

Response to:

*Banning Conversion Therapy Consultation*

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## Contents

1	Summary .....	3
2	Recommendations .....	3
3	Introduction.....	5
4	Definitions .....	5
4.1	LGBT.....	5
4.2	Gender, gender identity, transgender etc.....	5
4.3	WESC definitions .....	7
4.4	SOCE and GICE.....	8
4.5	Conversion ‘therapy’ .....	8
4.6	EHRC response .....	8
5	The evidence assessment.....	9
6	Conversion practices .....	10
7	Concerns.....	11
8	References.....	13
	Appendix A — WESC definitions .....	15

### About Sex. Not Gender.

Sex. Not Gender. was set up to counter the creeping replacement of the term sex with the term ‘gender’ in areas such as equality monitoring forms and diversity policies.

In the Equality Act 2010, the protected characteristic is sex; there is no protected characteristic called ‘gender’, ‘gender identity’, ‘gender expression’ or similar terms.

There is an entirely separate protected characteristic called ‘gender reassignment’ but this has nothing to do with sex or even the protected characteristic of sexual orientation.

Language and meaning of words are important and proper use and understanding of terms is vital so that the public is aware of what rights they have and what the duties of others are. Any confusion or inconsistency over meaning may prevent people from accessing their rights in law.

Clarity and precision are necessary.

Sex. Not Gender. aims to provide the information necessary to challenge organisations if they have conflated the two terms, whether inadvertently or otherwise.

*Il faut répéter ici ce que Locke a tant recommandé, définissez les termes.*

Voltaire — *Dictionnaire philosophique*: A comme abus des mots

## 1 Summary

The use of precise and understandable terminology is essential if meaning and intent are to be properly communicated and understood. The consultation is fatally flawed on this.

Using unclear and potentially misleading terms, definitions and language risks ineffective legislation and confusion, unintended consequences and the potential criminalisation on spurious or unintended grounds. Existing criminal law already outlaws abuse and physical harm, as well as child cruelty, neglect and violence.

New law based on the consultation would enshrine the subjective belief in gender ideology. This will criminalise dissent with that ideology, ensuring that only approved views can be spoken and advocated leaving the only permitted course for medical professionals as one of total affirmation of a single therapeutic pathway.

This will prevent medical professionals from helping those in most need, not just with understanding their gender issues but with a host of other mental health comorbidities.

## 2 Recommendations

### Gender Identity Change Efforts

1

A. A Bill on banning Gender Identity Change Efforts (GICE) should be postponed until:

- The Cass Review has been completed;
- 'Gender identity' can be sufficiently defined to give the necessary focus for any consideration of Change Efforts;
- Clear definitions of what would constitute permitted practices and what would constitute banned practices;
- The harms and/or benefits of Change Efforts have been adequately investigated, assessed, quantified and enumerated.

B. Commission research to be carried out by reputable bodies into GICE, its prevalence and the nature of the practices, to address any gaps in the knowledge of these allowing evidence-led policies.

C. A further consultation should then be carried out, with the above information clearly laid out.

2

### Sexual Orientation Change Efforts

A Bill on banning Sexual Orientation Change Efforts (SOCE) could be brought forward if the Government is convinced there is a need to do so, despite the lack of relevant evidence of prevalence in the consultation.



### 3 Introduction

The consultation proposes to ban LGB conversion practices and T conversion practices. I say more about the terms and their definitions below.

This sounds straightforward and I utterly condemn so-called “gay cure” conversion practices that used to go on, involving electric shock treatments, imprisonment and medication. We already know that efforts to change sexual orientation are harmful with no evidence they work (even if that was a desirable outcome). There is, however, no evidence that such abusive practices are happening now in the UK. Regardless of the fact such practices are already illegal, I support a ban on them if that helped send a progressive societal message.

However, this legislation also includes something completely different: “gender identity” and in particular it risks criminalising explorative practices offered by certified medical professionals as well as lay counsellors, friends and family to children and vulnerable people who are having issues with the way they view themselves in relation to their sex.

My response focusses on these aspects of the consultation.

### 4 Definitions

A recurrent and pervasive problem with the consultation is the complete lack of definition for many of the key terms relied on. As Voltaire implored, *first define your terms*.

#### 4.1 LGBT

LGB is uncontentious and relates to the protected characteristic of sexual orientation — as defined in the Equality Act 2010.

The T of LGBT requires further examination.

#### 4.2 Gender, gender identity, transgender etc

The consultation uses the following terms:

- Gender (as in ‘gender dysphoria’, eg in paragraph 2);
- Gender identity (eg in paragraph 14);
- Transgender (eg in paragraph 14).

The *Research and analysis on The prevalence of conversion therapy in the UK*[1] uses:

- Gender;
- Transgender;
- Cisgender;
- Gender identity;
- Gender expression.

The *Research and analysis Assessment of the evidence on conversion therapy for sexual orientation and gender identity*[2] uses:

- Gender;
- Gender identity;
- Transgender;
- Non-transgender.

The *Research and analysis Conversion therapy: an evidence assessment and qualitative study*[3] uses:

- Gender identity;
- Transgender;
- Cisgender.

The hastily withdrawn 'easy read' version of the consultation[4] uses:

- Gender.

Note that 'cisgender' is a derogatory term that has no place in a government publication.

None of these terms is adequately defined nor is there any explanation on how they may be interrelated or independent.

The evidence assessment states:

*'Transgender' in this report describes people whose gender identity is different to their sex recorded at birth.*

But it fails to define 'gender' or 'gender identity' so this statement is unhelpful.

Equating 'gender identity' with sex is meaningless since sex is a biological fact and the 'gender' is an identity that, at best, relies on demeaning, regressive stereotypical notions of societal roles for the two sexes.

It is clear that all the terms used in the various documents rely on the definition of 'gender' as a base, but none is given.

More worryingly, the evidence research fails to examine whether there is any correlation or commonality in meaning in these terms across the various papers cited. This renders the analysis worthless.

It also has to be noted that the prevalence assessment relies on the National LGBT Survey[5] and that, when asking participants about their experiences of 'gender identity conversion therapy', the survey provided no guiding definition, so it was left entirely open to respondents to use whatever meaning they had in mind: the meanings they relied on were not recorded.

Given the lack of any definition in the consultation, I offer the following as a cogent definition:

*Gender is the unmeasurable and shifting notion of what a person thinks they may feel at any specific moment in time about a fluid and changeable concept that either correlates with or denies their innate biological sex or alternatively corresponds with that person's estimation of their opposite sex predicated on their own personal perception of a stereotypical yet ultimately unknowable and reductive abstraction of an assumption of that sex for which they have no frame of reference to even begin to understand.[6]*

This may appear verbose, but I believe it gives form to the concept. It will pose a critical and severe challenge to the drafters of any Bill to devise their own cogent, reality-based and non-circular definition but without such a definition, a law proscribing discussion or practices relating to 'gender' cannot be intelligible and enforced.

Stated like this, the differences and contrast between sexual orientation and gender identity/transgender become apparent with the recognition that evidence for prevalence, forms, outcomes, harms, etc for one form of conversion practice are not applicable to the other: they must be considered entirely separately, and each considered on their own merits, based on their own distinct evidence, prevalence, harms, etc.

Because they are different from each other in fundamental and material ways it makes no sense to combine them as if they were similar. This extends to the use of the term 'conversion therapy' as it is used in the consultation to refer to *both* sexual orientation conversion therapy *and* gender identity conversion therapy at the same time as if they were homogenous when they are clearly not.

It would be incongruous to not differentiate between the two entirely different practices and contexts and it is disappointing that the consultation fails to do this.

Speculation as to why this is the case is probably moot, but to my mind, it was a deliberate attempt to smuggle gender conversion in with the abhorrent and universally condemned practices frequently associated with sexual orientation conversion therapy thus evading close scrutiny by both the public and Parliament. I sincerely hope that MEPs, when discussing any proposed legislation are fully cognisant of these fundamental differences.

### 4.3 WESC definitions

As an example of the confusion and total lack of definitional integrity that pervades Government on this, I have included at Appendix A a list of comments and questions raised by the definitions offered by the Women and Equalities Select Committee report[7] on their inquiry into the Gender Recognition Act.[8]

The WESC at least attempted to provide some definitions and had a golden opportunity to set straight the record and lay out a set of definitions that provided much-need and called-for clarity.

They singularly failed on this and instead provided a set of incoherent, contradictory and circular definitions. However, I would suggest that it would have been an impossible task to provide a set of definitions that were cogent, non-circular and precise that did not rely on demeaning, regressive stereotypical notions of societal roles for the two sexes.

The current consultation would have been a perfect opportunity for government to provide a set of definitions relevant to the discussion of GICE.

The consultation fails to do this as has been pointed out by many, including the EHRC (see section 4.6 below), but it is irresponsible and incompetent for the consultation not to have provided those very necessary definitions so that the consultation could have garnered views on how to proceed into law.

It is essential that the government provide those definitions and consults on them before proceeding to legislate for a ban on GICE.

#### 4.4 SOCE and GICE

The evidence assessment[2] identifies two separate and distinct aspects:

- 'Sexual Orientation Change Efforts' (SOCE);
- 'Gender Identity Change Efforts' (GICE).

The evidence assessment discovered a total of 46 published studies, split as follows:

Conversion therapy	Studies
Sexual orientation change efforts (SOCE)	40
Gender identity change efforts (GICE)	5
Both SOCE and GICE	1

I note that the one study that covered both was simply a study of the prevalence and characteristics of those who undergo conversion therapy and gives no insight into the effectiveness or harms of any practice.

It is significant and relevant that only one of the 40 on SOCE relates to the UK and that the vast majority (35) relate to North America, which has an entirely different religious demographic to the UK so frustrating any attempt to translate the findings to a UK context.

Thus, the evidence base for SOCE and GICE are different.

This arises because they are entirely separate and distinct practices and evidence relating to one cannot be used as evidence for the other. They are not interchangeable. The consultation does not seem to recognise this.

#### 4.5 Conversion 'therapy'

A 'therapy' is usually used to refer to the treatment of disease or disorders, as by some remedial, rehabilitating, or curative process. This clearly is not appropriate in a discussion about conversion.

A more neutral and less pejorative term would be 'conversion practice' and I would also suggest that term — or some other more neutral term — is used in any draft Bill.

#### 4.6 EHRC response

In their response to the consultation, the Equality and Human Rights Commission[9] make many pertinent and important points and I ask that these be given due weight and consideration.

In particular, I note they emphasise and amplify many of the points I make in my submission (my emphasis):

The consultation document contains no clear definition of what will amount to "conversion therapy" caught by its proposals, nor of the meaning of "transgender" – a term which has no clear legal meaning, is potentially wider than the concept of gender reassignment in current UK law, and is understood by different people in different ways. [Page 2]

Nor does the consultation address the possible need to consider a differentiated approach in relation to sexual orientation and being transgender so as to ensure, in particular, that clinicians and therapists are not prohibited from providing appropriate care and support for individuals with gender dysphoria. [Page 3]

Given the documented lack of evidence about conversion therapy in relation to being transgender, recent attention and litigation on the implications of medical and surgical transition, and the ongoing NHS-commissioned independent review of gender identity services for children and young people led by Dr Hilary Cass OBE, we consider that these matters require further careful and detailed consideration before legislative proposals are finalised and the implications of them can be fully understood. [Page 3]

...we consider that a more robust consultation would have been achieved had additional information been provided on the definition of the key concepts of “conversion therapy” and “transgender”. [Page 3]

Given this, we recommend that legislation should initially focus on banning conversion therapy attempting to change a person’s sexual orientation, where the evidence and impacts are clearer. Legislation to ban conversion therapy attempting to change a person to or from being transgender should follow, once more detailed and evidence-based proposals are available which can be properly scrutinised. [Page 3]

Should the Government decide to proceed with its proposals for legislation to ban both types of conversion therapy, we consider that a draft Bill should be published for pre-legislative scrutiny by a Committee of both Houses of Parliament. This approach will ensure that legislation to ban harmful conversion therapy practices contains clear definitions and terminology so that its effects can be properly understood, and is evidence-based and proportionate. [Page 3]

## 5 The evidence assessment

There are serious issues with the evidence assessment, including the undeclared conflicts of interest of:

- Dr Adam Jowett as Chair of the Psychology of Sexualities Section of the British Psychological Society.[10]
- Dr Simon Goodman as Committee member of both the Qualitative Methods in Psychology and Social Psychology sections of the British Psychological Society.[11]

I note that the British Psychological Society is currently under investigation by the Charity Commission:

*The British Psychological Society (BPS) is being examined by the Charity Commission as it faces complaints including allegations that it is potentially putting patients at risk by arguing for the right for psychologists to prescribe drugs including hormone blockers to transgender patients.[12]*

The nature of these allegations raises serious concerns about their impartiality, integrity and suitability for the task of assembling and evaluating the evidence for this consultation.

As I have pointed out, the evidence document uses the term ‘cisgender’. ‘Cis’ is a derogatory term without legal or biological meaning and has no place in a government document.

Overall, this language is indicative of an ideological stance and bias that prejudges much of the consultation.

However, very many fatal problems with the evidence assessment have been detailed by clinicians and others:

Title	Author
Conversion therapy: calling for legislation without evidence[13]	Sex Matters
GEO research finds no evidence for banning transgender “conversion therapy” [14]	Sex Matters
SCOPING SURVEY FOR GOVERNMENT EQUALITIES OFFICE CONSULTATION ON CONVERSION THERAPY[15]	Thoughtful Therapists
Prevalence of conversion therapy by therapists in the UK[16]	Transgender Trend

The evidence provided by the government in the consultation is a wholly inadequate basis for making law.

## 6 Conversion practices

As I have highlighted, it is a major flaw of the consultation to conflate ‘Sexual Orientation Change Efforts’ (SOCE) with ‘Gender Identity Change Efforts’ (GICE).

I refer the Government to Griffin *et al.* to understand the crucial difference between the abhorrent and ineffective practice of homosexuality ‘conversion therapy’ and that of the ideologically based gender ‘conversion therapy’. Griffin *et al.* describe the latter as:

Conversion therapy is described [by the Royal College of Psychiatrists] as ‘any approach that aims to persuade trans people to accept their sex assigned at birth’.[17]

Note: although the phrase is used by the Royal College, sex is not ‘assigned’ at birth: it is observed at or before birth and recorded.

This is different in fundamental ways to sexual orientation conversion therapy, not least because gender identity ‘conversion therapy’ can otherwise be described as ‘watchful waiting’ and other recognised and established therapeutic approaches in clear contrast to prescribing life-long treatments and surgical interventions that generally lead to infertility and drug dependence.

Gender ‘conversion therapy’ as outlined in this consultation is not conversion: it is leaving individuals to grow, learn, mature and develop naturally and become accustomed to and accepting of their sex — and of their sexual orientation.

This conflation of gender ‘conversion therapy’ with sexual orientation ‘conversion therapy’ must be understood and avoided, particularly as it hides the ideological basis for the term.

This reversal in position no doubt serves an ideological purpose in that it gives the impression to the lay public that the abhorrent ‘gay conversion’ practices are equivalent to the practices that might be administered to those who are having issues with understanding or feeling comfortable with their sex when they are not related.

## 7 Concerns

Many have expressed deep concerns with the proposals in the consultation and the direction any resultant law would take us:

Joanna Cherry QC MP:

*we must not make it a criminal offence for therapists to try to help patients with gender dysphoria to feel comfortable in their birth sex.[18]*

Dr Lucy Griffin and colleagues:

*Psychiatrists understand that human development is necessary, but not always comfortable. Puberty, although a normal physiological process, is associated with particularly high levels of psychological and bodily discomfort. Psychiatrists' role is to journey with patients as change is navigated and to provide support through sharing uncertainty and difficult decision-making. But in the current climate, psychiatrists may be unsure whether addressing psychological and social antecedents will lead to accusations of conversion therapy. Attempts to reconcile a sufferer's discomfort with their actual body would be good practice in other conditions involving body image disturbance, such as anorexia nervosa.[17]*

The Economist:

*The government wants "conversion therapy" to include talking treatments that explore why someone's gender identity is at odds with their biological sex. A ban would leave the field of gender medicine to those happy to shepherd patients—including the growing number of under-18s who see themselves as transgender—into "gender affirmation", in which their cross-sex identity is treated as permanent. This approach fast-tracks many children onto powerful drugs and sometimes surgery.[19]*

*Trans conversion therapy (which the proposed law does not define) is a different matter—not because trans people are inherently problematic, any more than gay people are, but because unlike sexual orientation, gender identity is neither well-defined nor necessarily stable. "Conflating the two is incredibly dangerous," says Anna Hutchinson, a clinical psychologist who used to work at gids. A person may dissociate from their biological sex for a host of reasons, including autistic-spectrum disorders, depression, trauma or a history of sexual abuse. Responsible clinical practice requires investigating such possibilities. But the phrase "trans conversion therapy" is being used to mean any approach other than immediately affirming a person's stated gender, says Dr Hutchinson. "That goes against what therapy is." [20]*

Mark Jenkinson MP:

*Gender dysphoria is the only condition that everyone, including the NHS, is expected to affirm rather than fully understand the root cause of, and potentially treat.[21]*

Josephine Bartosch writing in *The Telegraph*:

*David Bell, a consultant psychiatrist and former president of British Psychoanalytic Society, has become an outspoken critic of treatment pathways which do not investigate why a patient feels discomfort in their body. Earlier this year in an interview with Channel Four News, Bell accused ideological groups of “managing to capture policy- medically, professionally and in the media and in government”. He claims that the treatment model whereby patients are simply affirmed in their identities is itself “a form of conversion therapy”, as without medical intervention many girls in particular would grow-up to be lesbians, desisting from their belief that they have a male gender identity.*

*Bell is far from alone. The group Thoughtful Therapists was formed “to protect open-ended therapeutic exploration”, in opposition to those who argue that patients must be unquestioningly affirmed in their professed gender identities. They are concerned the ban on conversion therapy will have a “chilling effect”- preventing clinicians from exploring the underlying causes that lead people to feel discomfort in their bodies. As proposals stand, those found guilty of practicing conversion therapy could face imprisonment or a fine of an unlimited amount.[22]*

Sex Matters:

*There is no need for sweeping new legislation. Existing criminal law already outlaws abuse and physical harm, as well as child cruelty, neglect and violence. This new law will be used to criminalise dissent with gender ideology.[23]*

Nikki da Costa writing in *The Telegraph*:

*The proposed law follows a campaign by Stonewall to extend a ban on conversion therapy for sexual orientation, on which there is near universal agreement, to cover talking therapies that intend to change a person from being transgender. That sounds simple, but it conceals huge complexity, particularly as it relates to children.*

*It requires the Government to define what it means to be a transgender child, as opposed to a child suffering from gender dysphoria. As there is no objective test, it moves the Government into accepting the principle of self-identification. Is the bar the assertion by a girl that she is a boy, or vice-versa? How long must they hold this belief? At what stage does legitimate therapy or conversations that seek to explore what might underpin a child's assertion that they are in the wrong body become vulnerable to accusations that the intent was to change a transgender child?[24]*

I ask that you take all these concerns into account in your deliberations and in drafting any Bill to ban GICE.

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[www.sexnotgender.info](http://www.sexnotgender.info)

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## Appendix A — WESC definitions

An examination of some of the definitions given in Appendix A of the report[7] by the Women and Equalities Select Committee in their inquiry into the Gender Recognition Act.[8]

### 1. Sex: Assigned by medical practitioners at birth based on physical characteristics. Sex can be either male or female.

- 1.1. Sex is not 'assigned': it is observed (including by parents) and recorded at birth or (increasingly) long before.
- 1.2. However, the definition that sex is binary and can only be female or male is consistent with the Equality Act 2010.

### 2. Gender: Often expressed in terms of masculinity and femininity, gender refers to socially constructed characteristics, and is often assumed from the sex people are registered as at birth.

- 2.1. How is 'gender' 'assumed' from a sex? What does that mean and entail?
- 2.2. What's the measure of masculinity and femininity?
- 2.3. How is 'gender' 'assumed' from a sex? What does that mean and entail?
- 2.4. Who decides what these are and where an individual is on this supposed scale?
- 2.5. If it's left to each individual (it's certainly not the place of government to dictate this), how can the government base laws on this basis?
- 2.6. How can 'gender' be anything other than a reliance on demeaning, regressive stereotypical notions of societal roles for the two sexes?
- 2.7. This sets up a conflict: on one hand it refers to femininity and masculinity, which have a number of different and variable measures but on the other hand it equates this to sex, which has already been established as binary.

### 3. Gender identity: A person's internal sense of their own gender. This does not have to be man or woman. It could be, for example, non-binary.

- 3.1. What's the distinction between 'gender' and 'gender identity'?
- 3.2. What's the difference between a person's 'gender' and their internal sense of their own 'gender'?
- 3.3. How could they be different?
- 3.4. Are they not — by these definitions at least — synonymous?
- 3.5. Why then complicate things with superfluous terms?

4. Gender presentation / Gender expression: A person's outward expression of their gender. This may differ from their gender identity or it may reflect it.

- 4.1. Neither of these terms is used on the report so why are they included in the definitions?
- 4.2. What difference does it make whether or not an individual 'presents' or 'expresses' their 'gender'?

5. Non-binary gender: An umbrella term for a person who identifies as in some way outside of the man-woman gender binary. They may regard themselves as neither exclusively a man nor a woman, or as both, or take another approach to gender entirely. Different people may use different words to describe their individual gender identity, such as genderfluid, agender or genderqueer.

- 5.1. The report doesn't define woman and man but there is no need as they are already (as with sex) also defined in the Equality Act 2010, which does so in relation to binary sex.
- 5.2. But again there is the conflict between the binary of sex and the (presumed) spectrum of femininity and the (presumed) spectrum of masculinity.
- 5.3. So what can 'outside of the man-woman gender binary' mean?
- 5.4. But regardless if someone regards themselves as 'neither exclusively a man nor a woman, or as both', still can only mean they are either female or they are male.
- 5.5. What is left for 'non-binary gender' to mean?

6. Transgender / Trans: Umbrella terms used to describe individuals who have a gender identity that is different to the sex recorded at birth. Non-binary people may or may not consider themselves to be trans. This consultation document primarily uses 'trans'.

- 6.1. It has not been established that 'gender identity' and sex are in any way comparable: they are determined by entirely different measures ('gender' by some kind of femininity measure or masculinity measure and sex as binary).
- 6.2. Equating one to the other is therefore nonsensical and misleading.

## Conclusion

No cogent definitions have been provided by the Women and Equalities Select Committee: they are incomplete, lacking in any integrity, self-referential and allude to demeaning, regressive stereotypical notions of societal roles for the two sexes.