Thoughtful Therapists

SCOPING SURVEY FOR GOVERNMENT EQUALITIES OFFICE CONSULTATION ON CONVERSION THERAPY

November 2021

GDSN Supporting families

Genspect

FAIR PLAY FOR WOMEN

SSA UK Safe Schools Alliance UK

Transgender TREND

No child is born in the wrong body

THOUGHTFUL THERAPISTS: SCOPING SURVEY FOR GOVERNMENT EQUALITIES OFFICE CONSULTATION ON CONVERSION THERAPY

Welcome to Thoughtful Therapists. We are a group of psychotherapists and counsellors working in the area of gender and gender dysphoria. We have come together in a bid to protect the integrity of the open-ended exploration of feelings and ideas that has always been, and is still now, a necessary component of ethical and effective therapy.

We are concerned that the proposed Bill to Ban Conversion Therapy may criminalise or ban beneficial exploratory therapy in the context of gender dysphoria, as we feel this will be detrimental to both therapists and clients who want to work in this area. We believe that ethical therapists would never carry out conversion therapy and so the focus should be on protecting the integrity of ethical therapy. We do not agree with faith-based conversion 'therapy' and we do not consider it in any way ethical.

We are concerned about the consequences of the Memorandum of Understanding on Conversion Therapy. This document seems to promote an affirmation-only approach for therapists working with individuals with gender-related distress. There is no long-term, high quality evidence base to support the affirmative approach and we are concerned that this narrow-minded approach limits the range of therapeutic options available to individuals who are endeavouring to freely explore their innermost thoughts and feelings.

Please visit our About Us page to learn more, or get in touch for more information.

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FOREWORD

A Distress Flare...

The heightened emotion surrounding the Memorandum of Understanding on Conversion Therapy has become a serious obstacle to thoughtful discussion, yet thoughtful discussion is the only method that we have to contribute to ethical and effective policies. The emotion is now so intense that all sides are shrouded in a fog of indignation and anger.

This survey sends up a distress flare; to illuminate the landscape and to shine a light on the challenges facing those drafting the proposed Bill to ban Conversion Therapy. It serves to remind government of the many challenges faced by therapists, it makes the arguments visible to the wider public and signals the critical position of therapists within this debate.

I urge all those involved in drafting the proposed Bill to ban conversion therapy and all therapists involved in working with dysphoric patients to read this survey to fully understand the landscape within which we are operating.

Stella O'Malley, Psychotherapist and Author

Stella O'Malley is a psychotherapist, bestselling author and public speaker. Stella often writes for the media and has written three books on mental health, 'Cotton Wool Kids', 'Bully-Proof Kids' and 'Fragile', In 2018, Stella was the presenter of the highly-acclaimed Channel 4 documentary 'Trans - Kids: It's Time To Talk' and in 2019 she contributed a chapter to the book, 'Inventing Transgender Children and Young People'. In December 2020, Sasha Ayad and Stella launched the podcast 'Gender: A Wider Lens', in a bid to explore the concept of gender from a psychological depth perspective.

EXECUTIVE SUMMARY:

There is no agreed operational definition of conversion therapy. Conversion therapy can be understood as an *intentional* attempt by a professional therapist to use *therapy* to change specific client *behaviour*. (This document does not discuss conversion therapy applied in non-therapy settings, such as in faith or religious contexts.) Current research data does not provide compelling evidence of the widespread practice of conversion therapy by professional therapists in the UK against either homosexual, lesbian and bisexual clients, or against trans clients. Our survey of international law on conversion therapy has identified a number of crucial safeguards required to protect mainstream exploratory therapy from the unintended detrimental consequences likely to be caused by such a ban.

Potential problem areas for a number of aspects of mainstream therapeutic practice posed by a ban on conversion therapy are also identified and suggestions made. These suggestions include:

- reducing the risk that **gender identity affirmative therapy** will **reframe gay, lesbian and bisexuals as possessing an inherent trans gender identity,** requiring full or partial social and medical transition to transgender;
- acknowledging the overlooked **therapeutic needs of detransitioners,** i.e. those completing transition in full or in part, but who now wish to return to their former gender identity;
- ring-fencing and **protecting psychological therapy for sex offenders** e.g. in prisons and the community, aimed at controlling or reducing sexual offending behaviour;
- safeguarding and **protecting the distinct needs of children and young people under 18** with regard to gender identity affirmative therapy, risk management, social and medical transition and de-transition;
- **protecting therapists who are providing exploratory therapy** for clients with gender identity issues, from the risk of being perceived by clients as having provided conversion therapy. e.g. after a breakdown in the therapeutic relationship.

This document makes 15 recommendations (see **Table** below), designed to protect exploratory therapy from legal and professional sanction; to safeguard children and young people under 18 from irreversible decisions; to substantially revise the Memorandum of Understanding on Conversion Therapy; and to undertake research in specific areas. For example, one key recommendation proposes that:

- *exploratory therapy* for gender incongruent clients needs to be explicitly protected in law and professional codes of practice from attempts to impose gender identity affirmative therapy as the default therapeutic response to clients with gender identity issues;

SECTION No.	RECOMMENDATION
7.1	**Protecting exploratory therapy from legal and professional sanctions**
1	Providing broad *exceptions* in any proposed legislation to ensure *robust protection in law for the types of exploratory therapy* that therapists need to engage in, for example, "exploration of factors contributing to one's gender dysphoria, not limited to but including, previous traumatic experiences, sexual orientation, other mental health diagnoses etc."
2	Any proposed legislation should also require: • prior authorisation *by the Attorney General* for any proposed criminal prosecution of a registered therapists for practising conversion therapy; • provision for *exception of practice* taken by a health services provider's "reasonable professional judgement"; • provision for *informed consent to exploratory therapy* by adult clients, 16 – 17 year olds and Gillick-competent children under 16 years; • proof of the *highest level of intent* on the part of a therapist i,e, "intentionally", "wilfully" or "knowingly" performing conversion therapy.
3	*Exploratory therapy for gender incongruent* clients needs to be explicitly protected in law and professional codes of practice from attempts to impose gender identity affirmative therapy as the default therapeutic response to clients with gender identity issues.
4	*Exploratory therapy for non-heterosexual* clients needs to be explicitly protected in law and professional codes of practice from attempts to impose gender identity affirmative therapy as the default therapeutic response to clients with gender identity issues.
5	*Exploratory therapy for detransitioners* be specifically protected from any proposed legal sanctions following a ban on conversion therapy.
6	Any proposed legislation should specifically *exclude* psychological therapy for sex offenders from the remit of any proposed ban on conversion therapy in the wider public interest.
7	To raise the bar against frivolous or vexatious complaints, the civil law standard to be applied in hearing legal or professional complaints with regard to charges of conversion therapy be that of *direct causation of psychiatric harm*, based on professional negligence law applying in the field of medicine.
7.2	**Safeguarding children and young people under 18 from irreversible decisions**
8	The government issue a clear statement of legislative intent to *protect children and young people under 18* from making irreversible decisions about transition;
7.3	**Revising the Memorandum of Understanding on Conversion Therapy**
9	The GEO to require that the Memorandum of Understanding on Conversion Therapy be revised to consist of two separate documents i.e. one on conversion therapy for gays, lesbians and bisexual clients; and another on conversion therapy for gender identity.
10	The GEO to require that endorsement on the cover of either Memorandum be restricted to professional associations representing therapists, or to major employers of therapists, such as the NHS.

SECTION No.	RECOMMENDATION
11	The GEO to require urgent amendment to the Memorandum of Understanding on Conversion Therapy to include the specific recognition of the therapeutic needs of detransitioners for alternatives to gender identity affirmative therapy, such as exploratory therapy.
12	A requirement for the Memorandum of Understanding to undergo urgent amendment, in order to specifically *exclude* recognition of paedophilia as a sexual orientation.
13	The GEO to require urgent revision of the Memorandum of Understanding on Conversion Therapy that its remit and provisions do not apply to children and young people under the age of 18, in order to prevent the latter making irreversible decisions about social and medical transition to transgender status.
7.4	**Undertaking further research**
14	Research into gender identity affirmative therapy/social and medical transition as a covert form of conversion therapy for gay, lesbian and bisexual clients to trans is to be commissioned.
15	Research to be undertaken into the medical, legal, social and psychological needs of detransitioners, and appropriate medical and therapeutic services to be commissioned.

Table: Summary of recommendations

AUTHOR'S DETAILS:

Peter Jenkins is a counsellor, supervisor, trainer and researcher, and has been described by the journal 'Counselling at Work' as 'probably the foremost authority on legal issues in counselling'. He has published a number of books, training packs and DVDs on legal and ethical aspects of counselling practice, and on children's rights. His most recent book is Professional Practice in Counselling and Psychotherapy: Ethics and the Law (Sage, 2017). He has, in the past, been a member of the Ethics Committee of both the British Association for Counselling and Psychotherapy, and the United Kingdom Council for Psychotherapy.

James Esses began his career as a Criminal Defence Barrister. He has spent recent years specialising in criminal law and criminal justice throughout the public sector, including in the role of Head of Policy at the Crown Prosecution Service. James decided to transition into a career in psychotherapy. He is part-way through his Masters' training and spent over 5 years as a volunteer counsellor at Childline. James drafted a public petition at the start of 2021, asking the government to safeguard exploratory therapy for children with gender dysphoria. This subsequently received over 10,000 signatures and a favourable government response.

ACKNOWLEDGEMENTS:

The authors would like to gratefully acknowledge the many valuable contributions, ideas and suggestions made by other members of the Thoughtful Therapists group set up in May 2021, including James Caspian, Mary Garner, Chris Goddard, John Higgon, Stella O'Malley, Terry Patterson and Bob Withers. This document is intended to reflect the broad ethos of the group as a whole, and the tenor of ongoing discussions on key issues, and does not assume that all members of the group will necessarily agree with every point made here.

Peter Jenkins

CITATION:

Jenkins, P. and Esses, J. (2021) Thoughtful Therapists: Scoping Survey for Government Equalities Office Consultation on Conversion Therapy

CONTENTS

1. DEFINITIONS OF KEY TERMS

- **Therapy:** Treatment of mental disorders or distress. Therapy includes psychiatric or psychotherapeutic interventions intended to explore or understand a person's feelings regarding their sexual orientation or gender identity. See 'exploratory therapy'.
- **Conversion therapy:** Faith based, social, psychiatric or psychotherapeutic actions intended to persuade or convince a person to change their sexual orientation and/or gender identity. In the past, this has primarily referred to attempts to change:
  a) gay, lesbian or bisexual orientation to a heterosexual orientation;
  b) trans gender identity to a gender congruent with birth sex.

  However, other forms of conversion therapy could also apply, including:
  c) homosexual, lesbian or bisexual orientation to a trans gender identity;
  d) trans gender identity to a birth gender identity (i.e. 'detransitioning').

  It does not include actions intended to explore or understand a person's feelings regarding their sexual orientation and/or gender identity, irrespective of the person's level of declared certainty about their feelings.
- **Affirmative therapy:** this is a complex concept, given that *all* therapy involves a degree of affirmative support of the client, as part of the process of building rapport. Previously, this term has been qualified in order to capture a specific focus on a central aspect of a client's experience, such as 'gay affirmative therapy'. See also 'exploratory therapy and 'gender identity affirmative therapy'.
- **Gender identity affirmative therapy:** this therapeutic approach explicitly prioritises the need to positively affirm the client's preferred gender identity, rather than explore relevant co-morbid conditions, and potential contextual factors, such as internalised homophobia, trauma, loss or abuse.
- **Exploratory therapy:** treatment of mental disorders or distress by exploring possible causes and consequences of the disorder or distress in order to understand the person's experience. Exploratory therapy may be provided as part of psychiatric or psychotherapeutic interventions.
- **Trans:** a term defining a person's belief that their inner gender identity is not congruently aligned with their physiological sex.

Commentary:
Conversion therapy essentially refers to an *intentional* attempt by a professional therapist to use *therapy* to change specific client *behaviour*. (This document does not discuss conversion therapy applied in non-therapy settings, such as faith or religious contexts.) Some forms of behaviour change may be positive in social terms, e.g. to reduce sexual offending. Other forms of behaviour change e.g. to change a client's homosexual orientation, contravene well-established ethical principles of autonomy and avoidance of harm. Some forms of intended behaviour change via therapy may therefore be justifiable, or alternatively may be completely contra-indicated by agreed ethical principles. Banning all forms of conversion therapy (or intended behaviour change, if defined in this way) is therefore likely to have serious and possibly unintended consequences for broad swathes of legitimate and

mainstream therapeutic practice. These problematic areas are identified and discussed in more detail below (see Section 6 below).

As a starting point, there is no agreed operational definition of conversion therapy (CT). The term conversion therapy is in many ways a contradiction in terms. The term *conversion* derives from a religious vocabulary, i.e. to convert a person from one religion to another. *Therapy* requires a voluntary, contractual relationship between client and therapist; *involuntary* or *coercive* therapy is therefore both unethical and ineffectual. The term conversion therapy is an ideological construct, which only carries meaning in the context of a very specific political narrative.

In the recent past, classic conversion therapy was understood to apply to psychological and medical interventions intentionally designed to change a client's sexual orientation from gay, lesbian or bisexual to heterosexual. It has now been extended to cover attempts to change the client's *gender identity from trans to a gender congruent identity*. The extended use of this term has the advantage of culling additional support for this new aim from those who were previously opposed to classic conversion therapy, aimed at gay, lesbian and bisexual clients.

2. POTENTIAL PROBLEM AREAS FOR A BAN ON CONVERSION THERAPY

However, there are other forms of conversion, or behaviour change, relating to sexual orientation, sexual behaviour and gender identity, which need to be recognised in this debate, but which contradict the dominant political narrative. Other areas needing explicit recognition and protection in any proposed ban on conversion therapy include:

- reducing the risk that gender identity affirmative therapy will reframe gay, lesbian and bisexuals as possessing an inherent trans gender identity, requiring full or partial social and medical transition to transgender;
- acknowledging the overlooked therapeutic needs of detransitioners, i.e. those completing transition in full or in part, but who now wish to return to their former gender identity;
- ring-fencing and protecting psychological therapy for sex offenders e.g. in prisons and the community, aimed at controlling or reducing sexual offending behaviour;
- safeguarding and protecting the distinct needs of children and young people under 18 with regard to gender identity affirmative therapy, risk management, social and medical transition and de-transition;
- protecting therapists who are providing exploratory therapy for clients with gender identity issues, from the risk of being perceived by clients as having provided conversion therapy, e.g. after a breakdown in the therapeutic relationship.

It seems unlikely that any single definition of conversion therapy can cover all these varied and contradictory aspects of therapy for gender identity issues, given the degree of controversy now to be found in this debate.*

* The Cooper Report refers to 'conversion *practices*', rather than conversion therapy (Ozanne Foundation, 2021).

3. CURRENT DEFINITIONS OF CONVERSION THERAPY

There are a number of definitions of conversion therapy in current use:

- Memorandum of Understanding
- Government Equalities Office
- Matousek Report

3.1 MEMORANDUM OF UNDERSTANDING (2019)

> "'(C)onversion therapy' is an umbrella term for a therapeutic approach, or any model or individual viewpoint that demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other, and which attempts to bring about a change of sexual orientation or gender identity, or seeks to suppress an individual's expression of sexual orientation or gender identity on that basis"
> (BPS et al, 2019, p.2).

Critique:
This definition is over-inclusive, as it includes both *intentional attempts to change* sexual orientation or gender identity and *perceived attempts to suppress* the latter. Subjective perceptions could include experiencing inadvertent therapist responses, such as deadnaming, misgendering, incorrect use of pronouns, or non-gender identity affirmative therapy, etc. as suppression. It is impossible to translate the concept of 'suppression' into an accurate legislative format, except at the cost of criminalising both minor therapeutic errors, and legitimate therapeutic approaches. This definition is therefore not fit for purpose.

KEY POINT:
It is impossible to translate the concept of 'suppression' into an accurate legislative format

3.2 GOVERNMENT EQUALITIES OFFICE (2018)

> "So-called conversion therapies, sometimes also referred to as cure, aversion or reparative therapies, are techniques intended to change someone's sexual orientation or gender identity. These techniques can take many forms and commonly range from pseudo-psychological treatments to spiritual counselling. In extreme cases, they may also include surgical and hormonal interventions, or so-called 'corrective' rape"
> (GEO, 2018, p.83).

Critique:
This GEO definition is restricted to the aim of changing sexual orientation and gender identity. It is intended to apply to classic gay conversion therapy and trans conversion therapy. It does not address any of the five areas of therapist concern identified above, i.e. gender identity affirmative therapy as conversion therapy for gays; the distinct and

overlooked needs of detransitioners; psychological therapy for sex offenders; safeguarding children and young people; and exploratory therapy later reframed as conversion therapy. It is not a workable definition of conversion therapy.

3.3 MATOUSEK REPORT (2020)

The Matousek Report has provided the most overtly partisan definition of conversion therapy.

> "Our recommended legal definition combines elements of the legislation in place in both Madrid, Spain and Queensland, Australia, which are the two best examples of international legislation. This is because the Madrid definition is the most inclusive of various forms of conversion practices and the Queensland definition ensures that gender-affirming treatments are not included in a ban:
>
> **"Conversion therapies":**
> i) Encompass all medical, psychiatric, psychological, religious, cultural or any other interventions that seek to erase, repress or change the sexual orientation and/or gender identity of a person, including aversive therapies or any other procedure that involves an attempt to convert, cancel or suppress sexual orientation, gender identity and/or gender expression.
>
> ii) Do not include any practice that— (a) assists a person who is undergoing a gender transition; or (b) assists a person who is considering undergoing a gender transition; or (c) assists a person to express their gender identity; or (d) provides acceptance, support and understanding of a person; or (e) facilitates a person's coping skills, social support and identity exploration and development" (Matousek, 2020, p.4).

Critique:
This definition is overtly partisan, in seeking to prohibit attempts to erase, repress, change, convert, cancel or repress sexual orientation and gender identity. It is, in addition, explicitly framed to *exclude* gender identity affirmative therapy from risk of legal sanction. It also does nothing to address any of the five areas of therapist concern identified above, i.e. gender identity affirmative therapy as conversion therapy for gays; the distinct and overlooked needs of detransitioners; psychological therapy for sex offenders; safeguarding children and young people; and exploratory therapy later reframed as conversion therapy. It is also not a workable definition of conversion therapy.

4. COMPARATIVE SURVEY OF INTERNATIONAL LAW ON CONVERSION THERAPY (JAMES ESSES)

The case for a legal ban on conversion therapy in the UK draws much of its apparent strength from international comparisons. However, these comparative examples often lack essential background, so that proposals for emulating the legislation taken from, say, Victoria, Australia, can easily appear simply as cherry-picked examples, lacking any proper context.

For example, just to stay with the latter example of legislation from Victoria, Australia, it is rarely acknowledged that its justification via research rests on a convenience sample of no more than 15 participants, taken solely from faith or religious settings (Jenkins, 2021a).

The following survey looks in more detail at recent or pending legal bans on conversion therapy in the following jurisdictions: New Zealand, India, Queensland, Australia, Victoria, Australia, Canada, Ireland and Malta. It then identifies provision for crucial safeguards for therapists providing exploratory therapy.

4.1 EXISTING OR PENDING INTERNATIONAL LEGISLATION ON CONVERSION THERAPY

4.1.1 NEW ZEALAND (BILL): CONVERSION PRACTICES PROHIBITION LEGISLATION BILL

Definition:
"Performed with the intention of changing or suppressing the individual's sexual orientation, gender identity, or gender expression"

Exceptions:

- A health service provided by a health practitioner in accordance with the practitioner's scope of practice;
- Assisting an individual who is undergoing, or considering undergoing, a gender transition;
- Assisting an individual to express their gender identity;
- Providing acceptance, support, or understanding of an individual;
- Facilitating an individual's coping skills, development, or identity exploration, or facilitating
  social support for the individual; and
- The expression only of a religious principle or belief made to an individual that is not intended to change or suppress the individual's sexual orientation, gender identity, or gender expression

Offences:

- Performing conversion on someone under 18 or lacking decision making
- Performing conversion that causes serious harm (including adults)

Other:

- Includes recklessness as intent
- Consent is not a defence
- All prosecutions require Attorney General approval.

4.1.2 INDIA: HIGH COURT: SUSHMA v COMMISSIONER OF POLICE

Any attempts to medically "cure" or "change" the sexual orientation of queer people to heterosexual or the gender identity of transgender people to cisgender should be prohibited.

4.1.3 AUSTRALIA, QUEENSLAND: PUBLIC HEALTH ACT 2005, SECTION 213

Definition:
Practice that attempts to change or suppress a person's sexual orientation or gender identity. Examples include inducing nausea, vomiting or paralysis, or using shame or coercion to encourage gender-conforming behaviour, or using techniques to encourage a person to believe being transgender is a defect or disorder.

Exceptions:

- A practice by a health service provider that, in the provider's reasonable professional judgement:
  - Is part of the clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or
  - enables or facilitates the provision of a health service for a person in a manner that is safe and appropriate; or
  - is necessary to comply with the provider's legal or professional obligations.

Examples:

- Assisting a person who is undergoing a gender transition;
- Assisting a person who is considering undergoing a gender transition;
- Assisting a person to express the person's gender identity;
- Providing acceptance, support or understanding of a person;
- Facilitating a person's coping skills, development or identity exploration, or facilitating social support for the person.
- Exploring psychosocial factors with a person or probing a person's experience of sexual orientation or gender identity
- Providing a speech pathology or gender transition service for a trans-gender or gender-diverse person wishing to alter the person's voice and communication to better align with the person's gender identity
- Advising a person about the potential side effects of sex-hormonal drugs or the risks of having, or not having, surgical procedures.

Offence:
Difference in severity and sentence if performed on vulnerable person (including a child).

4.1.4 AUSTRALIA, VICTORIA: CHANGE OR SUPPRESSION (CONVERSION) PRACTICES PROHIBITION ACT 2021

Definition:
Practice changing or suppressing the sexual orientation or gender identity of the person; or inducing the person to change or suppress their sexual orientation or gender identity.

Exceptions:

- Is supportive of or affirms a person's gender identity or sexual orientation including, but not limited to, a practice or conduct for the purposes of
  - assisting a person who is undergoing a gender transition; or
  - assisting a person who is considering undergoing a gender transition; or
  - assisting a person to express their gender identity; or
  - providing acceptance, support or understanding of a person; or
  - facilitating a person's coping skills, social support or identity exploration and development; or
- Is a practice or conduct of a health service provider that is, in the health service provider's reasonable professional judgement, necessary to provide a health service; or to comply with the legal or professional obligations of the health service provider.

Offences:

- Require intent
- Cause serious injury or injury
- Advertisement that could reasonably be understood as offering practice

Other:
Also set up civil Commission to research, investigate, educate, etc.

4.1.5 CANADA: BILL C-6

Definition:
A practice, treatment or service designed to change a person's sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour.

Exceptions:
Does not include a practice, treatment or service that relates to a person's gender transition; or to a person's exploration of their identity or to its development.

Offences:

- Require intent
- Causing a person to undergo conversion therapy without consent
- Causing a child to undergo conversion therapy

- Promoting or advertising conversion therapy.

4.1.6 IRELAND: PROHIBITION OF CONVERSION THERAPIES BILL 2018

Definition:
Change, suppress and, or eliminate a person's sexual orientation, gender identity and, or gender expression;

"Gender identity" refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms; (thus identical to Malta.)

Exception:
Provides acceptance, support and understanding of a person, or a facilitation of a person's coping, social support and identity exploration and development, including sexual orientation-neutral interventions;

Offences:
Practice on any person or advertise.

4.1.7 MALTA: AFFIRMATION OF SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION ACT

Definition:
"Conversion practices" refers to any treatment, practice or sustained effort that aims to change, repress and, or eliminate a person's sexual orientation, gender identity and, or gender expression;

Exceptions:

- Any services and, or interventions related to the exploration and, or free development of a person and, or affirmation of one's identity with regard to one or more of the characteristics being affirmed by this Act, through counselling, psychotherapeutic services and, or similar services; or
- Any healthcare service related to the free development and, or affirmation of one's gender identity and, or gender expression of a person; and, or
- Any healthcare service related to the treatment of a mental disorder;

"Mental disorder" means a significant mental or behavioural dysfunction, exhibited by signs and, or symptoms indicating a distortion of mental functioning, including disturbances in one or more of the areas of thought, mood, volition, perception, cognition, orientation or memory which are present to such a degree as to be considered pathological in accordance with internationally accepted medical and diagnostic standards, with the exclusion of any form of pathologisation of sexual orientation, gender identity and, or gender expression as may be

classified under the International Classification of Diseases or other similar internationally recognised classifications, and "mental illness" shall be construed accordingly, and for the purpose of any matter related to criminal proceedings, it shall include "insanity" as understood for the purpose of the Criminal Code.

Offence:

- Vulnerable person (including child under 16)
- Involuntary or forced on anyone.

4.1 THEMES REGARDING POTENTIAL SAFEGUARDS WITHIN INTERNATIONAL LEGISLATION ON CONVERSION THERAPY

4.2.1 DEFINITIONS OF CONVERSION THERAPY

Definitions of conversion therapy are crucial, as argued earlier in relation to UK research. Wording that contains too wide a scope is potentially left open to overly broad interpretation and hence potential misuse. For example, the definition applied amongst most existing legislation is "change" or "suppress" or "repress" (see New Zealand, Australia, Ireland and Malta). The issue with the words 'suppress' or 'repress' is that they appear to be much broader in scope. A therapist could be alleged to be suppressing feelings around gender identity simply by pausing for thought, reflection and considering other contributing factors.

The narrower definition applied in India of "change or cure" may be preferable in this respect. Both of these terms requires that a therapist pro-actively goes out of their way to change the other person into something else. It would be very difficult to argue that exploratory therapy is attempting to do either of these things, so long as there is no pre-determined outcome.

4.2.2 EXCEPTIONS

The legislation needs to include crucial safeguards relating to specified *exceptions* for practitioners. The legislation in Malta exempts "any healthcare service relating to treatment of a mental health disorder". 'Mental health disorder' is broadly defined and would capture 'gender dysphoria'. Equally, it would be important to include broad exceptions protecting the interests and duties of clinical practitioners. For example, in Queensland, there are "exceptions for any health practitioner acting in according with the scope of their practise or identity exploration, including

- Clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or
- Enables or facilitates the provision of a health service for a person in a manner that is safe and appropriate; or
- is necessary to comply with the provider's legal or professional obligations"

It also provides for:

- Exploring psychosocial factors with a person or probing a person's experience of sexual orientation or gender identity
- Exploring potential side effects of sex-hormonal drugs or the risks of having, or not having, surgical procedures

These all appear to be important protections in law for therapists working with gender issues. The legislation from Victoria, Australia includes a beneficial reference to an exception of practice taken according to a health service provider's "reasonable professional judgement". Further to these safeguards, it would be important to establish broad exceptions for exploratory therapy, for example: "exploration of factors contributing to one's gender dysphoria, not limited to but including, previous traumatic experiences, sexual orientation, other mental health diagnoses, etc".

KEY POINT:
Further to these safeguards, it would be important to establish broad exceptions for exploratory therapy

4.2.3 INTENT

The vast majority of jurisdictions require "intentionally", "wilfully" or "knowingly" performing conversion therapy (Australia and Canada). This provides a significant level of protection for therapists, with the highest intent required. However, some, including New Zealand, merely require "recklessness". This is a far lower threshold, which could place therapists in jeopardy.

4.2.4 CONSENT

The legislation frequently makes a key distinction between adults and children, in that adults can consent to practises, but children cannot consent, due to their degree of vulnerability (see Malta and Canada). In New Zealand, neither adults nor children can consent. Again, it is important to make legal provision to the effect that *consent for exploratory therapy* is permitted, including for children. This is because individuals may have gender dysphoric feelings but do not wish to transition and want to become comfortable in their bodily selves.

4.2.5 ATTORNEY GENERAL PRIOR AUTHORISATION FOR CRIMINAL PROSECUTION

A significant feature of New Zealand's legislation is the requirement for prior authorisation by the Attorney General for any criminal prosecution for alleged conversion therapy. This would be desirable under any proposed UK legislation, as an additional safeguard. This provision would ensure that any and all prosecutions are properly scrutinised. Similar safeguards already apply in the UK, for example when considering prosecutions for assisted suicide.

Recommendations:

- providing broad *exceptions* in any proposed legislation to ensure robust protection in law for the types of exploratory therapy that therapists need to engage in, for example "exploration of factors contributing to one's gender dysphoria, not limited to but including, previous traumatic experiences, sexual orientation, other mental health diagnoses, etc."
- any proposed legislation should also require
  - prior authorisation by the Attorney General for any proposed criminal prosecution of a registered therapist for practising conversion therapy;
  - provision for an exception of practice taken by a health service provider's "reasonable professional judgement";
  - provision for informed consent to exploratory therapy by adult clients, 16-17 year olds and Gillick-competent children under 16 years;
  - proof of the highest level of intent on the part of a therapist, i.e. "intentionally", "wilfully" or "knowingly" performing conversion therapy.

5. RESEARCH EVIDENCE ON THE INCIDENCE OF CONVERSION THERAPY BY THERAPISTS IN THE UK

Turning now to the UK, it is argued here that there is no credible research evidence that classic conversion therapy (i.e. against gays, lesbians and bisexuals) is currently practised by therapists on any significant scale, as distinct from its use in the period from roughly 1950 to around the mid- 1970's. There is even less evidence of trans conversion therapy being practised currently by therapists on trans clients, in the sense of intentional therapeutic practices designed to actively change incongruent gender identity (Jenkins, 2021a).

5.1 GOVERNMENT EQUALITIES OFFICE (2018) LGBT SURVEY

The most frequently cited source is the Government Equalities Office (GEO) 2018 LGBT survey. This is a non-random, online self-report survey, which cannot be generalised to the wider LGBT population. Its methodology is seriously flawed – its starting definition of conversion therapy is to 'change', while the question actually posed in the questionnaire refers to 'cure', which implies a quasi-medical procedure. Its data on conversion therapy is based on only four questions in a much longer survey of LGBT experiences. No time frame is requested in the questionnaire, or provided in the data analysis, so some of the positive responses may be historic rather than current. The survey produces very generic findings. Fuller details of the survey data obtained (Annex 5) are missing from the final published report and are not available for independent scrutiny.

GEO question:
142. "Have you ever had so-called "conversion" or "reparative" therapy in an attempt to "cure" you of being LGBT? "

Findings:
The GEO Survey (n: 108,100) divides respondents into cis and trans respondents. According to Table 5.6 (p.88), 2% of cis respondents have had CT, while 92% have neither been offered CT, or had it. Whereas for trans respondents, 4.3% had had CT, and 84.3 had neither been offered it or had it (p.89). The majority of conversion therapy (81%) is allegedly provided by non-professional sources, which would reduce the estimated total numbers having experienced conversion therapy by professionals to 450. A further 20% of those reporting experience of conversion therapy were aged 55 years or older, so these respondents may be reporting historic experiences pre-1975, further reducing the total by an unknown but possibly significant amount. Any data regarding conversion therapy is clearly concerning, but the GEO findings do not confirm that conversion therapy by professionals is in any way a serious, widespread, or current problem.

KEY POINT:
GEO findings do not confirm that conversion therapy by professionals is in any way a serious, widespread, or current problem

5.2 MATOUSEK REPORT (2020) RESEARCH

The Matousek Report has carried out further research specifically into Gender Identity Conversion Therapy (GICT), as distinct from classic conversion therapy intended to change gay, lesbian and bisexual sexual orientation. This was also a non-random, online self-report survey which cannot be generalised to the wider trans population. Gender identity can be defined as an internal subjective state of feeling, rather than as denoting specific sexual behaviours. The Matousek research relies on a very broad definition of conversion therapy, as discussed above, i.e. 'erase, repress and change', and 'convert, cancel or repress'. These processes depend largely on the subjective perceptions of an individual, and are hard to evidence in any systematic or reliable manner. An individual may perceive unintended therapist interactions such as misgendering, deadnaming, incorrect use of pronouns, or an absence of overtly affirmative therapy, as attempts to apply conversion therapy. This would therefore provide an overly sensitive measure for identifying instances of gender identity conversion therapy. Its use would be very likely to produce a high number of false positives as a result, and would provide unreliable evidence of the extent of conversion therapy.

GICT question:
“Have you ever gone through (all or part way) gender identity 'conversion therapy'?”

Findings:
According to the GICT survey (n: 450) 51 people (11%) had experienced CT, of which 39 (9%) were gender diverse, 7 (2%) were cis and 5 (1%) preferred not to say (p.10). The total numbers are very small, and again are subject to the kind of factors discussed in relation to the GEO survey. For example, 56% of GICT was reported to be provided by non-professionals (p.12), which would reduce the notional figure of those undergoing GICT provided by professionals and health workers to around 22 in total. No time frame was requested via the questionnaire or presented in the data analysis, so a proportion of the

positive responses may well be historic rather than current. The format used for reporting of the survey data obtained does not permit further detailed analysis.

The findings of the GEO and GICT surveys are summarised below (**see Table 1: Summary of survey data on Conversion Therapy reportedly carried out by professionals**).

Source	Survey type	Focus	Sample size (n)	Conversion Therapy Questionnaire Definition	Respondents having had Conversion Therapy				
					Cis	Gender Diverse	Not specified	Total	
								n	n (adjusted)
GEO (2018)	non-random	LGBT	108,100	'cure'	1758 (2%)	613 (0.6%)	-	2371 (2%)	450 (0.42%)
Matousek (2020)	non-random	GICT only	450	'change'	7 (1.5%)	39 (8.6%)	5 (1.1%)	51 (11.3%)	22 (4.8%)

Table 1: Summary of survey data on Conversion Therapy reportedly carried out by professionals.

5.3 SUMMARY

The main surveys into conversion therapy are by the GEO (2018) and by Matousek (2020). These are non-random surveys, which cannot be generalised to the wider LGBT and trans populations respectively. These surveys do not therefore provide an accurate estimate of the extent of conversion therapy in the UK. The GEO provides generic data on LGBT respondents, and the Matousek survey provides similar data on GICT. No time frame is provided for the data obtained, and the original data is not available for further independent scrutiny. If final data is adjusted to exclude conversion therapy provided by non-professionals, the resultant figures are significantly reduced in size. The data does not provide compelling evidence of the widespread practice of conversion therapy by professional therapists in the UK against either homosexual, lesbian and bisexual clients, or against trans clients.

KEY POINT:
The data does not provide compelling evidence of the widespread practice of conversion therapy by professional therapists in the UK

6. PROPOSED TARGET AREAS FOR A LEGAL BAN ON CONVERSION THERAPY AND POTENTIAL PROBLEMATIC CONSEQUENCES

The potential impact of a legal ban on conversion therapy is discussed in two ways. Firstly, the proposed target areas for a ban are indicated, i.e. a ban affecting classic conversion therapy affecting gays, lesbians and bisexuals, and secondly, a ban affecting conversion therapy for trans clients. Potential problem areas for a number of aspects of therapeutic practice posed by such a ban are then identified and further discussed below.

6.1. PROPOSED TARGET AREAS FOR A LEGAL BAN ON CONVERSION THERAPY

6.1.1 CONVERSION THERAPY FOR GAYS, LESBIANS AND BISEXUALS TO HETEROSEXUAL

Homosexuality has in the past been perceived by therapists and medical practitioners as problematic, requiring corrective psychotherapy or aversion therapy. This approach was reflected in authoritative diagnostic manuals such as the DSM until 1973 (Jenkins, 2017). Professional attitudes and practice favouring behaviour change for gays, lesbians and bisexuals declined from the 1970's onwards. A key BBC documentary on classic aversion therapy for gay men, made in the 1990's concluded that "demand for it has virtually disappeared" (BBC, 1998). However, a professional complaint against a counsellor member of BACP in 2013 revealed that there were still practitioners who sought to change their clients' sexual orientation. A Memorandum of Understanding on Conversion Therapy was agreed between all major counselling bodies in 2015. This defined conversion therapy in the following terms:

"'Conversion therapy' is the umbrella term for a type of talking therapy or activity which attempts to change sexual orientation or reduce attraction to others of the same sex. It is also sometimes called 'reparative' or 'gay cure' therapy" (NHS England et al, 2015, p. 2).

There was limited (and somewhat outdated) research evidence that conversion therapy for homosexuality was being practised on any significant scale. The MoU referenced a survey of therapists (n: 1328) carried out during 2002-3, to explore attitudes towards providing therapy for clients wanting to change their sexual orientation (Bartlett et al, 2009). This found that a subset of respondents (n: 222, or 17% of the sample) had helped at least one client to *reduce* their homosexual or lesbian feelings. This subset of therapists was more likely to be male and older than other respondents. While the evidence for the incidence of conversion therapy was limited, the MoU sealed a wider sense of agreement amongst therapists that conversion therapy was both unethical and harmful to gay, lesbian and bisexual clients.

KEY POINT:
a wider sense of agreement amongst therapists that conversion therapy was both unethical and harmful

6.1.2 CONVERSION THERAPY FOR TRANS GENDER IDENTITY TO GENDER CONGRUENT IDENTITY

The Memorandum of Understanding was extended in 2017 to include gender identity for the first time. This is distinct from a *sexual orientation*, such as being gay, lesbian or bisexual. Gender identity is a subjective sense of being incongruent in the physical body inhabited since birth. It is captured by a broad umbrella term i.e. trans, which is constantly being redefined and extended to include new variants of gender identity. Self-defining as trans may or may not involve social transition, or culminate in medical transition. Medical transition may require cross-sex hormones, and life-changing surgery to change sexual characteristics, such as breasts, removal of genitals and reconstructive surgery.

The earlier MoU definition of conversion therapy was accordingly extended to include gender identity:

"'(C)onversion therapy' is an umbrella term for a therapeutic approach, or any model or individual viewpoint that demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other, and which attempts to bring about a change of sexual orientation or gender identity, or seeks to suppress an individual's expression of sexual orientation or gender identity on that basis" (BPS et al, 2019, p.2).

As discussed in a previous section (3.1 above), the definition of conversion therapy is here extended from active attempts to *change* sexual orientation or gender identity to attempts to *suppress* the latter. As gender identity is a subjective sense of incongruence, then attempts to suppress it depend completely on the *perception* of the individual concerned, rather than relying on any more objective test of therapist *intent*. The shift towards a broader, more overtly politicised agenda and purpose for the MoU is indicated by its endorsement by organisations such as Stonewall and Gendered Intelligence. The latter are not professional therapists' associations, nor employers of therapists, but are simply major campaigning lobbies for the promotion of trans rights.

The revised MoU is problematic for a number of reasons. There was no effort made to scope the incidence of conversion therapy for gender identity. This marks it as different from the original 2015 MoU in relation to conversion therapy *for sexual orientation*, however limited the latter evidence proved to be. In fact, one research study of conversion therapy for transgender people suggested that "...explicit attempts at conversion therapy seem to be less common than was the case in LGB people" (Wright et al, 2018: 11).

Crucially, clients affirming their gender identity may enter into a pathway involving social transition, and then progress to medical transition, potentially resulting in sterility, and a need for lifelong medical treatment, in order to maintain the sexual characteristics of a different sex. The absence of any protective reference to age restrictions is a fundamental and ultimately fatal fault running through the revised MoU. This was underlined by the outcome of the judicial review of Gillick assessment at the Tavistock Gender Identity Development Service in December 2020 (Bell v Tavistock (2020). Senior staff at the GIDS had taken the MoU's stance as supporting the need to apply (gender identity) affirmative therapy with its patients under 18, despite this approach lacking any credible research or evidence base (Evans, 2020; Wren, 2019) . In point of fact, the Tavistock GIDS' experience can be read as an instructive case study in its *failure*, arising from its application of gender identity affirmative therapy at an institutional level (Jenkins, 2021b).

This brief critique argues that it was a mistake to graft gender identity onto the original Memorandum on Conversion Therapy regarding sexual orientation. The complexity surrounding gender identity incongruence, and the potential for major medical interventions with life-changing consequences, require a specific and carefully tailored response. Not least, political pressures for therapists to provide *gender identity affirmative therapy*, rather than simply affirmative or exploratory therapy, are now a significant factor affecting our practice, far in excess of any such pressures regarding the use of gay affirmative therapy in the past.

KEY POINT:

The shift towards a broader, more overtly politicised agenda and purpose for the MoU is indicated by its endorsement by organisations such as Stonewall and Gendered Intelligence

Recommendations:

- the GEO to require that the Memorandum of Understanding on Conversion Therapy be revised to consist of two separate documents, i.e. one on conversion therapy for gays, lesbians and bisexual clients; and another on conversion therapy for gender identity;
- the GEO to require that endorsement on the cover of either Memorandum be restricted to professional associations representing therapists, or to major employers of therapists, such as the NHS.

6.2 ANTICIPATED PROBLEM AREAS FOR THERAPY FOLLOWING A LEGAL BAN ON CONVERSION THERAPY

6.1.1 THE RISK THAT GENDER AFFIRMATIVE THERAPY WILL REFRAME GAY, LESBIAN AND BISEXUALS AS POSSESSING AN INHERENT TRANS GENDER IDENTITY, REQUIRING FULL OR PARTIAL SOCIAL AND MEDICAL TRANSITION TO TRANSGENDER

A case has been made that pressures to facilitate social and medical transition for gender dysphoric young people may have the consequence of reframing gay, lesbian and bisexual young people as trans. This has been described as, in effect, to 'trans out the gay'. This development is highlighted by a number of therapists reflecting on their professional practice, including Esses (2021), Marchiano (2017), O'Malley (2021), Patterson (2018) and Withers (2020). The court report on a whistleblower case successfully brought against the Tavistock Gender Identity Development Service has also noted that “Some clinicians are concerned that young people who might be homosexual presented as misgendered, or are unduly influenced by social media campaigning on trans identity” (para 17, Appleby v Tavistock (2021); see also paras 31, 45, 47, 55).

The following case example is intended to be an illustration of these concerns.

> “...dysphoria is a bear. I know. I live with it. It is an obsessive, and destructive fixation on the aspects of my female body that I do not like. I am acutely aware of my breasts, stuck on the front of me, like lumps. I’m aware of my womb, of my period, of my discomfort, of my vulnerability. I can obsess about it. But it is a disorder that I live with, not a fact about my identity which defines who I am. Not everybody with dysphoria chooses to treat it with hormones and cosmetic surgeries to look more like the opposite sex. Instead of making myself a life-long medical patient, in an attempt to become something I know I cannot be, I am choosing to learn to love the skin I’m in. I see a therapist regularly. We work on various techniques around self-acceptance and CBT. We explore my feelings, and she helps me to question and reframe things.
>
> For example, instead of focusing on the female parts of my body, I focus on the positive things I can use my body to do – turn wood, mend things, carry and lift heavy weights, hug

> my wife and children. The therapy I seek is emphatically NOT conversion therapy. However, under the wording of the new bill [PJ: in Ireland], it could be taken as read that my therapist is not "affirming" my "gender identity," and is using therapeutic techniques to "convert" me away from "being" trans" (Teacup butch, 2020).

This may only count as anecdotal evidence, but it does correlate with an area of growing concern identified by experienced gender therapists. Littman's exploratory research into rapid onset gender dysphoria (n: 256) suggests that 41% of the sample of adolescent and young adults had expressed a non-heterosexual orientation prior to self-identifying as trans (2018). Vandenbrussche's (2021) international survey (n: 237) found that over half of detransitioners in this sample referred to "learning to cope with internalized homophobia" as an important factor in their detransitioning.

Ashley (2020) provides a trans-oriented critique of the argument that gender identity affirmative therapy constitutes a disguised form of conversion therapy for gays, lesbians and bisexuals to change to trans status. However, the author is not a therapist, and this critique does not engage with the complex relational dynamics of transition, such as the powerful implied threat to parents of the reportedly heightened risk of suicide by trans youth. It also does not address the role of unconscious factors affecting clients, such as *internalised* (as distinct from consciously expressed) homophobia. More research is therefore needed to explore these current therapist concerns more fully. The goal of the research will be to support young people in making autonomous choices about their preferred sexual orientation or gender identity, rather than have these eclipsed by a socially dominant trans narrative.

KEY QUOTES

"...dysphoria is a bear. I know. I live with it. It is an obsessive, and destructive fixation on the aspects of my female body that I do not like."

"…it could be taken as read that my therapist is not "affirming" my "gender identity," and is using therapeutic techniques to "convert" me away from "being" trans"

Recommendations:

- *exploratory therapy for non-heterosexual* clients needs to be explicitly protected in law and professional codes of practice from attempts to impose gender identity affirmative therapy as the default therapeutic response to clients with gender identity issues;
- research into gender identity affirmative therapy/social and medical transition as a covert form of conversion therapy for gay, lesbian and bisexual clients to trans be commissioned.

6.2.2 THE RISK OF OVERLOOKING THE THERAPEUTIC NEEDS OF DETRANSITIONERS, i.e. THOSE COMPLETING TRANSITION IN FULL OR PART, BUT WHO NOW WISH TO RETURN TO THEIR FORMER GENDER IDENTITY

The needs of detransitioners are systematically marginalised (e.g. inaccurately described as constituting 1% of those undergoing transition), little researched and poorly understood (O'Malley et al, 2021). Vandenbrussche's (2021) survey (n: 237) is international in scope, so future research may need to be restricted to a UK sample of detransitioners for greater accuracy. The actual number of detransitioners is unknown, but it may be significant, if little publicised. For example, one social media site for detransitioners now has 22,100 members, of whom one third are estimated to be detransitioners, and two thirds allies and supporters (https://www.reddit.com/r/detrans/). Recent UK research of a cohort attending an adult gender identity clinic (n: 175) found a detransition rate of between 7 and 10%, depending on the criteria used. This study concluded that "Detransitioning may be more frequent than previously reported" (Hall et al, 2021: 1).

Vandenbrussche's international survey has identified discrete areas of need for detransitioners, i.e. medical, legal, social and psychological needs. Psychological needs appeared to be the most common, including working on comorbid mental issues related to gender dysphoria, learning to cope with gender dysphoria; and finding alternatives to medical transition. Other needs included learning to cope with feelings of regret, with the new physical and/or social changes and with internalized homophobia (2021, p.7). It is worth noting that a number of respondents identified significant problems in finding therapists prepared to support them in detransitioning by using exploratory rather than gender identity affirmative therapy.

> "I struggled to find a therapist who supported questioning my trans identity and considering alternatives to transitioning; most only knew how to encourage transitioning and reinforced the harmful ideas that led to my wrongly identifying as FtM in the first place" (Vandenbussche, 2021, p.11).

This is an important consideration, given the often rapid curtailment of support for transition previously provided by the LGBT community, once individuals had clearly signalled their intention to detransition.

Finally, there is a curious hint of government intentions regarding a legal ban on conversion therapy, which may include adopting a favourable stance towards detransitioners, according to an article in The Times: "Ministers were alarmed by the judicial review against the Tavistock won by Keira Bell... They plan to include compelling someone to transition as a form of conversion therapy. This will allow "detransitioners" such as Bell to get funding and support as conversion victims" (Turner, 2021).

KEY POINT:

Detransitioning may be more frequent than previously reported

Recommendations:

- the GEO require urgent amendment to the Memorandum of Understanding on Conversion Therapy to include specific recognition of the therapeutic needs of

detransitioners for alternatives to gender identity affirmative therapy, such as exploratory therapy;

- exploratory therapy for detransitioners be specifically protected from any proposed legal sanctions following a ban on conversion therapy;
- research to be undertaken into the medical, legal, social and psychological needs of detransitioners, and appropriate medical and therapeutic services to be commissioned.

6.2.3 THE NEED TO RING-FENCE AND PROTECT PSYCHOLOGICAL THERAPY FOR SEX OFFENDERS e.g. IN PRISONS AND THE COMMUNITY, AIMED AT CONTROLLING OR REDUCING SEXUAL OFFENDING BEHAVIOUR

The possible relevance of a ban on conversion therapy to psychological therapy for sex offenders may need some context and explanation. These programmes are structured group therapeutic interventions run by the Ministry of Justice in prison and community settings for men convicted of sexual offences. This provision was formerly known as the Sexual Offenders Treatment Programme (SOTP). This was ended in 2017 and replaced by two separate programmes. Horizon is a new programme for men over 18 who have been assessed as medium risk and have been convicted of a sexual offence. Kaizen is a new programme for adult males who are assessed as high or very high risk. It is for people who have been convicted of violent or sexual offences (Prison Reform Trust, 2017).

Some of the relevant offending relates to children and young people, and some of this offending arises through paedophilia, i.e. the offender's sexual interest in children. There is a view which is expressed within the membership of the Memorandum of Understanding on Conversion Therapy, that paedophilia is a sexual *orientation*, rather than a paraphilia, i.e. a sexual perversion, or a pathological psychiatric condition (Charlesworth, 2021). The Memorandum states that:

> "'conversion therapy' is an umbrella term for a therapeutic approach, or any model or individual viewpoint that demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other, and which attempts to bring about a change of sexual orientation or gender identity, or seeks to suppress an individual's expression of sexual orientation or gender identity on that basis" (BPS et al, 2019).

Under this MoU definition, psychological therapy for sex offenders designed to change or suppress an offender's paedophile sexual orientation could qualify as conversion therapy. This would potentially lay the grounds for a future legal challenge to the lawfulness of such programmes via judicial review. It would therefore be prudent for the government to take necessary steps to specifically exclude this possibility. This could include, firstly, a requirement for the Memorandum of Understanding to undergo urgent amendment, in order to specifically *exclude* recognition of paedophilia as a sexual orientation. Secondly, any proposed legislation should specifically *exclude* psychological therapy for sex offenders from the remit of any proposed ban on conversion therapy in the wider public interest.

KEY POINT:
psychological therapy for sex offenders designed to change or suppress an offender's paedophile sexual orientation could qualify as conversion therapy

Recommendations:

- a requirement for the Memorandum of Understanding to undergo urgent amendment, in order to specifically *exclude* recognition of paedophilia as a sexual orientation;
- any proposed legislation should specifically *exclude* psychological therapy for sex offenders from the remit of any proposed ban on conversion therapy in the wider public interest.

6.2.4 A REQUIREMENT FOR SAFEGUARDING AND PROTECTING THE DISTINCT NEEDS OF CHILDREN AND YOUNG PEOPLE UNDER 18 WITH REGARD TO GENDER IDENTITY AFFIRMATIVE THERAPY, RISK MANAGEMENT, SOCIAL AND MEDICAL DE-TRANSITION

In April 2021, James Esses launched a petition to safeguard evidence-based therapy for children struggling with gender dysphoria. This rapidly achieved 11,119 signatures. The Government formally responded in July 2021 (see below for the full text of the petition and of the GEO response.) The section following identifies further concerns about safeguarding children and young people under 18 in relation to conversion therapy, and explores potential legislative responses by the government.

Petition to safeguard evidence-based therapy for children struggling with gender dysphoria:

> "We are deeply concerned by the possibility of normal therapeutic practices being banned alongside conversion therapy. We ask the government not to criminalise essential, explorative therapy. Such well-meaning legislation might ironically deny vulnerable children the help they need. Studies show that many dysphoric children will come to identify as their biological sex. We have seen a worrying number of young people de-transitioning and regretting medical treatment.
>
> Explorative therapy can be effective for those with gender dysphoria and does not remove the option of medical treatment, if required. Children with gender dysphoria do not fit a 'one size model' and need access to a range of therapeutic options. Criminalising therapy removes this choice."

(This petition received 11,119 signatures, requiring a formal Government response.)

The Government responded on 5 July 2021:

> "Government will ban conversion therapy, maintain safeguards for young people from inappropriate interventions and uphold the independence of clinicians supporting those experiencing gender dysphoria. Conversion therapy is an abhorrent practice that this government will ban. We will ensure that any action we take will be proportionate and effective and does not have unintended consequences.

We will protect free speech, uphold the individual freedoms we all hold dear and protect under-18s from irreversible decisions.

We will ensure parents, teachers and medical professionals are able to safeguard young people from inappropriate interventions and are clear that this ban must not impact on the independence and confidence of clinicians to support those who may be experiencing gender dysphoria. We will be working with stakeholders, including medical experts, to ensure we do not inhibit people seeking support.

We will be launching a consultation, which will provide experts and those impacted by conversion therapy with a formal opportunity to feed in views. We are proud that the UK is a leader on LGBT equality at home and abroad, having legalised same-sex marriage and introduced one of the world's most comprehensive legislative frameworks for protecting LGBT people from violence and discrimination. We want to ensure everybody can live their lives free from discrimination and violence and prosper in a modern Britain and banning conversion therapy is the next step in ensuring this."

Government Equalities Office.

Keypoint:
We will protect free speech, uphold the individual freedoms we all hold dear and protect under-18s from irreversible decisions.

Government options for safeguarding children and young people:

In alignment with the GEO's response, we therefore strongly support the statement made by Elizabeth Truss, Minister for Women and Equalities, in Parliament on 26/5/2021 that "...we want to ensure that under-18's are protected from making irreversible decisions about their own future" (Hansard, 2021a). Young people under the age of 18 are subject to a range of pressures in making key decisions about their future. These can include peer pressure, exposure to social media influences, the wish to separate themselves from parental and family constraints, and the fact that their ability to make decisions is limited by both a lack of life experience and the slow maturation of their cognitive developmental processes. Decisions made at an early stage about gender identity, and social and medical transition, may be strongly influenced by *social* factors, rather than simply being an innate and fully autonomous process.

These factors are illustrated by comments made by Keira Bell, plaintiff in the successful judicial review of Gillick assessment at the Tavistock Gender Identity Development Service in December 2020 (*Gillick v Norfolk AHA* [1985]; R (Quincy Bell) v Tavistock [2020]; [2021]). This judgment was subsequently reversed at the Court of Appeal in September, 2021 (Jenkins, 2021b).

"I should have been challenged on the proposals or the claims that I was making for myself. And I think that would have made a big difference as well. If I was just challenged on the things I was saying. Initially I felt very relieved and happy about things, but I think as the years go on you start to feel less and less enthusiastic or even happy about things. I was allowed to run with this idea that I had, almost like a fantasy, as a teenager.... and it has affected me in the long run as an adult. I'm very young. I've only just stepped into

adulthood and I have to deal with this kind of burden or radical difference - in comparison to others at least. I did say the same thing years ago when I went to the clinic. I would say it was saving me from suicidal ideation and depression in general and at the time I felt it relieved all those mental health issues I was feeling, alongside gender dysphoria" (Holt, 2020).

There is increasing concern that safeguarding issues in relation to young people seeking gender reassignment do not receive enough attention. This was the underlying narrative of the recent successful whistleblowing case brought against the Tavistock Gender Identity Development Service (Appleby v Tavistock (2021). In 2014, a 16 year-old was taken to Thailand by their parent to undergo gender reassignment surgery (Sloan, 2016). The young person, as a minor, is unlikely to have been deemed capable of providing consent to this life-altering surgery under English law, i.e. s. 8 of the Family Law Reform Act 1969. There may be provision in law for deeming future similar instances of this to constitute a child protection issue. It may well be that other young people will be taken abroad for similar non-medically indicated gender reassignment surgery in the future.

Young people under the age of 18 need to be protected from the serious, life-long consequences of either making, or being subjected to, irreversible decisions about their health. This can be achieved by using the existing law, and by making a number of changes to statutory safeguarding guidance, rather than by enacting new primary legislation. This would be consistent with the approach outlined by Kemi Badenoch, Minister for Equalities, i.e. "to see how conversion therapy can be stopped by making use of existing laws and offences" (Hansard, 2021b).

However, it may also require a very clear legislative statement of principle to be issued by the government, to cut through the existing legal confusion about children's capacity to make irreversible decisions about treatment for gender dysphoria. Dominic Raab, Deputy Prime Minister, has signalled a willingness to consider legislation for such a purpose. "Where there have been judgments that, albeit properly and duly delivered by the courts, we think are wrong, the right thing is for Parliament to legislate to correct them" (Malnick, 2021). This could be similar in intent and effect to the Botulinum Toxin and Cosmetic Fillers (Children) Act 2021, which prohibits the non- medically indicated use of Botox and other fillers for cosmetic purposes.

These measures could include the following:

Recommendations:

- the government issue a clear statement of legislative intent to protect children and young people under 18 from making irreversible decisions about transition;
- the GEO require urgent revision of the Memorandum of Understanding on Conversion Therapy that its remit and provisions do not apply to children and young people under the age of 18, in order to prevent the latter making irreversible decisions about social and medical transition to transgender status;

6.2.5 THE NEED TO PROTECT THERAPISTS WHO ARE PROVIDING EXPLORATORY THERAPY FOR CLIENTS WITH GENDER ISSUES, FROM THE RISK OF BEING PERCEIVED BY CLIENTS AS HAVING PROVIDED CONVERSION THERAPY e.g. AFTER A BREAKDOWN IN THE THERAPEUTIC RELATIONSHIP

Exploratory therapy is widely considered to be a legitimate, foundational and essential element of *all* mainstream therapeutic practice. This applies across all the four main therapy modalities, i.e. person-centred, psychodynamic, cognitive-behavioural and integrative. Affirming and valuing clients is also a central part of therapy, i.e. providing care, respect and avoiding judgemental responses on the part of the therapist. However, therapy is also based on a combination of support and challenge. Affirmation on its own may be insufficient to help clients to change. This is illustrated by the experience of one New Zealand therapist:

"...if a young person questioning their gender accesses Rainbow Youth's services - if their email to me is anything to go by - they appear to be met with a blanket "you must obviously be exactly what you say you are – we accept you". Sounds all very warm and fuzzy, doesn't it? Well, at the risk of sounding dramatic, it isn't. Offering a one-size-fits-all model is potentially unsafe, and through a counselling lens, unethical. The young person will not receive anything other than affirmation, with little room for exploration.

Ironically, life is experienced in the very grey areas mentioned in Rainbow Youth's email to me. This is where growth occurs. There is no black and white. Therapy is often painful for the client, but the ultimate result of this discomfort is a greater self-awareness, an increased acknowledgement of life's complexities, and a toolbox full of resilience to help them navigate these. Simply validating or affirming someone's experience uncritically is never enough, and risks merely perpetuating the individual's pain if we do not explore it fully" (Letham-McGrath, 2021).

As therapists, we would also take issue with any expectation of *solely* providing gender identity affirmative therapy as our default therapeutic response, or facing the risk of being charged with providing conversion therapy, either overtly or covertly. Gender identity relates to an internal sense of gender incongruence with the body's physiological sex. Automatic proffering of gender identity affirmative therapy may buttress the client's sometimes fragile sense of self, but is ethically problematic for a number of reasons. It takes the client's self-diagnosis or narrative ('born in the wrong body') as necessarily central, authoritative, all-defining and exempt from our usual respectful therapeutic challenge. Gender identity affirmative therapy risks a failure to adequately explore highly relevant comorbid conditions, such as depression or post-traumatic stress disorder, or key contextual factors, such as internalised homophobia, trauma, loss, or abuse. Critically, it also lacks a robust or extensive evidence base. One otherwise sympathetic analysis has acknowledged "...a paucity of research exploring the impact of transgender affirmative interventions on well-being" (Austin et al, 2017: 1).

A therapist would not seek to defer to client self-diagnosis with any other psychological issue or condition, regardless of the underlying strength of client conviction relating to the beliefs held. Therapists would normally seek to respectfully challenge clients over their depressive cognition, rationale for self-harm or suicide, obsessional beliefs and rituals, excessive drug or alcohol use, or negative body image influenced by an eating disorder. To impose a requirement for gender identity affirmative therapy as the default therapeutic response is to

negate the value of prior therapist training and expertise, to jeopardise effective risk management, and to promote a trans political ideology over and above known evidence-based practice.

KEY POINTS:
Exploratory therapy is widely considered to be a legitimate, foundational and essential element of all mainstream therapeutic practice.

Gender identity affirmative therapy risks a failure to adequately explore highly relevant comorbid conditions, such as depression or post-traumatic stress disorder

Defending the need for exploratory therapy:

It is concerning that this shift towards a more overtly ideological form of therapeutic practice now seems to be gaining force. The Memorandum of Understanding explicitly "supports therapists to provide appropriately informed and ethical practice when working with a client who wishes to explore, experiences conflict with or is in distress regarding, their sexual orientation or gender identity" (BPS et al, 2019, p.2).

However, it appears that this stance is hardening, and thus narrowing the space which is available for exploratory therapy. The Chair of the MoU, in evidence to the Scottish Parliament, has referred to the dangers of "extended exploration of someone's traumatised history" (Scottish Parliament, 2021). This apparent questioning of the value of exploratory therapy is problematic on a number of grounds. Challenging the value of exploratory therapy by mainstream therapists working with trans clients clearly contradicts the central tenet of the Memorandum itself. Far from perhaps being unnecessary, exploratory therapy with young trans is important, in order to help identify past trauma, which can inform accurate risk assessment and risk management. For example identifying and exploring Adverse Childhood Experiences (ACEs) is particularly important in the case of therapy with trans young people, as their presence may heighten the risk of future self-harm or suicide (Scottish Government, 2018, p.15). Awareness of ACEs can then contribute towards the therapist seeking to jointly mitigate the risk of self-harm and suicide by trans clients, for example by identifying protective strategies and resources, such as carefully negotiated safety plans (Hall et al, 2021: 7).

Ultimately, this new MoU stance risks setting up a double standard, on the one hand of supporting only MoU-approved exploratory therapy, and on the other, of criticising other forms of exploratory therapy allegedly provided in bad faith. However, such allegations against therapists of providing exploratory therapy in bad faith would be based, once again, solely on the grounds of client or MoU *perception*, rather than on the basis of proven therapist *intent*.

There are clearly limits to how far government agencies might wish to become involved in what might simply appear to be protracted internal professional debates. However, there is a parallel in the field of medicine, where it is well recognised in law that, for each contested clinical issue, there will exist any number of different schools of thought and models of practice. Criticism of another school or model within medicine is not in itself sufficient to prove that the former's approach is deficient or negligent in civil law (*Maynard v West Midlands RHA* [1984]). In addition, the courts have ruled that medical practice should be guided by peer-reviewed research wherever possible. This research and evidence base

should ideally take the form of randomised controlled trials, rather than individual or anecdotally-based clinician preference (*Bolitho v City & Hackney HA* [1997]).

It would be helpful at this point for all professional therapy organisations to be guided by a clear statement of UK government, GEO or ECHR principle here, perhaps in the form of practice guidance, on the critical importance of protecting exploratory therapy. This could, for example, reference the recent legal judgement in the Forstater case that gender critical beliefs are valid, protected in law and not in conflict with the requirements of the Equality Act 2010 for employment purposes (Forstater v CGD Europe (2021)). This statement of principle needs to make clear that exploratory therapy is a core practice within all therapeutic modalities, and is not to be subtly undermined as a therapeutic approach. Concern for trans clients must not be advanced here at the cost of undermining respect for a plurality and diversity of therapeutic approaches, all linked by a commitment to exploring client issues, as deemed necessary by informed professional judgement.

This really is the nub of the problem. Therapists who offer only exploratory and generic affirmative therapy (as opposed to *gender identity affirmative therapy*) to gender incongruent clients will be at severe risk of allegations of having provided conversion therapy, and will face professional censure or legal sanction as a direct result. We are aware via anecdotal evidence that this shift is already taking place, as NHS therapists express their rising concerns to us on this issue; as parents increasingly seek exploratory therapists for their children from the private sector*; with the growth of online parent self-help support organisations; and early signs of the politicisation of professional complaints systems against mainstream gender therapists.

One way of protecting therapists providing exploratory therapy for gender incongruent clients from frivolous, vexatious or politicised complaints could be to set the standard for successful complaint or legal action for alleged conversion therapy as that currently applying to professional negligence in the field of medicine. This requires sufficient evidence in civil court of *direct causation* by the therapist of a *psychiatric injury to the client*. The alleged psychiatric injury must be consistent with diagnostic criteria in standard psychiatric manuals, such as the DSM 5 or ICD 11. The evidential process would offer a means of addressing and separating out pre-existing elements of alleged psychiatric injury, or those attributable to co-morbid psychiatric conditions, rather than those elements of psychiatric injury claimed to be directly caused by conversion therapy alone.

*Our Thoughtful Therapists group has received 16 urgent requests seeking referral to a non-NHS gender therapist since being established four months ago, despite neither advertising nor offering therapy services. This would average 50 such requests over a year, if continued at the same rate.

KEY POINTS:

exploring Adverse Childhood Experiences (ACEs) is particularly important in the case of therapy with trans young people

a clear statement of UK government, GEO or ECHR principle here, perhaps in the form of practice guidance, on the critical importance of protecting exploratory therapy

Conclusion:

Any proposed conversion therapy ban needs to take all of these aspects fully into account. Failure to do so will result in a number of foreseeable consequences, such as the flight of

experienced gender therapists from the field of gender therapy, an increasingly hostile and litigious professional culture in this field, and the rapid eclipse of mainstream exploratory therapy by a partisan political lobby.

Recommendations:

- *exploratory therapy* for gender incongruent clients needs to be explicitly protected in law and professional codes of practice from attempts to impose gender identity affirmative therapy as the default therapeutic response to clients with gender identity issues;
- to raise the bar against frivolous, vexatious or politicised complaints, the civil law standard to be applied in hearing legal or professional complaints with regard to charges of conversion therapy be that of *direct causation of psychiatric harm*, based on professional negligence law applying in the field of medicine.

7. SUMMARY OF RECOMMENDATIONS FOR PROPOSED SAFEGUARDS AND MEASURES TO PROTECT THERAPISTS FROM CRIMINAL PROSECUTION, PROFESSIONAL DEREGISTRATION, PROFESSIONAL COMPLAINT, OR CIVIL ACTION FOR PROFESSIONAL NEGLIGENCE FOR CONTRAVENING THE PROPOSED BAN ON CONVERSION THERAPY

This document makes 15 recommendations, designed to protect exploratory therapy from legal and professional sanction; to safeguard children, young people under 18 from irreversible decisions; to substantially revise the Memorandum of Understanding on Conversion Therapy; and to undertake further research in specific areas. (See: **Table 2: Summary of recommendations.)**

SECTION No.	RECOMMENDATION
7.1	**Protecting exploratory therapy from legal and professional sanctions**
1	Providing broad *exceptions* in any proposed legislation to ensure *robust protection in law for the types of exploratory therapy* that therapists need to engage in, for example, "exploration of factors contributing to one's gender dysphoria, not limited to but including, previous traumatic experiences, sexual orientation, other mental health diagnoses etc."
2	Any proposed legislation should also require: • prior authorisation *by the Attorney General* for any proposed criminal prosecution of a registered therapists for practising conversion therapy; • provision for *exception of practice* taken by a health services provider's "reasonable professional judgement"; • provision for *informed consent to exploratory therapy* by adult clients, 16 – 17 year olds and Gillick-competent children under 16 years; • proof of the *highest level of intent* on the part of a therapist i,e, "intentionally", "wilfully" or "knowingly" performing conversion therapy.

SECTION No.	RECOMMENDATION
3	*Exploratory therapy for gender incongruent* clients needs to be explicitly protected in law and professional codes of practice from attempts to impose gender identity affirmative therapy as the default therapeutic response to clients with gender identity issues.
4	*Exploratory therapy for non-heterosexual* clients needs to be explicitly protected in law and professional codes of practice from attempts to impose gender identity affirmative therapy as the default therapeutic response to clients with gender identity issues.
5	*Exploratory therapy for detransitioners* be specifically protected from any proposed legal sanctions following a ban on conversion therapy.
6	Any proposed legislation should specifically *exclude* psychological therapy for sex offenders from the remit of any proposed ban on conversion therapy in the wider public interest.
7	To raise the bar against frivolous or vexatious complaints, the civil law standard to be applied in hearing legal or professional complaints with regard to charges of conversion therapy be that of *direct causation of psychiatric harm*, based on professional negligence law applying in the field of medicine.
7.2	**Safeguarding children and young people under 18 from irreversible decisions**
8	The government issue a clear statement of legislative intent to *protect children and young people under 18* from making irreversible decisions about transition;
7.3	**Revising the Memorandum of Understanding on Conversion Therapy**
9	The GEO to require that the Memorandum of Understanding on Conversion Therapy be revised to consist of two separate documents i.e. one on conversion therapy for gays, lesbians and bisexual clients; and another on conversion therapy for gender identity.
10	The GEO to require that endorsement on the cover of either Memorandum be restricted to professional associations representing therapists, or to major employers of therapists, such as the NHS.
11	The GEO to require urgent amendment to the Memorandum of Understanding on Conversion Therapy to include the specific recognition of the therapeutic needs of detransitioners for alternatives to gender identity affirmative therapy, such as exploratory therapy.
12	A requirement for the Memorandum of Understanding to undergo urgent amendment, in order to specifically *exclude* recognition of paedophilia as a sexual orientation.
13	The GEO to require urgent revision of the Memorandum of Understanding on Conversion Therapy that its remit and provisions do not apply to children and young people under the age of 18, in order to prevent the latter making irreversible decisions about social and medical transition to transgender status.
7.4	**Undertaking further research**

SECTION No.	RECOMMENDATION
14	Research into gender identity affirmative therapy/social and medical transition as a covert form of conversion therapy for gay, lesbian and bisexual clients to trans is to be commissioned.
15	Research to be undertaken into the medical, legal, social and psychological needs of detransitioners, and appropriate medical and therapeutic services to be commissioned.

Table 2: Summary of recommendations

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