# Conversion therapy

## Position paper

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**Sex Matters is a human rights organisation campaigning for clarity about sex in law, policy and language**

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## Introduction

The Government is consulting on its proposal[1] to introduce a new law banning 'conversion therapy'. It is aiming to introduce a Bill to parliament in time to celebrate this as an achievement at its 'Safe To Be Me: A Global Equality Conference' in June 2022. It is therefore undertaking a rushed six-week consultation which closes on 10th December 2021.

Sex Matters is concerned that the proposed legislation will do the opposite of making it **'safe to be me',** particularly for the growing number of children experiencing gender dysphoria and coming to believe they were 'born in the wrong body'.

Although the government says "It is important that a person experiencing gender dysphoria is able to openly explore what works for them without feeling pressured into any particular outcome", the legislation would contribute to the climate of fear for professionals, organisations and parents who do not support an affirmation-only approach to gender identity. This will leave more young people facing one-way pressure to transition physically rather than being accepted as being gender non-conforming (and possibly same-sex attracted). It will thus promote **a modern form of 'conversion' and homophobia.**

The proposed law is being promoted by Stonewall, Mermaids and other organisations that sought to reform the Gender Recognition Act to introduce self-ID. Effectively this new law seeks to do the same thing: remove medical gatekeeping by making doctors afraid of disagreeing with a patient's self-declared gender identity.

**We are calling on the government to #presspause:**

1. Extend the consultation period to allow adequate time for people to understand the proposal and engage with the issue.
2. Revisit the research, which is not fit for purpose.
3. Wait for the outcomes of the Cass Review.

[1] https://www.gov.uk/government/consultations/banning-conversion-therapy/banning-conversion-therapy

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## What is in the proposed legislation?

1. **A 'conversion therapy' aggravator**. Similar to the hate crime aggravator, this would be applied to existing violent offences such as assault or rape, so that if motivated by conversion they would attract a greater sentence from the court.
2. **Statutory services to develop policies.** The police and CPS (and presumably also social services) will be expected to develop policy frameworks.
3. A new criminal offence of delivering 'talking conversion therapy' covering any therapy undertaken with the intention of changing a person's sexual orientation or changing them from being transgender or to being transgender if the person:
    a. Is under 18
    b. has been coerced (defined as involving assault, threats, humiliation and intimidation or other abuse)
    c. s lacks the capacity to consent.

    The offence will be punishable by up to six months' imprisonment or a fine of up to an unlimited amount if tried by a magistrate, or up to five years if there is serious harm and the case is tried in the Crown Court. A person found guilty could also have earnings confiscated and be disqualified from working for a charity.
4. **Communications offences.** The government will consider amending the Communications Act 2003, Broadcasting Code and new Online Safety Bill to restrict promotion of conversion therapy.
5. **Protection orders.** A Conversion Therapy Protection Order could include requirements that no one or specific persons arranges for a person under 18 to undergo conversion therapy, removing a child's passport or requiring that a person stay a certain distance away. These could be applied for by the individual, local authority or a teacher, a charity, a friend or a family member.
6. **Influencing the charity sector and education.** The government plans both to "ensure charities don't support conversion therapy" and commission support in the form of a helpline and online education resource for victims and professionals in safeguarding roles, such as teachers.

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## Our concerns

1. **There is no need for sweeping new legislation**. Existing criminal law already outlaws abuse and physical harm, as well as child cruelty, neglect and violence. This new law will be used to criminalise dissent with gender ideology.
2. **Childhood transition is a controversial medical issue not a simple equality issue.** The equality framework is the wrong vehicle to address complex questions of how to support children and vulnerable people experiencing gender dysphoria.
3. **The rush to legislate short-cuts the Cass Review** which is looking at the evidence, and how best to support these children experiencing gender dysphoria.
4. **The legislation would introduce 'gender identity' as a legal concept and impose this on families**. This legislation would usher in state-mandated compliance with gender identity ideology and criminalise it, or threaten to remove children from parents who disagree.
5. **The safeguards protecting legitimate therapists are not strong enough**, relying on a child or other patient declaring that they are 'questioning' rather than 'trans'.
6. **The legislation would increase pressure on therapists and clinicians to agree to put children and young people on puberty blockers** and cross-sex hormones.
7. **The legislation is based on fear-mongering, not evidence**. There is no evidence of prevalence of 'conversion therapy' in the UK, or of harm in relation to gender identity.
8. **The legislation risks strengthening the influence on public organisations by organisations that promote childhood transition and foster a culture of fear.**
9. **The provisions against conversion talking therapy will be used to isolate 'trans widows' and the children of transitioners from support**.
10. **The law would effectively remove medical gatekeeping from legal gender recognition, amounting to self-ID by the back door.**

## Our concerns in detail

1. **There is no need for sweeping new legislation. Existing criminal law already outlaws abuse and physical harm, as well as child cruelty, neglect and violence. This new legislation will be used to criminalise dissent with gender ideology.**

   Existing criminal law means that no act of harmful physical violence done in the name of conversion therapy is legal in this country. Assault, rape and the forcible administration of drugs are already punishable with fines and life imprisonment. There is no evidence from police reports that abusive practices are in fact taking place with a 'conversion' motivation.

   However, we know that referring to a child by their name and sex (so called 'deadnaming' and 'misgendering') is already being presented to schools as intimidating, humiliating and abusive by organisations promoting the transitioning of children. Professionals and parents who do not affirm a child's self-identified gender will be threatened with investigation and prosecution, or protective orders, and organisations will be made afraid to support them.

   For example the advocacy organisation GALOP lists as the most common 'transphobic hate crimes' invasive questioning, deadnaming, discrimination, outing, being treated as diseased. All of these are versions of not accepting that someone is the opposite sex, or exploring other mental health explanations for dysphoria.[2]

2. **The equality framework is the wrong vehicle to address complex questions of how to support children and vulnerable people experiencing gender dysphoria.**

   The legislation is being advanced by the Government Equalities Office. It states that it will develop interventions "that provide fair protection for everyone" with a universal approach covering attempts to change a person's sexual orientation or gender identity in any direction. While this sounds fair and equal, in practice it means that quite different situations are being conflated.

[2] https://galop.org.uk/wp-content/uploads/2021/06/Trans-Hate-Crime-Report-2020.pdf

A young person discovering their sexual orientation is not the same thing as a young person who feels distressed by the prospect of puberty and their sexed body.

Gender dysphoria involves a strong desire to be and to be treated as being of the opposite sex. Those diagnosed with it suffer associated significant distress or impairment in function.[3] Framing the question of how best to resolve their distress as one of 'conversion' is ideological rather than therapeutic. Allowing a child to grow up and become reconciled with their sex (via a process of 'watchful waiting') may be deemed to be 'conversion therapy' if the child, or those around them, demands affirmation and a fast-track to hormone treatment.

We have already heard from parents who tell us that schools are socially transitioning children (changing their name and pronouns, treating them as if they were the opposite sex) without telling parents, and that when challenged they say that they believe (and have been trained) that equality law makes a 'watchful waiting' approach by the school unlawful.

3. **The accelerated timetable shortcuts the Cass Review, which is looking at why there has been such a rise in children experiencing gender dysphoria and seeking to transition, and how best to support these children and their families.**

   Dr Hillary Cass is leading the Review on Gender Identity Services for Children and Young People, commissioned by the Department of Health.[4] She is undertaking an intensive study considering questions around clinical models and treatment pathways, including the best clinical approach for individuals with other complex presentations, the benefits, risks, harms and effects of puberty blockers and the reasons for the increase in referrals of children, particularly girls.

   Rushing through any legislation concerning the treatment of children presenting with gender dysphoria before the outcome of the Cass Review is released would be irresponsible and counterproductive.

4. **The legislation would introduce 'gender identity' as a legal concept and impose this on families.**

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[3] https://www.judiciary.uk/wp-content/uploads/2021/09/Bell-v-Tavistock-judgment-170921.pdf

[4] https://cass.independent-review.uk/

The proposal introduces several new concepts not currently covered by law.

It talks about 'LGBT people' and 'LGBT conversion therapy'. In practice, and in law, no individual is 'LGBT'. People have a sexual orientation which can relate to people of the opposite sex (straight), same sex (lesbian/gay) or both sexes (bisexual). Separate to this, some people identify as transgender, transsexual or transvestite (trans).

The proposal also introduces the concept of 'gender identity' into law so that children will be said to have a gender identity, and children who identify as trans will be said to have a gender identity which is different from their sex.

The upbringing and development of children is first and foremost the right of the family, and the state's role is to assist, only taking action to protect a child from abuse or neglect.[5] This legislation would usher in state-mandated compliance with gender identity ideology and criminalise parents who disagree.

5. **The safeguards protecting legitimate therapists are not strong enough, relying on a child or other patient declaring that they are 'questioning' rather than 'trans'.**

The government seeks to avoid criminalising psychologists, psychiatrists, psychotherapists, counsellors and other clinicians and healthcare staff providing legitimate support. The proposal states: "The ban will complement the existing clinical regulatory framework and not override the independence of clinicians to support those **who may be questioning their LGBT status**, in line with their professional obligations."

While we welcome the principle of protection for therapists and others practising in-line with their professional standards, we fear that the safeguard is not strong enough since it relies on a child or other patient identifying as 'questioning'. If a child or vulnerable person declares that they *are* transgender, then any professional seeking to explore the reasons for this feeling, or alternative pathways than transition would be at risk of investigation and prosecution for engaging in 'conversion therapy'.

[5] See for example the Supreme Court case over the Scottish Government's named person' scheme https://www.supremecourt.uk/cases/docs/uksc-2015-0216-judgment.pdf

6. **The legislation would result in pressure on therapists and clinicians to put children and young people on puberty blockers and cross-sex hormones.**

The complexity of the issues, and pressures on clinicians at the NHS Gender Identity Services (GIDS) have been well documented, including through the report by Dr David Bell, and the evidence revealed in the cases of detransitioner Keira Bell and the safeguarding lead Sonia Appleby. As the judgment in the Appleby case stated:

> "Some patients referred are autistic, and some come from backgrounds of neglect or abuse. Clinicians from a psychoanalytic background may want to consider whether gender dysphoria is a symptom of some other problem which merits treatment. Some clinicians are concerned that young people who might be homosexual presented as misgendered, or are unduly influenced by social media campaigning on trans identity. Others hold that in general young people should be taken at their word on identity, and allowed to make their own choices."
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> "External pressure from campaigners (including a group called Mermaids) and some parents made difficult clinical decisions more difficult, and in consequence there were staff who sometimes found detachment difficult. Accusations of transphobia and homophobia were made."[6]

In October 2019 judicial review proceedings on whether young people could validly consent to hormone treatment were brought by former GIDS patient Keira Bell. The resulting judgment was that they could not. This was later overturned by the Court of Appeal, returning decision-making power from the courts to clinicians, saying:

> "Clinicians will inevitably take great care before recommending treatment to a child and be astute to ensure that the consent obtained from both child and parents is properly informed by the advantages and disadvantages of the proposed course of treatment and in the light of evolving research and understanding of the implications and long-term consequences of such treatment. Great care is needed to ensure that the

[6] https://assets.publishing.service.gov.uk/media/6149eb48d3bf7f05ac396f79/Ms_S_Appleby__vs___Tavistock_and_Portman_NHS_Foundation_Trust.pdf

necessary consents are properly obtained."

Keira Bell has applied for permission to appeal. But in any case, it is clear that the adoption of a simplistic 'affirmation' versus 'conversion' binary into criminal and civil law would get in the way of clinicians taking care and considering other pathways than transition. Even if there are few prosecutions it will have a chilling effect on therapists, counsellors and other professionals making them less willing to take anything other than an affirmation approach.

7. **There is no evidence of prevalence of 'conversion therapy' in the UK, or of harm in relation to gender identity. It is being used to create a culture of fear.**

   Those campaigning for this ban have used a fear-mongering approach suggesting there is an epidemic of conversion therapy across the country. In fact there is no evidence for this. The government leans on the *National LGBT Survey 2017* in which 5% of respondents said they had been offered conversion or reparative therapy (using a very wide definition) and 2% said they had undergone it. *This survey is self-selected and the findings cannot be taken as representative.*[7]

   A nationwide survey undertaken by Stonewall, Mermaids, GIRES and the Ozanne Foundation found only 51 individuals who said they had undergone any kind of 'gender identity conversion therapy' in their lifetime. The most common experiences were prayer and talking therapy.[8]

   The government also commissioned researchers from Coventry University who set out to show that 'conversion therapy' in relation to gender identity is similar to religiously motivated attempts to 'pray the gay away' or to pseudoscientific therapies. Instead they included studies that considered ordinary psychological support to children as 'gender identity conversion therapy', and found no evidence of harm in the scientific literature.[9]

8. **The influence of public organisations such as Stonewall, Mermaids, Gendered Intelligence would be strengthened.**

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[7] https://sex-matters.org/posts/updates/is-there-evidence-of-an-urgent-epidemic-of-conversion-therapy/

[8] https://www.transgendertrend.com/conversion-therapy-gender-identity-survey-analysis/

[9] https://sex-matters.org/wp-content/uploads/2021/11/Coventry-University-research-on-conversion-therapy.pdf

By outlawing a broadly framed definition of 'conversion therapy', the government would in practice be handing new levers of influence to organisations that promote gender ideology and encourage mental vulnerability in children, through funding, training and guidance, as well as the ability to report parents, therapists and organisations to statutory services, apply for protection orders and prevent other charities and organisations from advertising, communicating online or obtaining funding.

While the legislation may seek to protect against this, given the demonstrated capture of public organisations by Stonewall, and their existing success in using misinterpretation of the Equality Act to create a culture of fear within professions, creating a new criminal offence at their behest hoping for the best seems foolhardy.

How well-intentioned programmes can be translated into government-funded gender-ideology propaganda programmes can be seen in the previous GEO fund for countering 'homophobic, biphobic and transphobic bullying'. It led to promotion of gender ideology in schools, including statements that were not in line with government policy. Resources explicitly sought to warn schools away from using 'gender critical' sources.[10] A vaguely conceived and unevidenced ban on promotion of 'conversion therapy' together with commissioning of services from gender ideology organisations is likely to have a similar outcome.

9. **The provisions against conversion talking therapy will be used to isolate 'trans widows' from support.**

A trans widow is a woman (usually heterosexual) whose male partner or husband believes that they have a gender identity other than 'man' or who cross dresses. Often women also report having experienced that their husband or partner has autogynephilia (AGP), a sexual fetish for wearing women's clothing.

Partners and children of transitioners are some of the least heard voices. There is growing evidence that many trans widows are subject to domestic abuse and coercive control.[11] They must be able to access support which does not force

[10] https://equaliteach.co.uk/equaliteach-statement-on-geo-and-free-to-be/ and https://womansplaceuk.org/2020/05/02/equaliteach-and-the-government-equalities-office/

[11] https://committees.parliament.uk/writtenevidence/16197/pdf/

them to affirm their partner's opposite sex identity, or treat them as abusers if they do not. Any organisation or professional taking a non-affirmative approach is likely to be censured as being involved in 'conversion therapy'.

10. **The law would effectively remove medical gatekeeping around legal gender recognition, amounting to self-ID by the backdoor.**

Under the current Gender Recognition Act 2004, individuals seeking a Gender Recognition Certificate (GRC) are required to provide two doctors' reports attesting that they have gender dysphoria and outlining any treatment undertaken. While applications for a GRC are rarely refused, occasionally they are, and others may not reach the application stage if no doctor is found to submit the report, perhaps because they diagnose some other mental health condition.

One case which ultimately went to the High Court (M Jay v Secretary of State for Justice [2018] EWHC 2620 (Fam)) illustrates such a situation.

**Jay v Secretary of State for Justice**

This case concerns Jay, a father of seven and a convicted bomb-maker with a long history of contact with psychiatric services for emotionally unstable personality traits, behavioural impulsivity and maladaptive coping strategies. After cutting into his own testicle in prison Jay applied for a GRC. Several doctors declined to give a gender dysphoria diagnosis, suggesting other reasons that Jay "unwisely latch[ed] onto a change of gender role as a seemingly universal solution to both why her life had gone wrong and how it might be rectified." Jay's response to this was returning letters from the Gender Recognition Panel with scribbled notes in the margin, denigrating the panel, the process and the medical professionals involved in Jay's care, often in aggressive and profane language. Ultimately, after several failed applications, Jay took a case to the court of appeal, where the decision of the doctors and the GRC panel not to agree the legal sex change was overruled by a single judge sitting without a medical expert.

Under the Conversion Therapy Ban proposal Jay could have had the doctors who

did not affirm Jay's female gender identity investigated for non-consensual 'conversion therapy'.

## Recommendations

We are calling on the government to *press pause*:

1. **Extend the consultation period.** Six weeks is not adequate time for people to understand the proposal and engage with the issue. It should be at least 12 weeks.

2. **Revisit the research**, which is not fit for purpose. In particular it conflates gay conversion therapy with the treatment of children and young people with gender identity issues. The two topics should be separated from the outset.

3. **Wait for the outcomes of the Cass Review**. Rushing through any legislation concerning the treatment of children and young people presenting with gender dysphoria before the outcome of the Cass Review is released would be irresponsible and counterproductive to evidence-based policy making.

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