

# Sex Matters response to the Banning Conversion Therapy Consultation

DRAFT

Sex Matters is a not for profit organisation campaigning for clarity on sex in law and policy in the UK.

## Do you agree or disagree that the Government should intervene to end conversion therapy in principle?

### Somewhat agree

We think that acts of abuse and violence done in the name of conversion such as electrocution, sexual assault, rape and the forced medication should continue to be banned.

We think the government should act to control the social, medical and surgical conversion of children in the name of “affirming” their gender identity.

We welcome the government’s determination to ensure that young people are not pushed into irreversible harms by medical conversion. As the consultation document states:

“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 government is determined to ensure that no person is put on a clinical pathway that is not right for them, and that young people are supported in exploring their identity without being encouraged towards one particular path.”

However we think the government’s proposals as currently framed are misconceived, for three reasons:

1. **Sexual orientation and transsexualism are not equivalent.** Evidence, concepts and approaches cannot simply be read across from one to the other. They should not be dealt with together.
2. **The proposal as presented is fighting yesterday’s battles.** It focuses its attention on conversion practices in religious communities, but the UK is an increasingly secular country. While there may be small pockets where this is an issue, there is no evidence of widespread practice.

3. **The proposal misses the fastest-growing and most brutal form of conversion that is being undertaken today on young people across the mainstream of UK society - a form of “talk therapy” that leads them to believe that they can literally change sex** (and sexual orientation), and which leads them to undergo attempts at physical conversion which will impair their sexual function, ability to form relationships and fertility.

## Sexual orientation and transsexualism are not equivalent

The core of the problem with this proposed legislation is that it conflates sexual orientation and transsexualism, and seeks to apply the concept of “conversion therapy” to both of them as if they were alike.

In reality, gender identity and sexual orientation are separate concepts with no self-evident connection from a psychological perspective.

- Being male or female (sex) is a biological fact. A person’s biological sex cannot change although secondary sex characteristics and aspects of anatomy can be modified (or “converted”) with surgery and hormones.
- Same-sex orientation is a normal, non-pathological variation of human sexuality. It isn’t a medical condition. It requires no treatment. Sexual orientation relates to a person’s sex not their self declared gender, gender expression or gender identity.
- There can be a range of diagnoses, and potential pathways for someone self-identifying as transgender or suffering from gender dysphoria. A cross-sex or non-binary identity that causes no distress and does not require any treatment may also be non-pathological; but gender dysphoria sufficiently severe to make the sufferer seek radical alterations to their healthy body is a condition requiring medical assessment.

The motivation for combining sexual orientation and “being transgender” under a single umbrella is political. In recent years links have been forged between organisations representing lesbian and gay people and those representing people with diverse gender identities. Organisations have adopted the ideological view that gender is self-identified and that medical “gender affirmation” treatment should be available on demand without “medical gate keeping” (i.e. therapeutic assessment and counselling) have promoted the idea that not affirming that someone is the opposite sex is a form of “conversion therapy”.<sup>1</sup>

The government is hosting an LGBT Summit in 2021, and there is pressure to produce legislation that is “inclusive”. Any attempt to treat transsexualism separately from sexual orientation is likely to be met by accusations of “transphobia” and calls for “LGB with the T”. For example, when the Ozanne Foundation, Stonewall, Mermaids, GIRES and

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<sup>1</sup> <https://www.gendergp.com/am-i-trans-gender-dysphoria-test/>

the LGBT Foundation published their report calling for this legislation, they labelled any survey responses which made this point “transphobic” and excluded them from the results.<sup>2</sup>

This approach is not in the best interests of gender non-conforming children and young people (who are more likely to grow up to be gay than to be transsexual).<sup>3</sup>As a group of eminent psychologists wrote in an open letter to the Chief Executive of the British Psychological Society in 2020:<sup>4</sup>

“it is imperative that psychologists are not prevented from using our core professional skill of formulation, exploring the origins and nature of distress rather than ascribing to one pre-determined ‘diagnosis’ or explanation...We think the current guidelines effectively prohibit psychologists from taking a questioning approach and applying ethical practice in these situations.”

Statements conflating these groups, such as “LGBTQIA+ people who are subjected to conversion therapy are at higher risk of severe mental health problems, including depression, anxiety, suicidal ideation and risk of suicide attempts” are not robust. The government’s own commissioned research could find no causal evidence of harm for what it broadly termed conversion therapy in relation to gender identity.<sup>5</sup>

## The proposal is fighting yesterday’s battles

In living memory in the UK, homosexuality was criminalised and treated as a mental disorder; male homosexual acts remained outlawed in the UK until the Sexual Offences Act 1967. “Conversion” or “reparative” therapy was a term used for the medical attempts to “cure” same-sex desire through approaches such as psychotherapy, hormone treatment and aversion therapy.

However this practice died out in regulated healthcare as evidence emerged of ineffectiveness, and as societal attitudes changed. It is no longer present in the NHS or within any regulated medical profession.

In recent years, the concept of conversion therapy has been expanded to include spiritual practices such as prayer, religious instruction and exorcism. However, while there are some reported cases of people undergoing religious conversion practices, this is not a widespread issue.

The UK is an increasingly secular country in which even those who are nominally religious are often not believers. In a recent survey just 34% of English and Welsh adults who ticked “Christian” said they did so because they “believe in the teachings of Christianity”, 27% did so because they “believe that Jesus Christ was a real person who died and came back to life, and was the son of God”, and 14% did so because they “go

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<sup>2</sup> [https://www.stonewall.org.uk/system/files/2020\\_conversion\\_therapy\\_and\\_gender\\_identity\\_survey.pdf](https://www.stonewall.org.uk/system/files/2020_conversion_therapy_and_gender_identity_survey.pdf)

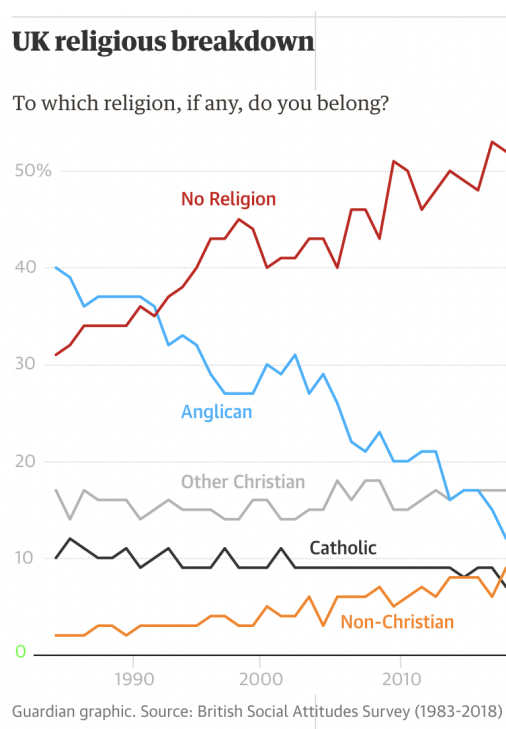
<sup>3</sup> <https://www.transgendertrend.com/conversion-therapy-legal-opinion/>

<sup>4</sup> <https://thepsychologist.bps.org.uk/volume-33/october-2020/freedom-expression-around-diversity-guidelines>

<sup>5</sup> Sex Matters. 2011. Rapid review of Coventry University research on conversion therapy <https://sex-matters.org/wp-content/uploads/2021/11/Coventry-University-research-on-conversion-therapy.pdf>

to religious services at a church”. Fifty-five% did not select any of these three options. Instead, people were more likely to tick “Christian” because they were christened (59%) or brought up to think of themselves as a Christian (49%), because one of their parents is/was a Christian (44%), or they went to a Christian or Sunday school as a child (42%). 26% also said they had ticked “Christian” because “this is a Christian country”, while 12% said “it reflects my ethnicity”. None of these reasons reflect these people’s religious beliefs or practices today. Most British adults who ticked ‘Christian’ said they either never usually attend a place of worship (27%) or do so less than once a year (24%). Similarly, 29% of those who ticked another religious answer said they never attend a place of worship, while 14% said they do so less than once a year.<sup>6</sup>

**Figure 1: UK religious population**



There are contemporary stories of “conversion therapy” from people from religious communities, but often the distress described is about isolation from community, and feelings of spiritual turmoil. These are real and distressing, but such personal and community relationships cannot be regulated by law. They are not evidence of widespread “conversion practices” that can effectively be solved with legislation.

The only evidence for the prevalence of “conversion therapy” is drawn from the National LGBT Survey 2017 which found that “5% of respondents answered yes to the question “Have you ever been offered so-called ‘conversion’ or ‘reparative’ therapy in an attempt to ‘cure’ you of being LGBT?”; a further 2% said they had undergone such therapy. However the survey did not provide a definition of conversion therapy or ask whether

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<https://humanists.uk/2021/03/04/new-survey-reveals-how-census-question-leads-people-to-tick-a-religious-answer/>

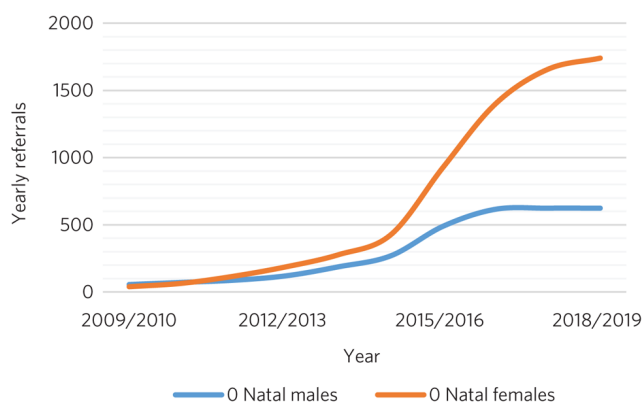
these experiences were recent or took place in the UK, and the survey respondents are self-selected. It provides no basis to estimate the prevalence of “coercive or abhorrent practices” in contemporary Britain. <sup>7</sup>

### It ignores the fastest-growing and most brutal form of conversion

A growing cohort of children have been encouraged to believe they were “born in the wrong body” and need their bodies fixed with hormones and surgery.

The number of children presenting with gender related mental health issues has risen rapidly in recent years, with a particularly marked increase in the proportion of girls. They are undertaking early “social transition”, and undergoing physical conversion by taking puberty-blocking drugs which affect bone and possibly also brain development.<sup>8</sup> They are binding their breasts and seeking double mastectomies. If children progress onto cross-sex hormones the result is sterility and impairment of adult sexual function. Many of these children are same-sex attracted.

**Figure 2: Referral rates to the Gender Identity Development Service at the Tavistock Centre (Tavistock and Portman NHS Trust) in London between 2009 and 2019**



There are divergent views on the reasons for this growth. There is a group of organisations including Mermaids, Gendered Intelligence and Stonewall that have promoted this “conversion therapy ban”, and that propound a view of gender which is uncoupled from biological sex. eThey say sex is “assigned at birth”, whereas a person’s true nature is their gender which is innate, but unverifiable and unfalsifiable . A popular representation of this is the “Genderbread Person” used in training schools, teachers, government departments and others.

### Figure 3: The Genderbread Person

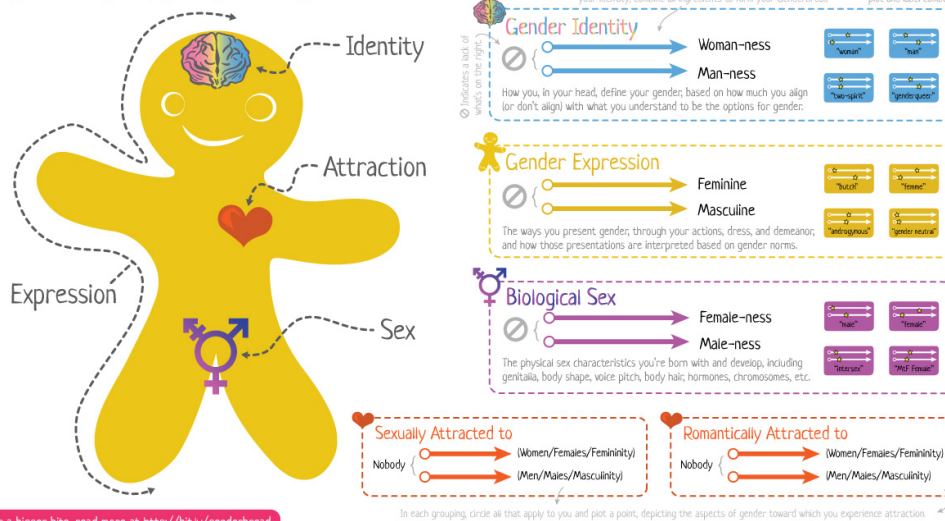
<sup>7</sup> Sex Matters. 2021. Rapid Review of Coventry University Research <https://sex-matters.org/posts/publications/rapid-review-of-coventry-university-research-on-conversion-therapy/>

<sup>8</sup> Biggs, Michael. 2021. "Revisiting the Effect of GnRH Analogue Treatment on Bone Mineral Density in Young Adolescents with Gender Dysphoria". Journal of Pediatric Endocrinology and Metabolism, 34: 937–939. doi: 10.1515/jpem-2021-0180.

# The Genderbread Person v3.3

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*, Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding. It's okay if you're hungry for more. In fact, that's the idea.

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Thus they argue that a significant proportion of people are “born trans”, and that the recent rapid growth is the result of a natural phenomenon which has been unrecognised or repressed until recently. They teach that “trans girls are girls, trans boys are boys”, “trans women are women and trans women are men”, and some people are neither men nor women but a range of other gender identities including “non-binary”, “gender fluid”, “gender queer”, “gender fuck” [sic] and others.

Others think the recent rise in children and young people presenting with gender dysphoria arises not from something wrong with the healthy bodies of children who don't conform to gender stereotypes, but from social contagion driven by societal changes including:

- Shifting social attitudes towards sex and gender;
- Increasing sexualisation and objectification of women associated with female puberty and womanhood;
- Promotion of trans identities in the media and in schools;
- Social pressures to conform, or not conform, to gender norms;
- Homophobic or other types of abuse and bullying;
- The significant role that social media and the internet play in young people's lives.

What we know for certain is that human beings cannot literally change sex, and while a small minority of adults feel that their life is improved by living as a transsexual they have not literally changed sex. Having your breasts removed and taking testosterone does not really change a girl into a boy; taking female hormones, having your testicles removed and your penis turned inside out to create the simulacrum of a vagina does not really change a boy into a girl. There are increasing concerns that a young adolescent

cannot truly understand this reality, nor the potentially devastating side-effects of such treatment.<sup>9</sup>

Evidence suggests that if left alone the majority of children will reconcile their identity with their biological sex; the feelings of 60–80% of children with a formal diagnosis of gender dysphoria subside during adolescence, and many will grow up to be gay and lesbian adults. But early social transition and access to puberty blockers are likely to make it difficult for young people to change their minds, and to increase the likelihood of irreversible medical decisions at an early age. The Tavistock and Portman NHS Foundation Trust's Gender Identity Development Service reports that 98% of adolescents given puberty blockers continue to cross-sex hormones.

As well as the physical impacts and risks of physical conversion to a person's body, there is also the impact on their ability to find love. Romantic relationships are some of the most important sources of social support and happiness, contributing greatly to overall well-being.

Transgender ideology tells people that their gender identity overrides their sex, and they should be viewed as male or female on the basis of their identity. However research shows that in practice sexual orientation is based on sex. Hardly any straight men will accept "trans women" as partners, and hardly any straight women will accept "trans men"; a small minority of gay men will accept "trans women" or "trans men" and a slightly larger minority of lesbians.<sup>10</sup> Telling young lesbians that they can transition to become straight men, and straight men with autogynephilia (a sexual fetish defined as a male's propensity to be sexually aroused by the thought of himself as a female)<sup>11</sup> that they can transition to become lesbians is a form of conversion therapy. It doesn't work, because other people do not think that men can be lesbians or women can be straight or gay men.

Therapists must either explain this reality to clients seeking physical conversion, or else collude with them in fostering different form of "conversion therapy": encouraging trans people to challenge or violate the consent and sexual boundaries of others. CliniQ for example published a guide "for anyone who was labelled as female when they were born but who identifies as male, trans male or trans masculine, some or all of the time", telling them that it is appropriate explore the male gay scene as a trans guy without telling potential partners that they are female.<sup>12</sup> Lesbians complain of being pressured to "accept the idea that a penis can be a female sex organ".<sup>13</sup>

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<sup>9</sup> Griffin, Lucy, Katie Clyde, Richard Byng, and Susan Bewley. 2020. "Sex, Gender and Gender Identity: A Re-Evaluation of the Evidence". *BJPsych Bulletin* 1–9. doi: 10.1192/bjb.2020.73. November 2021 page 26

<sup>10</sup> Blair, K and Hoskin, R..2018 Transgender exclusion from the world of dating: Patterns of acceptance and rejection of hypothetical trans dating partners as a function of sexual and gender identity. In *Journal of Social and Personal Relationships*

<https://journals.sagepub.com/doi/abs/10.1177/0265407518779139?journalCode=spra>

<sup>11</sup> Lawrence, A. 2011. Autogynephilia: an underappreciated paraphilia

<https://pubmed.ncbi.nlm.nih.gov/22005209/>

<sup>12</sup>CliniQ: CRUISING: A TRANS GUY'S GUIDE TO THE GAY SEX SCENE

<https://jirosworld.com/transgender/TransGuys-cliniq-safers.pdf>

<sup>13</sup>Lowbridge, C. 2021. "We're being pressured into sex by some trans women"

<https://www.bbc.co.uk/news/uk-england-57853385>

Is important to recognise that “social transition”, such as changing names or pronouns, wearing binders and prosthetics and demanding to be treated as the opposite sex in school and in groups such as Scouts and Guides, are significant psychological steps (a form of talking therapy) towards physical conversion. Often this social transition occurs without parental knowledge or consent.

Schools and youth organisations are encouraged by affirmation advocacy groups to enable social transition on demand, through policies such as keeping a child’s sex secret from peers and teachers.<sup>14</sup> Schools are encouraged to adopt and promote the idea of gender identity as a person’s innermost concept of self, and that questioning it threatens a person’s right to exist. Behaviours such as “misgendering” (using sex based pronouns) or “dead-naming” (calling a child by their given name) are presented as destructive, debasing and dehumanising.

We are also beginning to see an increasing number of desisters and detransitioners, with numbers unknown. Lisa Littman’s study of detransitioners in the US found that only a quarter informed their healthcare provider, so 75% were not tracked.<sup>15</sup>

No evidence on detransitioners was considered in the Coventry University research the government relies on to support this policy. This research ignores all of the literature supporting the case for caution in physical conversion of children and adolescents (see annex).

There is a very real risk that any legislation against gender identity “conversion therapy” will result in therapists, schools, youth groups and statutory services being pressured to facilitate early and complete social transition, often leading directly to medical conversion.

This sterilisation and body modification of gender non-conforming children and young people is not recognised as conversion therapy by the organisations promoting this law. Instead, organisations promoting the conversion of gender non-conforming children to appear to be the opposite sex term call any challenge to this “conversion therapy”. This can include sending a child to a boys’ school or girls’ school (for the correct sex),<sup>16</sup> failing to pretend a child is the opposite sex, “misgendering” (not agreeing to use non sex-based pronouns) and “deadnaming” (calling someone by their given name).

It is particularly ironic that proponents of the ban condemn as “conversion therapy” any therapeutic approach that would treat preservation of bodily integrity as a worthwhile goal; but praise as “affirmative care” radical hormonal and/or surgical conversion of previously healthy bodies.

The Department of Health has commissioned Dr Hillary Cass to lead a Review on Gender Identity Services for Children and Young People. 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,

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<sup>14</sup> [https://fairplayforwomen.com/draft\\_ehrc\\_schools/](https://fairplayforwomen.com/draft_ehrc_schools/)

<sup>15</sup> <https://pubmed.ncbi.nlm.nih.gov/34665380/>

<sup>16</sup> Stonewall/Ozanne Foundation. 2020. Conversion Therapy and Gender Identity Survey [https://www.stonewall.org.uk/system/files/2020\\_conversion\\_therapy\\_and\\_gender\\_identity\\_survey.pdf](https://www.stonewall.org.uk/system/files/2020_conversion_therapy_and_gender_identity_survey.pdf), p.13



risks, harms and effects of puberty blockers and the reasons for the increase in referrals of children.<sup>17</sup>

**We encourage the government not to legislate in this area until the Cass Review has completed its work.**

## To what extent do you support, or not support, the Government's proposal for addressing physical acts of conversion therapy?

### Strongly not support

**The government says this legislation is to stop “coercive and abhorrent practices” of conversion therapy.** While we absolutely agree that abhorrent practices such as electrocution, beating, starving and corrective rape should be illegal, they already are.

There is no evidence of an urgent and widespread problem of abhorrent gay conversion practices in the UK as conventionally understood, either carried out by therapists or in the name of religion.

As the Minister Kemi Badenoch has stated “Conversion therapy” is now used as “an umbrella term for a number of acts”.<sup>18</sup> The Cooper Report by the Ozanne Foundation, one of the chief proponents of a new law, gives a non-exhaustive list. It is helpful to divide their list into legal and illegal activities.

**Figure 4: non-exhaustive list of “conversion practices”**

Currently illegal	Currently legal
Corrective rape Deprivation of liberty Being threatened with abduction or torture Attempts to abduct Forced marriage/ threats of force marriage Physical and verbal abuse (if it rises to the level of harassment, threatening behaviour etc.)	Exorcism Pseudo-scientific counselling Being prayed over as a form of healing

Source: Ozanne Foundation, with additional analysis by Sex Matters

The first group may rightly be called “abhorrent”, and it is right they are illegal.

We have seen FOI responses from 24 police forces showing that there have been no arrests or detentions for electrocution or sexual assault/corrective rape in relation to conversion in the past 5 years.

<sup>17</sup> <https://cass.independent-review.uk>

<sup>18</sup> Minister Kemi Badenoch, House of Commons [Petitions Debate](#) (08/03/21)

We have also searched the media and been unable to find any reports of recent cases.<sup>19</sup> Physical and sexual abuse are already crimes under English and Welsh law. As the consultation document says “No act of physical violence done in the name of conversion therapy is legal in this country”.

The second group might reasonably be labelled “misguided” and “futile” in relation to sexual orientation, but it is not for the state to legislate to prevent people doing things that are misguided or futile.

As the consultation document points out, there is a need to avoid creating overlapping offences which would mean that prosecutors are faced with an unhelpful choice in how to charge an offence and could lead to inconsistent sentences for equivalent crimes.

Hate crime legislation *already* requires that courts treat a crime more seriously if it is perceived by the victim or any other person, to be motivated by *hostility or prejudice*, based on a person’s sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.”

S 66 (4) of the Sentencing Act 2020 States

For the purposes of this section, an offence is aggravated by hostility of one of the kinds mentioned in subsection (1) if—

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

(iv) the sexual orientation (or presumed sexual orientation) of the victim, or (as the case may be)

(v) the victim being (or being presumed to be) transgender, or

(b) the offence was motivated (wholly or partly) by—

(iv) hostility towards persons who are of a particular sexual orientation, or (as the case may be)

(v) hostility towards persons who are transgender.

Thus violent and criminal acts motivated by a desire to suppress, “cure” or change an individual’s sexual orientation or transgender identity (or presumed) sexual orientation or transgender identity can already be covered under existing hate crime legislation (as is acknowledged by the Ozanne Foundation’s Cooper report). There is no need for an additional, and overlapping aggravator.

<sup>19</sup>Forstater, M 2021 : November 29, 2021 Maya Forstater: A conversion therapy ban threatens to leave unhappy children medicalised, sterilised and sexually impaired, ConHome  
<https://www.conservativehome.com/platform/2021/11/maya-forstater-a-conversion-therapy-ban-could-leave-unhappy-children-medicalised-sterilised-and-left-with-impaired-sexual-function.html>

Organisations such as Stonewall and GALOP should raise awareness of the existing law so that victims of any a criminal act motivated by conversion would know to report this as a hate crime.

**Rather than create a new criminal act or aggravator we recommend that the government:**

- Encourage reporting of any such acts within the existing hate crimes framework.
- Commission more research into whether there are pockets of acceptance and practice of abhorrent and violent acts motivated by conversion within religious communities.

## How far do you agree or disagree with the government's proposal on talking therapies?

### Strongly disagree

We strongly oppose the Government's proposal to outlaw delivering talking therapy "with the intention of changing a person's sexual orientation or changing them from being transgender or to being transgender either to someone who is under 18, or to someone who is 18 or over and who has not consented or lacks the capacity to do so".

The consultation document states

"Banning conversion therapy must not result in interference for professional psychologists, psychiatrists, psychotherapists, counsellors and other clinicians and healthcare staff providing legitimate support for those who may be questioning if they are LGBT."

We support this aim. However, bracketing "talking therapies" together with rape and abduction as different forms of the same social ill, called "conversion therapy", will create a climate of fear for professionals engaged in explorative therapy.

We have already seen this with the expansion of the Memorandum of Agreement against conversion therapy in relation to sexual orientation. In 2017 gender identity was added despite opposition from within the profession from therapists who feared that it would have a chilling effect on therapists' ability to undertake open ended exploration with their patients.<sup>20</sup>

The proposed legislation does not safeguard these healthcare and mental health professionals in the situation where a child or vulnerable person does not identify as "questioning" but as transgender, as many young people do, often quite abruptly and insistently.

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<sup>20</sup> Charlesworth, S. 2021. Captured: the full story behind the memorandum of understanding on conversion therapy <https://www.transgendertrend.com/product/captured-the-full-story-behind-the-memorandum-of-understanding-on-conversion-therapy/>

Nor does it safeguard parents, teachers, school counsellors, social workers, youth workers and others working with children and families who are also being pushed into providing a form of affirmation therapy in the form of social transitioning outside of a formal healthcare setting.

It is inevitable that this legislation would be used to label as “conversion therapy” any resistance to social transition, such as a family, community school or youth group **not:**

- a) treating a child as if they are the opposite sex
- b) allowing a child to access opposite sex facilities
- c) enforcing change of name and pronouns
- d) enabling breast binding, tucking and taping of genitals or wearing prosthetic “packers” or fake breasts.

Social transition is a significant step, and the strongest predictor for persistence of gender dysphoria.<sup>21</sup> A child who is treated as if they were the opposite sex in pre-puberty will be afraid of the upcoming physical changes of puberty. They will also be in a situation where their peers and teachers have been recruited into affirming and celebrating their transgender identity. They may risk humiliation and social isolation if they admit to changing their mind. Thus social transition sets a child on a pathway where puberty blockers and cross-sex hormones are determined as the goal, before they are old enough to understand the consequences or to have explored and experience their own sexual orientation.

Outlawing non-affirmative talking therapies would also make it harder for the partners (usually wives) and children of late adult transitioners (usually male) to access support for their own mental health and social wellbeing, if they do not agree that their husband or father is now a woman, since professionals will fear being perceived as condoning any non-affirming language.

### **Risk of harm even from well-intentioned legislation.**

The key problem in the legislation is that it treats children as “transgender” rather than as children presenting with gender dysphoria.

The concept of “conversion” implies a definite state and a change from one to the other.

The way this is defined would call into legal existence - in the absence of any rigorous scientific evidence - the concept of a transgender child, strengthening the pressure on schools and local authorities to reinforce early and complete social transition and making it harder for these children and their families to obtain therapeutic support that enables them to fully explore why they feel distressed by their body.

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<sup>21</sup> Steensma, Thomas D., Jenifer K. McGuire, Baudewijntje P. C. Kreukels, Anneke J. Beekman, and Peggy T. Cohen-Kettenis. 2013. "Factors Associated With Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study". *Journal of the American Academy of Child & Adolescent Psychiatry* 52:582–90. doi: 10.1016/j.jaac.2013.03.016.

**There is a real danger that drafters will adopt inappropriate formulations from existing legislation that will lead to this outcome.** A likely form for the legislation would be something like this:

1. It shall be an offence for any person in the course of providing or purporting to provide therapy or counselling services for another person to perform any act or pattern of acts consisting of, or any combination of spoken, written or other communication with that other person, with the intent (in this Section, a "conversion intent") that that act or pattern of acts shall secure:
  - (a) a change to the sexual orientation of that other person, or
  - (b) the establishment of a sexual orientation for that other person where their existing sexual orientation is unclear; or
  - (c) a change in the other person resulting in the suppression of their sexual orientation; or
  - (d) a change of that other person from or to transgender, or
  - (e) the establishment of that other person being or not being transgender where that is unclear; or
  - (f) a change in the other person resulting in the suppression of their being or not being transgender

... (with further clauses relating to age, consent and coercion)

Such a formulation would appear to drafters at the Office of the Parliamentary Counsel to be a straightforward translation of HMG intent into legislation.

It is likely that they will draw from definitions that appear in existing laws such as the Equality Act 2010 and the Sentencing Act (in relation to hate crimes). This will appear to be obvious, neat and clear to drafters, who do not have subject expertise but are seeking to meet the tests of accuracy, brevity and clarity, and will be following the lead of the consultation document.

#### **Definitions from existing legislation**

**Sexual orientation** is defined in the Equality Act 2010

S.12 (1) Sexual orientation means a person's sexual orientation towards—

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

**Gender reassignment/being transsexual** is also defined in the Equality Act 2010:

S. 7 (1) A person has the protected characteristic of gender reassignment if the person 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.

As the explanatory notes to the Act state "This section replaces similar provisions in the Sex Discrimination Act 1975 but changes the definition by no longer requiring a person to be under medical supervision to come within it."

**"Being transgender"** is defined in the same way in relation to hate crimes in the Sentencing Act as in the Equality Act 2010:

(66) (6) (e) references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.

There are serious problems with this approach of transferring the protected characteristic used in the Equality Act (and copied in the Sentencing Act) directly into a therapeutic context:

**Characteristics set alongside each other in equality law are not functionally equivalent.**

A range of characteristics are protected, but this does not imply or require that they are the same type of thing in terms of innateness, mutability, subjective/objectiveness, nor in terms of different needs that are attached to some characteristics. Age is not the same kind of thing as race, race is not the same as disability, sex is not the same as religion.

**In relation to the general principle of non-discrimination this does not matter, but it matters in pastoral, clinical, therapeutic and safeguarding contexts.** For example while people should not in general be treated differently in a therapeutic context because of their race or sexual orientation, they often should be because of their age.

It is appropriate for the Equality Act to have *sexual orientation* and *gender reassignment* alongside each other, even though they are different types of thing, in order to protect people against discrimination. But treating sexual orientation and transgender identification as equivalents *in relation to therapy or the pastoral care of young people* is a category error. Gender dysphoria sufficiently severe to make you seek radical alterations to your healthy body is a condition requiring medical assessment, being gay is not. There is no legitimate "medical gatekeeping" to being gay; but it should be self-evident that there must be "medical gatekeeping" before adolescents are able to undergo permanently life-changing hormone therapy and surgery.

The inclusion of "gender identity" as being an attribute comparable to "sexual orientation" and appropriate for an equivalent approach in respect of prohibiting conversion therapy remains a topic of controversy amongst psychologists and other

mental health professionals. This controversy should not simply be cut through with an Act of Parliament.

**The broad definitions used in discrimination and hate crime laws if repurposed would effectively allow “transgender children” to self-diagnose.** The Equality Act uses broad and open definitions of characteristics, for the purpose of protecting people against discrimination. These can be applied on the basis of perception, even if the victim of discrimination or harassment does not have the characteristic in question (for example a Sikh man harassed for “being a Muslim”, or a heterosexual woman for “being a lesbian”).

No medical supervision is required for the protected characteristic “gender reassignment” in the Equality Act 2010 (this was a change from the Sex Discrimination Act as amended to add that protected characteristic in 1999). However this self-identified legal characteristic cannot supplant the need for careful and sensitive medical supervision and diagnosis and meaningful consent in relation to physical conversion.

As the High Court observed<sup>22</sup> in the case of Keira Bell v Tavistock:

“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 necessary consents are properly obtained.”

“[multi-disciplinary teams of clinicians] must satisfy themselves that the child and parents appreciate the short and long-term implications of the treatment upon which the child is embarking. So much is uncontroversial. But it is for the clinicians to exercise their judgement knowing how important it is that consent is properly obtained according to the particular individual circumstances, as envisaged by Gillick itself, and by reference to developing understanding in this difficult and controversial area.”

Applying the broad Equality Act definition of gender reassignment (or being transgender) to children in the context of “banning conversion therapy” essentially creates a category of self-identifying “transgender children”.

We have already seen this problem in action: in relation to social transition, the principle of non-discrimination has been stretched well beyond the intentions with which the Equality Act was passed. Schools have been told by activist organisations, local councils and even by the EHRC that it would be discriminatory not to treat such a child as if they were the opposite sex, by enforcing the use of opposite sex pronouns, allowing them to use opposite sex changing facilities and sports, and treating them in

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<sup>22</sup> In an uncontroversial passage unaffected by the subsequent overruling of the High Court’s judgment on appeal.

all respects as if they had changed sex.<sup>23</sup> There is no case law to support this, and it is a misreading of the Act; but it is widely believed.

A conversion therapy law focused on under-18s would go further in adding a criminal offence, creating the concept of the “transgender child” in law, and enabling those encouraging children to feel dislocated from their bodies to demand complete social transition with threats of police investigation.

There would be demands to interpret the law as effectively outlawing “misgendering” and “deadnaming” along with any other practice by professionals in therapeutic or pastoral context which explicitly recognise that the child has not in fact changed sex.

**Borrowing concepts from equality and discrimination imports the idea that no outcome is better or worse than another. This is wrong in relation to questions about the medical conversion of children.**

It is a clear principle of equality law that people with different characteristics should not be treated less well because of those characteristics. Being white is not better than being black (and vice versa), being old is not better than being young, being straight is not better than being gay and so on.

But this does not mean that all outcomes are equally good in terms of quality of life and morbidity.<sup>24</sup> Not being disabled is better than being disabled (hence people are able to claim compensation for medical malpractice or workplace injuries which result in disability). Overcoming childhood gender dysphoria by being reconciled with your body is objectively a better outcome than being sterilised and left with osteoporosis and impaired sexual function, and a false idea that men can become lesbians and women can become straight men.

It is not “transphobic” for therapists to explain the negative impacts of medical conversion; on the contrary, it is essential if informed consent is to be given to interventions which have significant downsides.

**In short: the existence of a self-identified definition of the protected characteristic of “gender reassignment / being transgender” for the purpose of the Equality Act and hate crimes legislation cannot remove the need for individual medical and psychological assessment and consent to physical conversion. Applying this definition in a therapeutic setting, or in relation to decisions about what is right for a child or vulnerable person is inappropriate and dangerous.**

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<sup>23</sup> Transgender Trend. 2019. Stonewall Schools Guidance: a critical review  
<https://www.transgendertrend.com/product/stonewall-schools-guidance-a-critical-review/>

<sup>24</sup> [https://www.rcpsych.ac.uk/pdf/PS02\\_18.pdf](https://www.rcpsych.ac.uk/pdf/PS02_18.pdf)



## How far do you agree or disagree with the penalties being proposed?

### Strongly disagree

The legislation risks criminalising therapists, social workers, teachers, youth workers and parents for acting in the best interests of individual children.

The urgent problem for the growing number of children and young people with gender issues is the lack of thoughtful mental health care which takes the time to enable them to explore their feelings, and considers the whole child in all their complexity. Parents tell us they are unable to find counselling which will consider a child's gender issues alongside other co-morbidities and issues.

Threatening therapists and counsellors with prosecution would further reduce the number of open-minded professionals willing to see these children, and see them funnelled onto the waiting lists of gender specialists, with medication treated as the natural goal.

It could result in a return to the "Section 28" situation where teachers and counsellors at school were unwilling to respond to a child who said they were gay. Teachers and counsellors at school may be unwilling to engage with a child who expresses gender issues (other than to affirm their identity and assist them to obtain medical treatment) for fear of being investigated for "conversion therapy".

## Do you think that these proposals miss anything?

### Yes

We think these proposals lack clarity in the definition of conversion therapy, and are wholly unsupported by credible evidence that they are directed to solving a real problem current in the UK.

They also miss the most brutal and fastest growing form of conversion therapy in the UK: the medical and surgical conversion of gender non-conforming children who have been encouraged to believe that they can literally change sex.

There will be negative unintended consequences, in particular pressure to socially transition children, leading to greater pressure for physical conversion.

It is vital that the government wait for the recommendations of the Cass Review before implementing any legislation affecting the treatment of children and young people.

In order to make sure that young people are supported in exploring their identity without being encouraged towards one particular path, the government should investigate how the Equality Act is being interpreted in guidance being given to schools and others

working with children, and ensure that this guidance does not promote body dysmorphia and social transition.

## The Government considers that Ofcom's Broadcasting Code already provides measures against the broadcast and promotion of conversion therapy. How far do you agree or disagree with this?

### Somewhat agree

The Ofcom code states that material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast.

Programmes promoting a simplistic view of physical conversion aimed at children in terms of "pink brains" and "blue brains" and stereotypes about dress, hair, make up and hobbies encourage children to think that they may be trans, when in fact what they are is gender-non conforming and may well grow up to be gay.<sup>25</sup> BBC educational resources for children and young people are written from a belief in "gender identity" and presented as if this were fact.

GIDS clinicians who have spoken with alarm about the rush to medicalisation highlight the role of TV programmes such as *I am Leo* and *Butterfly* which presented physical conversion as an uncomplicated good.<sup>26</sup>

In response to the ITV programme *Butterfly* GIDS said.

"Raising awareness of the difficulties that young gender diverse people may face is important, as it can increase societal acceptance and decrease prejudice, and we support the show's efforts to explore the experiences of the fictional family. However, we feel it is difficult for any single depiction to encompass the complexity and diversity of the journeys taken by the young people who come to our service"<sup>27</sup>

It should be recognised by broadcasters that transition (including social transition) is a significant step for which informed consent is needed. Broadcasters should consider their presentation of physical conversion in the same way they would consider the responsible broadcast of any information in relation to serious medical treatment (for which questions of age related to Gillick competence are relevant).

The Ofcom code states that "Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, when children are particularly likely to be listening, or when content is likely to be accessed by children on BBC ODPS, and must be appropriately limited." Thus detailed content related to sexual orientation is

<sup>25</sup> <https://www.transgendertrend.com/uk-cbbc-childrens-tv-i-am-leo/>

<sup>26</sup> <https://www.thetimes.co.uk/article/giving-puberty-blocker-to-trans-children-is-a-leap-into-the-unknown-x3g37sb7f>

<sup>27</sup> <https://gids.nhs.uk/news-events/2018-10-15/our-response-full-itv-series-butterfly>

rightly limited to older age groups. Children should not be inappropriately exposed to material of a sexual nature, but at the same time this means they are likely to be exposed to content which suggests they may be trans long before they are exposed to content exploring sexual orientation.

**The Ofcom code states that programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.**

**Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context.**

The Gender Identity Development Service at the Tavistock and Portman NHS trust, the UK's main centre of treatment for gender-variant children states:

“Suicidality in young people attending the GIDS is similar to that of young people referred to child and adolescent mental health services. It is not helpful to suggest that suicidality is an inevitable part of this condition.”<sup>28</sup>

Polly Carmichael, head of the GIDS told a conference in 2017.<sup>29</sup>

“I also question the discourse that is being created around young people experiencing gender diversity, that it is unbearable, intolerable. This is quite unhelpful. While recognising distress, we need not to be buying into a narrative that is so imbued with negativity and lack of resilience and remember that many of the young people here are coping quite well.”

However broadcast media frequently raise suicide risk, and use suicide storylines in relation to children experiencing gender dysphoria, and often uncritically report this narrative promoted by affirmation activists.

For example the BBC article "*Puberty blockers: Parents' warning as ruling appealed*" stated "Doctors and parents have told the BBC the ruling could cause distressed trans teens to self-harm or even take their own lives."<sup>30</sup> They referred to GP Dr Adrian Harrop as a source for this. Dr Harrop promotes himself through Youtube videos such as "Puberty Blockers 101", and has recently been suspended by the GMC for misconduct as a result of his insulting and intimidating actions as an activist.<sup>31</sup>

Another example was the BBC 3 programme "*Transitioning Teens*" which promoted the suicide narrative with the phrase "without hormones there is no future".<sup>32</sup> The programme gave the statistic that "48% of young trans people have attempted suicide." The only UK data on which this could be based is a self-selected survey promoted to "the LGBT community" in which out of a total 2078 responses only 120 were

<sup>28</sup> <https://gids.nhs.uk/news-events/2018-10-15/our-response-full-itv-series-butterfly>

<sup>29</sup> <https://soundcloud.com/user-664361280/dr-polly-carmichael-developments-and-dilemmas>

<sup>30</sup> <https://www.spectator.co.uk/article/the-bbc-should-be-ashamed-of-its-reporting-on-trans-teenagers>

<sup>31</sup> <https://twitter.com/tribunaltweets/status/1465360219798659073>

<sup>32</sup> <https://www.bbc.co.uk/iplayer/episode/p093wyx7/transitioning-teens>

transgender people, and only 27 of these were under the age of 26 years old. The study is not robust.<sup>33</sup>

More robust studies from other countries give similar figures, but increased suicide risk cannot confidently be attributed to transgender identity. Trans people are more likely to be depressed, have eating disorders, and autistic spectrum conditions. Autism is known to increase the risk of suicide mortality, especially in females. Moreover, many other subpopulations have comparable rates of suicidal ideation, for instance 43% of English adults receiving employment support allowance (ESA) report attempting suicide.<sup>34</sup>

Conversely there have been efforts to discredit those raising concerns. For example on Woman's Hour, BBC Radio 4, 20 October 2020 Professor Sarah Pedersen spoke about women's rights groups organising on Mumsnet, when the presenter interjected that "some people would call these women's rights groups "transphobic". ITV and Sky are both members of the Stonewall Diversity Champions Scheme and Workplace Equality Index (as were The BBC and Channel 4 until recently). Under this scheme Stonewall, and its sponsored LGBT+ staff networks seek to influence not only workplace conditions but also editorial decisions and programming.

We are concerned about the culture of Ofcom, which until recently was also a member of the Stonewall Diversity Champions scheme and still takes part in its Workplace Equality Index. Speaking to the DCMS select committee Melanie Dawes of Ofcom agreed that the group LGB Alliance were "transphobic" and said that Ofcom would turn to Stonewall for advice.<sup>35</sup> According to FOI responses reported by the BBC *Nolan Investigates* show, Ofcom cited judgments that they had made on broadcasting issues or complaints as evidence to impress Stonewall about advancing LGBT equality in the wider community.<sup>36</sup>

## Do you know of any examples of broadcasting that you consider to be endorsing or promoting conversion therapy?

### Yes

Any output aimed at children that promotes gender identity ideology as if it were fact risks encouraging gender non-conforming children into gender dysphoria and physical conversion.

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<sup>33</sup> <https://www.transgendertrend.com/the-suicide-myth/>

<sup>34</sup> McManus, Sally, Paul Bebbington, Rachel Jenkins, T. Brugha, NHS Digital, and UK Statistics Authority. 2016. Mental Health and Wellbeing in England: Adult Psychiatric Morbidity Survey 2014 : A Survey Carried out for NHS Digital by NatCen Social Research and the Department of Health Sciences, University of Leicester.

<sup>35</sup> <https://thecritic.co.uk/stonewall-take-another-hostage-ofcom/>

<sup>36</sup> <https://fairplayforwomen.com/nolan-investigates-stonewall-9/>

Examples include: *100 genders* (BBC Teach)<sup>37</sup>, *I am Leo* (CBBC), *Just a Girl* (CBBC), *First Day* (CBBC), *Butterfly* (ITV), *Transitioning Teens* (BBC3)

## The Government considers that the existing codes set out by the Advertising Standards Authority and the Committee of Advertising Practice already prohibits the advertisement of conversion therapy. How far do you agree or disagree with this?

### Somewhat agree

Gender dysphoria, was, until about five years ago, extremely rare. It was diagnosed in less than 0.01 per cent of the population. Now most schools have several children who identify as transgender or non-binary and who see their sexed body as a source of anxiety.

The Advertising Standards Agency recognises that:

“children and young people are vulnerable to body image pressures and negative body image perceptions are prevalent amongst those groups, which can have an impact on their self-esteem, wellbeing, mental health and behaviours. In particular, the period of adolescence has been highlighted in the evidence cited by consultation respondents as a life stage in which children and young people’s body image positivity may rapidly decline.”

Advertising, particularly focused on body “improvements” such as cosmetic procedures, is likely to exacerbate body image dissatisfaction and negativity during vulnerable stages of their lives. The Committee for Advertising Practice (CAP) warns against trivialising surgery and says that “marketers should ensure that cosmetic surgery ads do not exploit the insecurities of children, young people and vulnerable groups”.

New rules being introduced in 2022 will ban cosmetic surgery clinics from targeting adverts at under-18s. The rules will bar ads on all media - including social media sites such as Facebook, TikTok and Instagram as well as billboards and posters, newspapers, magazines and radio as well as social influencer marketing - that are aimed at under-18s or likely to have a particular appeal to that age group.

It seems likely that social media influencers have played a key role in the rapid increase in the number of teenage girls identifying as transgender over the past decade. In the past a key focus of concern has been breast enlargement ads targeting young people or vulnerable groups. **The ASA should be aware of similar pressures on young women to have breast removal (so called “top surgery”).** This is a growing market, and brand

<sup>37</sup>

<https://www.thetimes.co.uk/article/parents-condemn-bbc-educational-film-describing-100-gender-identities-396092vl8>

ambassadors, social marketing influencers and companies and surgeons advertising directly on social media<sup>38</sup> are all playing a role in promoting hormone therapy and surgery.

Advertisers seeking to burnish their brand's reputation for "social responsibility" are also using transitioners as characters in their advertisements, such as the Starbucks-Mermaids advertisement, which won a Channel 4 Diversity Award.<sup>39</sup> Advertisers should be clear that social transitioning is a significant step, particularly in childhood, which is likely to lead to demand for puberty blockers, and cross-sex hormones and surgery.

## Do you know of any examples of advertisements that you consider to be endorsing or promoting conversion therapy?

The cosmetics company Lush is currently promoting "chest binders" for girls who want to disguise the fact they are girls, often as a step towards or an aspect of physical conversion. Compressing breast tissue leads to problems including chest & shoulder pains, shortness of breath, dizziness, respiratory infections and fractured ribs.

The Starbucks 2020 ad campaign #WhatsYourName, offered a limited-edition Mermaids cookie to raise £100,000 for the charity, which promotes physical conversion for children who don't comply with gender stereotypes<sup>40</sup>

## The consultation document describes proposals to introduce conversion therapy protection orders to tackle a gap in provision for victims of the practice. To what extent do you agree or disagree that there is a gap in the provision for victims of conversion therapy?

**Somewhat disagree**

## To what extent do you agree or disagree with our proposals for addressing this gap we have identified?

**Somewhat disagree**

Giving charities and teachers the power to apply for such an order could result in oppressive orders preventing parents travelling abroad or to live in another country with

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<sup>38</sup> <https://twitter.com/LabelFreeBrands/status/1374467095430242308?s=20>

<sup>39</sup> <https://www.advocate.com/business/2020/2/03/starbucks-calls-trans-man-his-name-heartwarming-ad>

<sup>40</sup> <https://stories.starbucks.com/emea/stories/2020/whatsyourname-starbucks-mermaids-cookie>

their children. This would interfere with the freedom of parents to bring up their child as they see fit.

Proving that the intention was to seek out conversion therapy for gender identity would be likely to be impossible to prove.

## **Charity trustees are the people who are responsible for governing a charity and directing how it is managed and run. The consultation document describes proposals whereby anyone found guilty of carrying out conversion therapy will have the case against them for being disqualified from serving as a trustee at any charity strengthened. To what extent do you agree or disagree with this approach?**

### **Strongly disagree**

Current reasons for disqualification from being a charity trustee are indictable offences of dishonesty, such as fraud, corruption, perjury, as well as terrorism and sex offences.

The proposal is for "conversion therapy" to be triable as a summary offence by a magistrate. It is not clear what the justification is thought to be for treating the proposed summary offence, anomalously, as grounds for disqualification from serving as a charity trustee.

The definition of "conversion therapy" being proposed is political and is likely to be used to put pressure on charities to promote the physical conversion of young people.

The proposals risk increasing the influence of charities encouraging children and young people to understand themselves as "transgender" and lead to vexatious and malicious complaints against charities that disseminate research-based evidence.

## **To what extent do you agree or disagree that the following organisations are providing adequate action against people who might already be carrying out conversion therapy?**

**Police:** Neither agree or disagree

**Crown Prosecution Service:** Neither agree or disagree

**OTHER statutory service:** Neither agree or disagree

The term "conversion therapy" has not been clearly enough defined to make it possible for us to judge this.

The police, the CPS and other statutory services should not be empowered to interfere with family life on the basis of such a nebulous concept.

## To what extent do you agree or disagree that the following organisations are providing adequate support for victims of conversion therapy?

**Police:** Neither agree or disagree

**Crown Prosecution Service:** Neither agree or disagree

**OTHER statutory service:** Neither agree or disagree

## Do you think that these services can do more to support victims of conversion therapy?

**Prefer not to say**

No evidence has been provided on the extent of conversion therapy

## Do you have any evidence on the economic or financial costs or benefits of any of the proposals set out in the consultation?

**No**

## There is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act 2010. Do you have any evidence of the equalities impacts of any proposals set out in the consultation?

The short consultation period makes meaningful engagement with this question difficult, but we think there is reason to expect particular adverse impacts of the proposals on the following groups, defined by reference to one or more protected characteristics under the Equality Act:

- people with autism (disability)



- people on the autistic spectrum have a higher prevalence of gender dysphoria<sup>41</sup>
- children (age)
- members of certain faith groups (religion or belief)
- therapists/teachers/parents with gender critical views (religion or belief)
- gender-dysphoric people (gender reassignment)
- gay men and lesbians (sexual orientation)
  - gay men are more likely to have engaged in childhood behaviors typical of girls, and lesbians are more likely to have engaged in childhood behaviors typical of boys—and therefore both groups are more likely to be diagnosed with gender dysphoria<sup>42</sup>

## Would you like your response to be treated as confidential?

No

### Annex: Literature supporting the case for caution about physical conversion of children and adolescents

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<sup>41</sup> Warrior, Varun, David M. Greenberg, Elizabeth Weir, Clara Buckingham, Paula Smith, Meng-Chuan Lai, Carrie Allison, and Simon Baron-Cohen. 2020. 'Elevated Rates of Autism, Other Neurodevelopmental and Psychiatric Diagnoses, and Autistic Traits in Transgender and Gender-Diverse Individuals'. *Nature Communications* 11(3959). doi: 10.1038/s41467-020-17794-1.

<sup>42</sup> Li, Gu, Karson T. F. Kung, and Melissa Hines. 2017. 'Childhood Gender-Typed Behavior and Adolescent Sexual Orientation: A Longitudinal Population-Based Study.' *Developmental Psychology* 53:764–77. doi: 10.1037/dev0000281.

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