 to have sex reassignment surgery. Farrow wrote: “Susie Green is in breach of Samaritans policy about how suicide should be discussed and broached in the media. What she

⁵⁰ *R (Harry Miller) v The College of Policing and The Chief Constable of Humberside* [2020] EWHC 225, para.280.

⁵¹ <https://judicialcat.blogspot.com/2020/02/harry-miller-judicial-review-mrs-b.html>

⁵² <https://www.crowdjustice.com/case/the-police-recorded-me-as-hate/>

⁵³

<https://www.2harecourt.com/2019/03/04/gudrun-young-secures-no-case-to-answer-in-controversial-first-prosecution-for-transgender-hate-crime/>

did to her own son is illegal . She mutilated him by having him castrated and rendered sterile while still a child”.⁵⁴ Farrow said she was told by police that the complaint was about misgendering. Susie Green later withdrew the complaint and Mermaids issued a statement: “The tweets are a lot more serious than about misgendering. They were allegations of serious misconduct and vile and spiteful personal attacks.”⁵⁵ Sexual reassignment surgery on under-18s is illegal in the UK, and was subsequently made illegal in Thailand. A Court has since ruled that children under the age of 16 do not have the capacity to consent to puberty blocking drugs.

- **Linda Bellos OBE**, a leading feminist and campaigner for racial equality, was prosecuted for an offence of using threatening, abusive or insulting words or behaviour contrary to section 5 of the Public Order Act 1986. The alleged offence arose out of a public event where Bellos stated that “if any one of those bastards comes anywhere near me I will take my glasses off and clock ‘em”. She has said she was referring to the attack on Maria MacLachlan at Speakers’ Corner. The event was live-streamed on Facebook by Venice Allan. Giuliana Kendal, a trans woman who had watched the live-streaming of the debate, complained to South Yorkshire Police that she found the remarks threatening as a trans woman. South Yorkshire Police launched a full investigation, including interviewing Bellos under caution. In May 2018 the CPS decided there was no realistic prospect of conviction, taking into account the context in which the words were uttered and the fact that Bellos would have a defence of freedom of speech under Article 10 of the ECHR. Kendal then embarked on a private prosecution of both Bellos (under section 5 Public Order Act) and Allen (under section 127 of the Communications Act 2003.) Eventually in November 2018 the case was dropped after the CPS exercised their statutory powers to take over the prosecution and then discontinued it.⁵⁶ Bellos and Allen had had to instruct criminal defence lawyers and attend court on three occasions.
- **Kate Scottow** was prosecuted under s.127 of the Communications Act and found guilty of using a public communications network to “cause annoyance, inconvenience and anxiety”. In court the judge told Scottow that “we teach our children to be kind” and took particular exception to Scottow’s use of “Mandy McGirlDick” as a Twitter

⁵⁴ <https://www.dailymail.co.uk/news/article-6846643/Devout-Catholic-mother-44-reported-police.html>

⁵⁵

<https://www.theguardian.com/society/2019/mar/20/catholic-journalist-investigated-by-police-after-misgendering-trans-woman>

⁵⁶

<https://www.dailymail.co.uk/news/article-7978797/amp/Mother-two-called-transgender-woman-man-racist-series-offensive-tweets.html>

<https://www.2harecourt.com/2018/11/30/gudrun-young-successfully-defends-leading-feminist-anti-racist-campaigner-linda-bellos-obe/>

handle. As Kim Thomas wrote in the *Spectator*, “Scottow’s tweets were, admittedly, uncivil. But nothing she wrote was worse than what can be seen every day on Twitter and other social media platforms, where thousands of cruel insults and threats are regularly posted without any comeback at all.”⁵⁷ The conviction was overturned on appeal almost two years after her arrest. In quashing Scottow’s conviction (*Scottow v CPS* [2020] *EWHC* 3421 (*Admin*)), the judges Bean and Warby were particularly scathing regarding the overreach of the law that had taken place.⁵⁸

⁵⁷ Thomas, Kim (2020) I stand with Kate Scottow <https://www.spectator.co.uk/article/i-stand-with-kate-scottow>

⁵⁸ <https://www.judiciary.uk/wp-content/uploads/2020/12/Scottow-v-CPS-judgment-161220.pdf>

Annex 2: Data on Transgender Hate Crime

According to police figures, there were 2,333 transgender hate crimes reported in 2018/19.⁵⁹ In the same year there were 89 CPS cases, resulting in 66 convictions. Taking an estimate that there are 400,000 transgender people in the UK this suggests that around **6 in 1,000** experienced hate crime and reported it to the police.⁶⁰

Figure 1: Transgender hate crime, England and Wales 2018/19 (numbers of individuals)

Public order offences	904
Violence against the person with injury	141
Violence against the person without injury	498
Stalking and harassment	551
Criminal damage and arson	112
Other notifiable offences	125

Perceived levels of hate crime are much greater than this (including figures from Stonewall referred to in the Law Commission report, and by Galop in the Law Commission report on Communications Offences)

Stonewall states that “**Two in five trans people** (41 per cent) of trans people have experienced a hate crime or incident because of their gender identity in the last 12 months.”

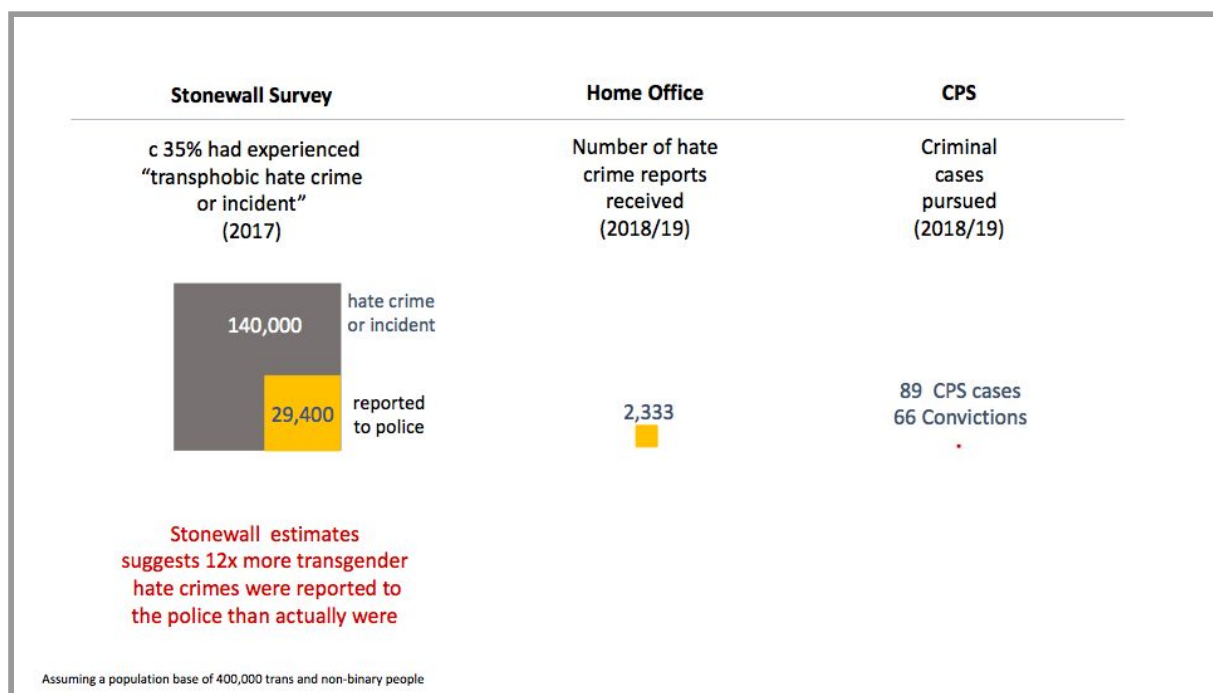
⁶¹ This is over 60 times greater than the rate actually reported to the police. Stonewall survey finds that four in five (79 per cent) don't report it to the police. Overall Stonewall's figures suggest around 12 times as many hate crimes are being reported to the police than actually are.

⁵⁹ <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2018-to-2019>

⁶⁰ The government estimates that there are between 200,000 and 500,000 trans people in the UK, Stonewall estimate that there are 600,000.

⁶¹ https://www.stonewall.org.uk/system/files/lgbt_in_britain_-_trans_report_final.pdf

Figure 2: Comparison of Stonewall estimates of transgender hatecrime with police and CPS figures



This may reflect a lack of representativeness of the survey, or a lack of clarity about what is meant by hate crime. The Stonewall survey does not give a definition or state what categories the "hate crimes or incidents" are in.

LGBT+ anti-violence charity Galop reports that 4 out of 5 respondents to their survey had experienced a transgender hate crime in the past year. they say "Trans people are under such high rates of physical, sexual, and verbal attack that more than half feel less able to leave their home".⁶²

This is the result of an online survey that the national charity ran over 5 weeks to an audience of over 13,000 social media followers. It attracted 227 responses, with some 15 reporting physical assault, about which no further details are given. The most commonly reported "hate crimes" were "invasive questions" (67%) and "deadnaming" (55%). Neither of these are crimes in themselves.

⁶² <http://www.galop.org.uk/transphobic-hate-crime-report-2020/>

Figure 3: Top ten categories of 'hate crime', Galop Survey

Category	Percent
Invasive questions	67
Deadnaming	55
Verbal abuse	55
Online harassment	45
Discrimination	43
Being treated as 'diseased'	37
Outing	63
Threat of physical assault	28
Offline harassment	20
Threat of outing	17

Respondents generally said they had not reported the incidents to the police, listing reasons such as “police could not help”, “is not serious enough”, “did not have the energy”, “was not a crime”. Common coping strategies instead included “spoke to people in support network”, “bought nice things” and “joined trans groups online”

These figures and perceptions from Stonewall and Galop are at odds with reported hate crimes and convictions, and suggest that the term “hate crime” is being used broadly to mean anything that causes upset.