Response to the government consultation **Banning conversion therapy**

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

In order to develop this response we have undertaken a review of the government's evidence base:

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

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 forced medication should continue to be banned. **No change of law is needed here.**

We think the government should act to control the social, medical and surgical conversion of children under the guise 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 **not supported by any evidence of a problem requiring a new criminal law,** and are furthermore are misconceived, for three reasons:

1. **Sexual orientation and "being transgender" 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 – the promotion of the belief that they can literally change sex (and sexual orientation), leading them to undergo attempts at physical conversion which will impair their sexual function, ability to form relationships and fertility.

We support the EHRC's call not to legislate prematurely, particularly in relation to gender identity.

If this legislation goes ahead there should be pre-legislative scrutiny.

There is a lack of evidence to support this legislation

As the EHRC have stated in their response there is a distinct lack of evidence supporting this legislation, particularly in relation to gender identity.

We have set out an analysis of the government's evidence base in our rapid review[1] which we are attaching as an annex to this response.

The key piece of evidence underpinning the proposal is the UK Government's 2017 National LGBT survey, in which around 2.9% of respondents answered "Yes" to the question "Have you ever undergone so-called 'conversion' or 'reparative' therapy in an attempt to 'cure' you of being LGBT?"

However, the GEO's own paper's own research paper *The prevalence of conversion therapy in the UK* acknowledges that the survey was badly flawed: it did not reach a nationally representative sample and failed to define conversion therapy. It provides no basis to estimate the prevalence of "coercive or abhorrent practices" in contemporary Britain.[2]

Dr Paul Martin OBE, who has been working for 30+ years on the frontlines of supporting the LGBT community, and whose organisation the LGBT Foundation sees over 40,000 people a year, recalls that the survey's findings did not match his experience:

> "Many of us were extremely surprised that the national survey raised such a large number of people who had experienced conversion therapy. That came as quite a big surprise to many of us, who were unaware of the extent of it…
>
> …Organisations like mine had come across people from faith communities or people who were older and who had been through and experienced conversion therapy, but not to the extent that the survey

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

[2] Sex Matters (2021). *A rapid review of the Coventry University research on "gender identity conversion therapy"*. https://sex-matters.org/posts/publications/rapid-review-of-coventry-university-research-on-conversion-therapy/

> was indicating or that we have heard subsequently from the greater attention and focus."[3]

Similarly Baroness Williams says:

> "When I first started in my role as Equalities Minister, I did not believe that conversion therapy existed. I thought that the like of what happened to people like Alan Turing was gone, only to find that it still exists. One upshot of the survey is to highlight that it does exist."

The survey itself is not compelling evidence. In particular it is not clear what proportion of the people who answered "Yes" to the question in the survey were describing practices which would be captured by this legislation as proposed.

The government has given assurances that it "has no intention to stop parents, clinicians, teachers, or anyone else from having open and explorative conversations with young people or others about their sexual orientation or whether they are transgender or not".[4] And it has said that "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".[5]

Yet of the respondents who reported experiencing "conversion therapy" in the National LGBT Survey, 19% said they were provided by a healthcare provider or medical professional, 16% by a parent, 14% by any other organisation and 9% from a person from their community. The NHS and healthcare professionals do not provide "conversion therapy", so it is not at all clear what it is that is being described here.

Similarly in 2018 Stonewall conducted a survey of LGBT health in Britain, which found that "one in twenty LGBT people (five per cent) have been pressured to access services to question or change their sexual orientation when accessing healthcare services… One in five trans people (20 per cent) have been pressured to access services to suppress their gender identity when accessing healthcare services."[6] However since the NHS does not commission services to suppress sexual orientation or gender identity this points to a difference of perception, where ordinary healthcare and therapy is being perceived as "conversion".

The majority of the qualitative examples of "conversion therapy" described in the commissioned research from Coventry City University could well be experiences that do not meet the government's definition of conversion therapy targeted by the ban.

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[3] https://committees.parliament.uk/oralevidence/2217/pdf/

[4] https://medium.com/government-equalities/minister-freer-mythbusting-the-conversion-therapy-ban-399f4440e267

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

[6] https://www.stonewall.org.uk/system/files/lgbt_in_britain_health.pdf

For example routine therapeutic exploration was interpreted at a later date as aimed at conversion:

> "We started talking about my family history. The counsellor convinced me that because my mum left and my dad would spend more time with my two sisters… that I was looking for the attention my sisters had and that was the feelings for my gender identity, so they kept pushing that into my head."
> *(Transgender woman, pansexual, 20s, sexual orientation change efforts and gender identity change efforts)*

Or therapy to curb problematic behaviours like pornography addiction was perceived to be conversion therapy:

> "The guy that I'd work with would encourage me to resist watching pornography… it might be things like don't have a computer in your room, or noticing when you first feel tempted to go and look at porn and see what's going on, see if there's a trigger."
> *(Cisgender man, heterosexual, 30s, sexual orientation change efforts)*

Or the interpretation that medical consideration of lack of any adult sex drive can be a symptom of a mental health or physical health condition was conversion:

> "The medical field, especially psychiatrists, wanted to believe it was a sign of mental illness. They figured, regardless of the fact that I was content with being asexual, that it was pathological, and that they could use that as a basis for my health. They took the fact my sexuality wasn't changing as an indicator that the medicine wasn't working, ignoring the fact the medicine was helping my other, actually distressing symptoms."
> *(Non-binary person, asexual, 20s, sexual orientation change efforts)*

Or pastoral talk as conversion:

> I got very involved in the youth group at that church, which I loved and I still have very positive feelings and memories of, but also that was where I had, I guess, some experience of what we're talking about today. It was when I was 18, I told a friend who was also in this youth group and then the second person I told was the youth pastor at the church…Then we just started speaking more and more often… we spoke about things to do with my parents, that classic relationship with parents, perhaps that's why.
> *(Cisgender woman, lesbian, 20s, sexual orientation change efforts)*

Or that parental pressure was conversion:

> "She encouraged me into sexual relations with a man around my own age and told me it was 'normal' to not want to."
> *(Cisgender woman, asexual, 20s, sexual orientation change efforts)*

Or personal feelings of conflict with religious sexual teachings amounted to conversion therapy:

> That's when the real conflict started to happen, and a challenge in terms of how I integrated my religious faith with being gay, and feeling the shame, a huge amount of shame in being gay within a very conservative environment.
> *(Cisgender man, gay, 50s, sexual orientation change efforts)*

In fact there is almost nothing in the Coventry University report that points to coercive "conversion practices" of the type that this law is seeking to ban being undertaken in the UK. Only one academic study of "conversion therapy" in the UK was found by the Coventry University literature review. This is a 2009 survey of UK mental health professionals (Bartlett, Smith and King, 2009).[7] In this study 55 (4%) of therapists reported that they would attempt to change a client's sexual orientation if one consulted asking for such therapy, 222 (17%) reported having assisted at least one client/patient to reduce or change his or her homosexual feelings.

The reasons given for the client seeking help were confusion about sexual orientation (236, 57%), social pressures including the family (59, 14%), mental health difficulties (45, 11%), religious beliefs (28, 7%), gender confusion (15, 4%), legal pressures (14, 4%), heterosexual relationship difficulties (9, 2%), and as victims of abusive relationships (8, 2%).

However, the description by therapists tends to fit the picture of talking therapy helping people questioning or exploring their sexual orientation rather than conversion therapy with a pre-determined outcome:

> "[The] client is 'the expert' and I deal with their realities rather than mine." (BACP).
>
> "People should have the choice to explore change while at the same time the therapist can hold to their ethical stance." (UKCP).
>
> "If after extensive, good therapy they were still adamant they wanted to change, I would think this was their decision though I would hope they would come to terms with themselves on the journey." (BACP).
>
> "I feel people should have the opportunity to consider their sexuality and if they want to reduce or redirect any aspect of it they should be helped to do so." (BPS).
>
> "We have a responsibility to assist our patients with self-determination." (Psych).
>
> "Some bisexual individuals may wish to choose an orientation that is comfortable for them and their lifestyle choices for example. This is a therapeutic issue to explore and support if that is their wish. It is different from behavioural attempts to reshape desire." (UKCP).

[7] https://bmcpsychiatry.biomedcentral.com/articles/10.1186/1471-244X-9-11

> "I am sure there are cases of bisexuality or sexual ambivalence where counselling could be offered to motivated individuals." (Psych).
>
> "Because some clients/patients are unsure of whether they are really homosexual – particularly young adults under 25." (BPS).
>
> "Children and young adults are more likely to be confused about their sexuality and to jump to conclusions (correct or otherwise) if unable to talk through their concerns." (Psych).
>
> "It is better to help people look at the problems and come to a decision for themselves. If people are homosexual/lesbian that is what they are." (BPS).
>
> "I would not assume I knew what direction someone should take." (BACP).

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.[8]

The Ozanne Foundation in the *Cooper Report* in support of this legislation uses the term "torture" and refers to Article 3 of the European Convention of Human Rights:

> "It is the view of the Forum that the morally reprehensible and discriminatory nature of conversion practices, which as the Prime Minister has said "have no place in a civilised society", warrants criminalisation. This is because conversion practices deny human dignity and demean victims in such a way as to amount to degrading or inhuman treatment and may in some circumstances constitute torture. They also destroy an individual's right to a private life, protected by Article 8 ECHR. Human rights law requires that conduct that falls within the scope of prohibited ill-treatment be regulated by the criminal law."[9]

The experiences described in the qualitative, quantitative and academic research assembled by the government bear no relation whatsoever to torture.

The recent disproportionate responses to the EHRC's consultation response published on 26th January 2022 should also give cause for concern.

Following the EHRC's call for a more cautious approach the promoters of this legislation reacted strongly; Stonewall called on the UN Office of the High Commissioner for Human Rights and the Global Alliance of National Human Rights Institutions to urgently review EHRC's status as an National Human Rights Institution.[10] Mermaids stated "Until we as a community see a significant investment, meaningful engagement and progressive action taken by the EHRC

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[8] Sex Matters (2021). *A rapid review of the Coventry University research on "gender identity conversion therapy"*. https://sex-matters.org/wp-content/uploads/2021/11/Coventry-University-research-on-conversion-therapy.pdf

[9] https://drive.google.com/file/d/1YckOHNJ4-pUq779huyT8cRuXt81FAVYe/view

[10] https://www.stonewall.org.uk/about-us/news/stonewall-response-ehrc-statements-upcoming-lgbtq-legislation

towards progressing trans rights, we see no merit in further dialogue."[11] The LGBT Foundation declared it was "severing ties" with the EHRC and said "EHRC has ignored the experiences of trans and non-binary individuals who have undergone unnecessary trauma. They suggest that LGBTQ+ lives are up for debate and medical scrutiny. They disregard expert opinion and lived experience – a humiliating and dehumanising action against our community with real-world consequences."[12] Pride Cymru called EHRC's stance "transphobic" and said it had been influenced by "hate groups".[13]

These overblown responses demonstrate how a vaguely defined new law to criminalise "conversion therapy" or "practice" would be weaponised to close down debate and to in turn criminalise those who disagree with the organisations that have lobbied for it.

It is notable that none of these groups had previously emphasised conversion therapy as a strategic priority or problem in their annual reports, strategy documents or research programmes until very recently. This shows every sign of being a recently concocted moral panic in which indignation, rage, and fear about "torture" are being manipulated and translated into social and political support for a move to restrict freedom of belief and freedom of speech.

Sexual orientation and "being transgender" are not equivalent

A key problem with this proposed legislation is that it conflates sexual orientation and "being transgender" (which is not defined), 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 hormones and surgery.
- Same-sex orientation is a normal, non-pathological variation of human sexuality. It isn't a medical condition. It requires no diagnosis or treatment. Sexual orientation describes attraction to a person's sex and not to 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. Non-conforming gender expression that causes no distress and which is not associated with a desire for body modification is obviously non-pathological; but gender dysphoria sufficiently severe to make the sufferer seek radical alterations to their healthy body is a condition requiring medical assessment.

[11] https://mermaidsuk.org.uk/news/mermaids-response-shameful-ehrc/

[12] https://lgbt.foundation/news/lgbt-foundation-to-sever-all-ties-with-the-ehrc/455

[13] https://twitter.com/PrideCymru/status/1486647118173544448

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 that 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 any failure to affirm someone as the opposite sex is a form of "conversion therapy".[14]

The government is hosting an LGBT Summit in 2022, and there is time pressure to produce legislation that is "inclusive". Any attempt to treat transsexualism separately from sexual orientation has been met by accusations of "transphobia". For example, when the Ozanne Foundation, Stonewall, Mermaids, GIRES and the LGBT Foundation published their report calling for this legislation, they labelled any survey responses which stated that convincing gay children that they were "born in the wrong body" and need physical conversion "transphobic" and excluded them from the results.[15]

This approach of treating a child's self-identification as the last word 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).[16] As a group of eminent psychologists wrote in an open letter to the Chief Executive of the British Psychological Society in 2020:[17]

> "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."

The Equality and Human Rights Commission has recommended that legislation should initially focus on banning conversion therapy that attempts to change a person's sexual orientation, only proceeding on gender identity "once more detailed and evidence-based proposals are available which can be properly scrutinised"; alternatively they suggest prelegislative scrutiny of the draft legislation.[18]

> The legislation must be carefully drafted in order not to catch legitimate and appropriate counselling, therapy or support which enables a person to explore their sexual orientation or gender dysphoria, and to avoid criminalising mainstream religious practice such as preaching, teaching

[14] https://www.gendergp.com/am-i-trans-gender-dysphoria-test/

[15] https://www.stonewall.org.uk/system/files/2020_conversion_therapy_and_gender_identity_survey.pdf

[16] https://www.transgendertrend.com/conversion-therapy-legal-opinion/

[17] https://thepsychologist.bps.org.uk/volume-33/october-2020/freedom-expression-around-diversity-guidelines

[18] https://www.equalityhumanrights.com/sites/default/files/consultation-response-banning-conversion-therapy-26-january-2022.docx

> and praying about sexual ethics. Specific consideration will be needed to determine whether a differentiated approach to what constitutes conversion therapy in relation to sexual orientation and being transgender is required to achieve this. Similarly, the legislation must define clearly what is meant by sexual orientation and being transgender.

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.

As Labour MP Sandra Osborne said in a Westminster Hall[19] debate in Parliament in 2013.

> "In the 1950s and '60s, LGBT patients were routinely forwarded by teachers, GPs and, as in the case of Alan Turing, criminal courts to NHS so-called specialists in sexual orientation treatment. During that period, all branches of psychology from the cognitive to the behavioural and the psychodynamic had their own cruel and unpalatable methods of dealing with same-sex attraction."

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 2015 Conservative MP Mike Freer cited outlandish practices such as exorcism and testicular transplants in a Westminster Hall debate.[20] He referenced Dr Christian Jessen, who for a television programme:

> "underwent treatment for homosexuality, including one of the most extreme cures, aversion therapy, which looks to teach patients to associate same-sex attraction with pain or nausea. Patients are given a drug that makes them extremely ill and they are then played pornographic images and sound recordings while they vomit violently… Usually patients experience a session every two hours, night and day, for three whole days."

[19] https://www.parallelparliament.co.uk/debate/2013-11-20/commons/westminster-hall/gay-to-straight-conversion-therapy#13112084000076

[20] https://hansard.parliament.uk//commons/2015-11-03/debates/15110343000005/GayConversionTherapies#contribution-15110343000353

What he did not say was that this was not an actual example of aversion therapy being offered in the UK, but a re-enactment staged for television entertainment.[21]

Other stories are historic. For example in parliament Elliot Colborn MP told "Carolyn's story" which has been promoted by Stonewall in support of this legislation:

> "At 17, Carolyn confided in her local vicar her feelings of self-hatred and depression, and her suicidal thoughts, because she did not feel like a boy. Her vicar took her to a doctor and a psychiatric hospital, where Carolyn was strapped to a wooden chair in a dark room. As images of women's clothing were projected on to the wall in front of her, doctors would deliver painful electric shocks, hoping to associate the feelings of being a woman with memories of intense pain."

What Colborn did not say was that this happened in the 1970s, and is already illegal and could not be performed by the NHS or any regulated professional.[22]

There is simply no evidence of such practices taking place in the UK, and if they did they would already be illegal.

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 such religious 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 ticked "Christian". When questioned further, 55% of these apparently "Christian" respondents acknowledged that they did not believe in Christian teachings and did not attend church services. 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 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.[23]

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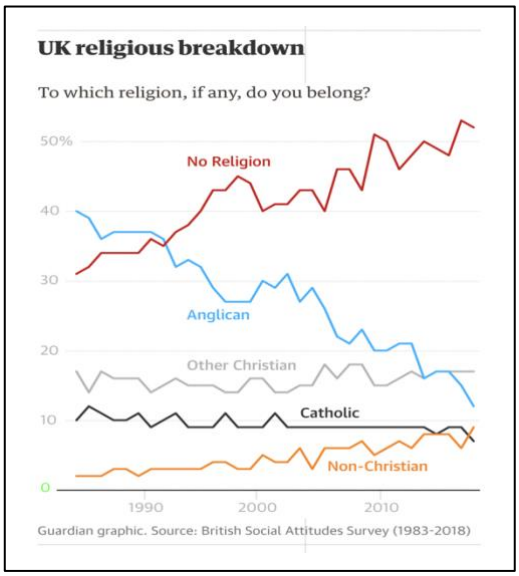
[21] https://www.youtube.com/watch?v=U6PI1alUhRA

[22] https://hansard.parliament.uk/commons/2021-03-08/debates/552D6176-C4D5-47F1-A8C1-C900B58AEB7C/LGBTConversionTherapy

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

Figure 1: UK religious population



Some contemporary stories of "conversion therapy" within religious communities, are reported in the media but often the distress described is actually describing isolation from community, and feelings of spiritual turmoil. These are real and distressing feelings, 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.

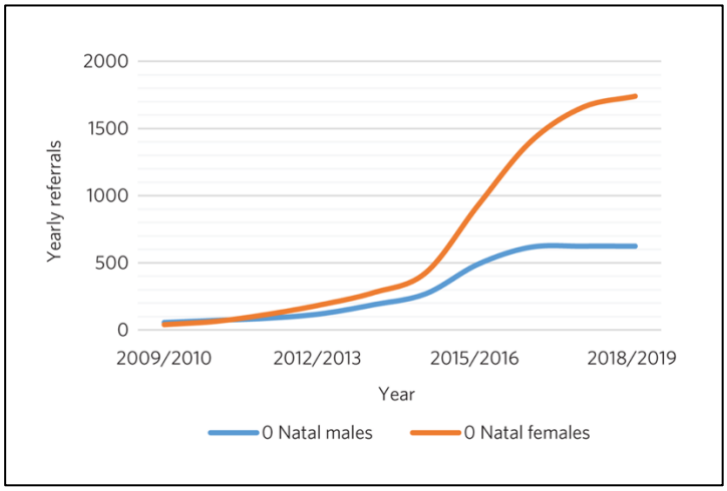
It ignores the fastest-growing and most brutal form of conversion

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 amongst girls. They are undertaking early "social transition" and undergoing physical conversion by taking puberty-blocking drugs which affect bone and possibly also brain development.[24] Girls 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; a disproportionate number are on the autistic spectrum.

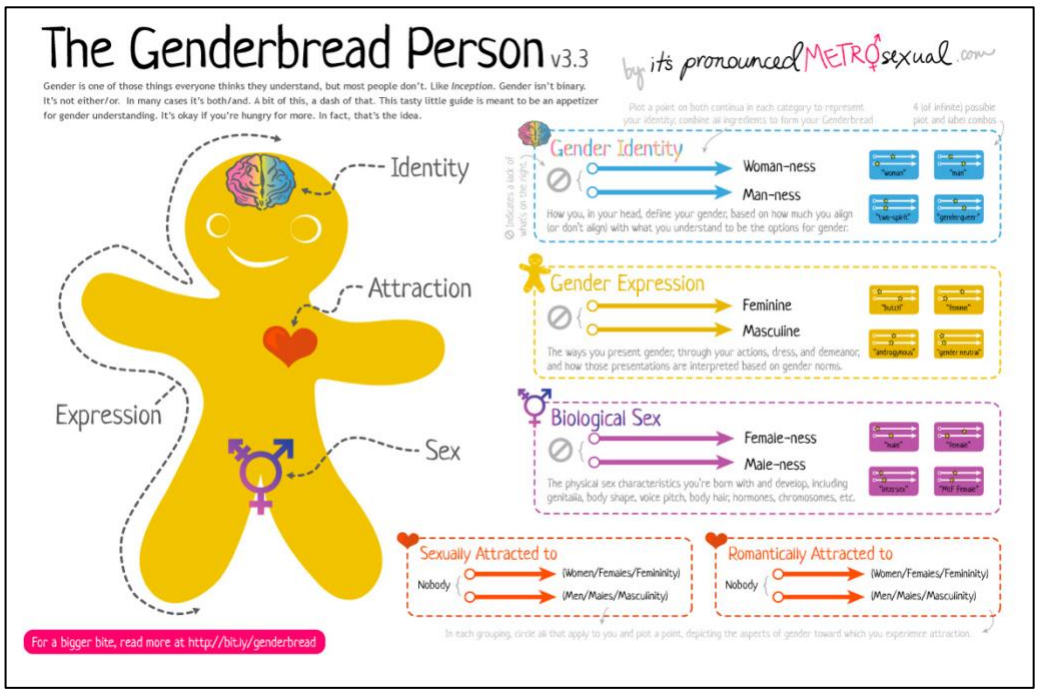
[24] Biggs, Michael (2021). 'Revisiting the Effect of GnRH Analogue Treatment on Bone Mineral Density in Young Adolescents with Gender Dysphoria', *Journal of Pediatric Endocrinology and Metabolism*, 34: 937–939. doi: 10.1515/jpem-2021-0180.

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. They claim that sex is merely "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 other organisations.

Figure 3: The Genderbread Person



They argue that a significant proportion of people are "born trans", and that the recent rapid growth in children affected by this phenomenon 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
- unprecedented use of social media by young people.

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 having body modifications and living as a transsexual, there are increasing concerns that a young adolescent cannot truly understand this reality, nor the serious impacts of such treatment.[25]

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

[25] 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

will accept "trans women" or "trans men" as partners and a slightly larger minority of lesbians.[26] Telling young lesbians that they can transition to become straight men, and straight men with autogynephilia (a male's propensity to be sexually aroused by the thought of himself as a female)[27] 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", advising them how to penetrate the male gay scene without telling potential partners that they are female.[28] Lesbians complain of being pressured to "accept the idea that a penis can be a female sex organ".[29]

It 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 towards physical conversion. Sometimes 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.[30] Schools are encouraged to adopt and promote the idea of gender identity as a person's innermost concept of self, and have been trained that questioning gender identity 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 behaviours for which children should be reprimanded.

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.[31]

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[26] 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', *Journal of Social and Personal Relationships* https://journals.sagepub.com/doi/abs/10.1177/0265407518779139?journalCode=spra

[27] Lawrence, A (2011). *Autogynephilia: an underappreciated paraphilia*. https://pubmed.ncbi.nlm.nih.gov/22005209/

[28] ClinicQ: *Cruising: a trans guy's guide to the gay sex scene*. https://jirosworld.com/transgender/TransGuys-cliniq-safers.pdf

[29] Lowbridge, C (2021). 'We're being pressured into sex by some trans women'. https://www.bbc.co.uk/news/uk-england-57853385

[30] https://fairplayforwomen.com/draft_ehrc_schools/

[31] https://pubmed.ncbi.nlm.nih.gov/34665380/

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 proposed new law.

Instead, organisations promoting the conversion of gender non-conforming children to appear to be the opposite sex call any challenge to their worldview "conversion therapy". This can include sending a child to a boys' school or girls' school (corresponding to their sex regardless of gender identity),[32] 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, risks, harms and effects of puberty blockers and the reasons for the increase in referrals of children.[33]

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?

Somewhat 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 a significant problem of abhorrent gay conversion practices in the UK as conventionally understood, either carried out by therapists or in the name of religion.

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[32] 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, p.13

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

As the Minister Kemi Badenoch has stated, "Conversion therapy" is now used as "an umbrella term for a number of acts".[34] 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.

We have also searched the media and been unable to find any reports of recent cases.[35] 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

[34] Minister Kemi Badenoch, House of Commons Petitions Debate (08/03/21)

[35] Forstater, M (2021). '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

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 are already covered by existing hate crime legislation (as is acknowledged by the Ozanne Foundation's *Cooper report*). There is no need for an additional, and overlapping aggravator.

Organisations such as Stonewall and GALOP should raise awareness of the existing law so that victims of any 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:

- encourages reporting of any such acts within the existing hate crimes framework.
- commissions 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 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 under the umbrella of "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.[36]

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.

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 likely that this legislation would be used to label as "conversion therapy" anything that falls short of immediate social transition, such as a family, community school or youth group ***not:***

1. treating a child as if they are the opposite sex
2. allowing a child to access opposite-sex facilities
3. enforcing change of name and pronouns
4. enabling breast binding, tucking and taping of genitals or wearing prosthetic "packers" or fake breasts.

Repeatedly saying "no" to a child (such as "No, you cannot use the girls' changing rooms because you are male") could be construed as conversion talking therapy, although it is a necessary measure to take to allow single-sex spaces to maintained for the privacy and dignity of all.

[36] 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/

Social transition is a significant step, and the strongest predictor for persistence of gender dysphoria.[37] 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 experienced 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.

Mike Freer has stated that the legislation will not introduce gender identity into law:

> "The most worrying misconception around our proposals is the allegation that some of those who advocate for this ban are doing so as a pretext to introducing 'gender identity' in legislation. It has been claimed that this would lead to people being able to change their legal sex without needing to follow the process to acquire a gender recognition certificate. To be clear, the legislation we will put forward following this consultation will address conversion therapy only and will not amend the Gender Recognition Act 2004 which allows for change of legal sex."[38]

However while this bill will not legally enable people to change the sex recorded on a birth certificate it will establish in law the concept of gender identity, and of a child being transgender based on their own self-identification.

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 – despite 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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[37] 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.

[38] https://medium.com/government-equalities/minister-freer-mythbusting-the-conversion-therapy-ban-399f4440e267

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, or 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 quite different, 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 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 overruled 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[39] 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 and local councils 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 all respects as if they had changed sex.[40] There is no case law to support this

[39] In an uncontroversial passage unaffected by the subsequent overruling of the High Court's judgment on appeal.

[40] https://www.brighton-hove.gov.uk/families-children-and-learning/support-school/trans-inclusion-schools-toolkit-2021#5-supporting-the-individual-trans-non-binary-or-gender-exploring-child-or-young-person

treatment, and it is a misreading of the Act; but it is widely believed to be required by the legislation.

A conversion therapy law focused on under-18s would go further in adding the threat of a criminal offence, creating the concept of the "transgender child" in law, and empowering those encouraging children to feel dislocated from their bodies to threaten a police investigation if demands of complete social transition are not met.

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 law grossly oversimplifies the complex nature of treatment for gender dysphoria and risks causing children irreversible harm.

It is a clear principle of equality law that people with different characteristics should not be treated less favourably because of those characteristics. These protected characteristics are suitably broad because their purpose is to eliminate discrimination in all its forms.

Medical and healthcare professionals must be free to consider their patients' needs on an individual, case-by-case basis, taking into account a wide variety of factors, which often intersect in highly complex ways.[41]

If professionals are threatened with prosecution for asking reasonable questions and not immediately affirming a patient's own self-diagnosis and treatment needs, then this effectively constrains medical professionals' abilities to carry out the thorough assessments they are professionally and ethically bound to perform.

Forcing medical professionals to prioritise a patient's self-diagnosis over their own expert instincts for fear of being caught by conversion therapy legislation means that many young people will be prevented from receiving appropriate healthcare. When this is taken in the context of Sheffield Hallam University et al's 2012 *Trans Mental Health Study* which revealed that 27% of respondents who had attended UK gender identity clinics had either withheld information from or lied to their clinicians, it paints a very dangerous picture of the future of transgender healthcare.

Comments made by Sheffield survey respondents who had lied to or withheld the truth from medical professionals at gender identity clinics included:

> "I didn't tell the clinician about all the abuse I'd experienced as a child. I told him of one set of incidents by one person, but none of the rest. I'm scared that they'll refuse me top surgery and force me to go through counselling instead and I just can't live with this body that long".
>
> "Someone once said that the healthy personality has both masculine and feminine traits, a healthy balance, but I disowned anything that

[41] Transgender Trend (2019). *Stonewall Schools Guidance: a critical review*. https://www.transgendertrend.com/product/stonewall-schools-guidance-a-critical-review/

> could have been considered masculine to impress the psychologists there."
>
> "I do not tell them about the fact I enjoy my genital organs sexually in case treatment is withheld as a result."
>
> "I presented to the NHS GIC as a binary-identified trans man who had fully socially transitioned and invented a narrative about my gender identity so that they could tick boxes. I have not had problems getting the treatment I require, but only because I heavily edited the truth in my relations with them."

These comments suggest that medical professionals need more freedom rather than less to be able to thoroughly explore their patients' backgrounds and experiences in order that appropriate treatment can be provided.

If this is where we are without conversion therapy legislation, then it seems reasonable to assume that constraining medical practitioners further will only serve to exacerbate the existing issues around self-diagnosis and gender-affirmative treatment, and the irreversible harm this can cause to children and young people.

There is a very clear danger that it will be seen as conversion therapy for therapists to explain clearly the negative impacts of medical transition on sexual function, fertility, ability to find relationship partners, bone density, and other aspects of health.

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.

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

Strongly disagree

The legislation would effectively criminalise 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 problems such as eating disorders and bullying.

Threatening therapists and counsellors with prosecution would further reduce the number of open-minded professionals willing to see these children, and see them instead funnelled on to 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 they are gender-non conforming and may well grow up to be gay.[42] BBC educational resources for children and young people are written from a belief in "gender identity" and presented as if this were fact.

[42] https://www.transgendertrend.com/uk-cbbc-childrens-tv-i-am-leo/

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 promoted physical conversion as an uncomplicated good.[43]

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."[44]

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 rightly limited to older age groups. It is accepted that children should not be inappropriately exposed to material of a sexual nature, but at the same time content aimed at children has been created 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."[45]

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[43] https://www.thetimes.co.uk/article/giving-puberty-blocker-to-trans-children-is-a-leap-into-the-unknown-x3g37sb7f

[44] https://gids.nhs.uk/news-events/2018-10-15/our-response-full-itv-series-butterfly

[45] https://gids.nhs.uk/news-events/2018-10-15/our-response-full-itv-series-butterfly

Polly Carmichael, head of the GIDS, told a conference in 2017:[46]

> "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."[47] 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.[48]

Another example was the BBC 3 programme *Transitioning Teens* which promoted the suicide narrative with the phrase "without hormones there is no future".[49] 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 2,078 responses only 120 were transgender people, and only 27 of these were under the age of 26 years old. The study is not robust. Moreover, many other subpopulations report comparable rates, for instance 43% of English adults receiving employment support allowance (ESA) report attempting suicide.[50]

A recent analysis of adolescents referred to the Gender Identity Development Service estimates a suicide rate of 13 per 100,000 patient-years.[51] This rate for patients is higher for the general population, but increased suicide risk cannot necessarily be attributed solely 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.

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[46] https://soundcloud.com/user-664361280/dr-polly-carmichael-developments-and-dilemmas

[47] https://www.spectator.co.uk/article/the-bbc-should-be-ashamed-of-its-reporting-on-trans-teenagers

[48] https://twitter.com/tribunaltweets/status/1465360219798659073

[49] https://www.bbc.co.uk/iplayer/episode/p093wyx7/transitioning-teens

[50] 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.

[51] Biggs, Michael (2022). 'Suicide by clinic-referred transgender adolescents in the United Kingdom', *Archives of Sexual Behavior*; https://link.springer.com/article/10.1007/s10508-022-02287-7

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 "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.[52] 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 of its progress in advancing LGBT equality in the wider community.[53]

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.

Examples include: *100 genders* (BBC Teach)[54], *I am Leo* (CBBC), *Just a Girl* (CBBC), *First Day* (CBBC), *Butterfly* (ITV), and *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.

[52] https://thecritic.co.uk/stonewall-take-another-hostage-ofcom/

[53] https://fairplayforwomen.com/nolan-investigates-stonewall-9/

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

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 that 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, 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 ambassadors, social marketing influencers and companies and surgeons advertising directly on social media[55] 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.[56] 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.

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[55] https://twitter.com/LabelFreeBrands/status/1374467095430242308?s=20

[56] https://www.advocate.com/business/2020/2/03/starbucks-calls-trans-man-his-name-heartwarming-ad

Compressing breast tissue leads to problems including chest and 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 fail to comply with gender stereotypes.[57]

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

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.

[57] https://stories.starbucks.com/emea/stories/2020/whatsyourname-starbucks-mermaids-cookie

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 defined clearly enough 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 particularly 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[58]
- children (age)
- members of certain faith groups (religion or belief)
- therapists/teachers/parents with gender-critical views (religion or belief)
- people suffering from gender dysphoria (gender reassignment)
- gay men and lesbians (sexual orientation)
    - gay men are more likely to have engaged in childhood behaviours typical of girls, and lesbians are more likely to have engaged in childhood behaviours typical of boys – and therefore both groups are more likely to be diagnosed with gender dysphoria.[59]

Would you like your response to be treated as confidential?

No

More information

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[58] Warrier, 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.

[59] 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.

sexmatters

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

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Hakeem, A. 'Changing Sex or Changing Minds: Specialist Psychotherapy and Transsexuality', *The International Journal of Group Analysis*, Volume 41 Number 2, June 2008, pp182–196.

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