

Response to 2020 Consultation on the Reform of the Gender Recognition Act¹

Susan Gilchrist²

SuM1127d

27 November 2020

One of the features which has a profound effect on how the questions you ask in this consultation may be answered comes from the disputes about the origin of transgender conditions. My response to a previous consultation can be found here, <http://www.tgdr.co.uk/documents/222P-TransgenderEqualityCtteeWrittenEvidence.pdf>. My commentary on a later consultation can be found at Gilchrist, S. (2019a): “*Divisions: Self-Declaration and Gender Variant People*”: <http://www.tgdr.co.uk/documents/243P-DivisionsSelfDeclaration.pdf>): both still apply.

As a university academic who is and has been involved in reconciliation work in Northern Ireland and who, with the support of the Corrymeela Community and academic staff from both the Queen's University of Belfast and the University of Ulster, have been engaged in the study of how individual personality and identity develops in early life, both in tribal situations where violence occurs and also in how gender identification takes place, I believe I may be able to provide some insights that are relevant to this consultation³. Therefore, I briefly wish to address these disputes about the origin of transgender conditions, before considering the questions asked in the consultation document.

The first of these groups, mainly from the feminist movements, use the work of Blanchard, Zucker and others to argue that it is a paraphilia. This term, and the claims made by this approach, consider that its origins arise as a disruption to the normal path of development which is driven by sublimated sexual motivations. This defines the origins of transgender conditions as perversions of male homosexuality, rather than perversions of sex. The other group, which represents a consensus view of the professional medical institutions, argue that it is a personality variation, which is within the normal range of human development, and is a search for identity instead. Depending on which identification you choose, the methods of management are almost opposite to one another.

That creates further disagreements since one of these sides dismisses gender identity as a purely social construct while the other places it at the heart of the personality that is created. On one side the transgender person is regarded as the potential perpetrator: on the other side, that person becomes the sufferer instead. What is seen as compassion by one side is automatically condemned as coercion by the other. It is the differences between these approaches which provide the background for what has become a toxic dispute

When such profound differences occur it is essential that true hearing and listening takes place, but when one side attacks the other with accusations of malpractice, and dismisses it with the statement that: “*Their teaching is backed by no credible science but has been adopted by government, the NHS, schools, and therapists*”⁴, and when the other side

¹ This document is available at Gilchrist, S. (2020): “*Response to 2020 Consultation on the Reform of the Gender Recognition Act*”: <http://www.tgdr.co.uk/documents/249P-ConsultationResponse.pdf>

² A personal biography is available at: <http://www.tgdr.co.uk/documents/SusanBiographyPicture.pdf>

³ For my own research in these areas see: <http://www.tgdr.co.uk/articles/bibliography.htm>

⁴ Transgender Trend (2019) Impact of Teaching Gender Identity to Children <https://www.transgendertrend.com/wp-content/uploads/2018/02/Impact-of-Teaching-Gender-Identity-to-Children.pdf> [Accessed July 2020]

responds in equal measure, or when any religious group refuses to consider even the possibility of moving from its entrenched theological stance, then regardless of your viewpoint, or the justice of your position, the capacity for listening is destroyed.

These concerns have led all of the major medical organizations across the UK, including the British Psychological Society, and parallel United Kingdom organisations to sign a memorandum of understanding which very strongly condemns any attempt to try to 'cure' gender and sexually variant people. That is also the position taken by the British Royal College of Psychiatrists. These processes are referred to as "*Conversion Therapy*" for lesbian and gay people, and "*Reparative Therapy*" for trans people. Corresponding positions are taken by the American Psychiatric Association and the American Psychological Association who have released statements which are equally as strong. Other international mental health organizations, including the World Health Organization have followed. All these organisations are signatories to the World Professional Association for Transgender Health standards, which provides the consensus view.

It is these differences and arguments which form the background to my own research. This work examines how personality and identity, including gender identity develop in early life. In it I consider both the psychological and physiological patterns of neural development during the first four years of life and I map how the transition occurs from the contagious, fragmented, internally created driving forces identified in the neuroscience based studies pioneered by Girard, Dawkins, Gallese and others: which dominate development from birth, to the restraining forces of cognitive development identified in the traditional psychodynamic and social learning theories pioneered by Freud, Piaget and others: which only later can come into effect. The details of that research work need not be discussed here, but it is fully written up in Gilchrist, S. (2019): "*The Development of Transgender Behaviour and Identities in Early Life*": <http://www.tgdr.co.uk/documents/243P-BehaviourSelfIdentity.pdf>.

I also discuss the reasons for the disputes in a further paper: Gilchrist, S. (2020): "*Responsibility in Transgender Disputes*": <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>. This includes a full analysis of the approaches taken by both groups. The presumptions made by the feminist groups that transgender conditions are paraphilias and the use of neurophysiological analyses which do not allow for any fundamental changes in the nature of learning patterns in early life means that gender identity must be created by social conditioning alone. That corresponds to the mantra presented by second-wave feminists who distinguished sex from gender: this is considered to be created through a social learning process that imposes the role of male or female onto sexed bodies. The important feature of the feminist account is that gender is socially, not individually, constructed, therefore the earlier transitions and processes I identify are dismissed, disputed, or ignored⁵. The results of my work fully support the approach taken by the international bodies and the professional medical institutions which argue that these conditions must be treated as personality variations and not perversions. It adds a research-based approach to the experiential evidence already available, and it shows how a core sense of gender identity and personality develops very early in life and that the development of a core sense of gender identity is at the heart of personality that is formed.

For these reasons, the answers I give in this consultation are based on the conclusion reached by the professional medical institutions who regard transsexuality as naturally expected variations of the human condition, which are intrinsic to the personality created,

⁵ See for example Rippon, Gina. (2019); "*The Gendered Brain: The new Neuroscience that shatters the myth of the female brain*": Penguin Random House, London 2019: ISBN 9781847924759.

that arise very early in development and cannot be changed either by the individual concerned or by the predations of others in subsequent life.

One of the more contentious areas relates to the way that transgender children are treated. That exposes major difficulties because the approach that gender identity clinics must adopt will differ according to the diagnosis that is applied. Giving children the freedom to find their own identities, as would be expected if it is treated as a personality variation, will immediately raise allegations of predation against the “*transgender lobbies*”. On the other hand, attempts to repress any such exploration, by treating it as a motivation, will raise ire among transsexual people by reason of the trauma that repression creates. The argument that is often heard from these groups is that transgender children do not exist. By denying such children the framework on which they build their lives, the self-acceptance and self-esteem that is needed to overcome the difficulties that they face is attacked or destroyed. That is why giving all children the freedom to explore their own senses of gender identity, without pressures from any advocacy group, and without feelings of guilt imposed by the condemnation of others, should be an important part of child development, as is the need to calm the dynamics of any conflict that is created... but that does not mean that safeguards should be abandoned. Indeed, it is crucial that strong and appropriate safeguarding provisions are applied. In the document, Gilchrist, S. (2018): “*The Safeguarding of Transgender Children*”: <http://www.tgdr.co.uk/documents/241P-SafeguardingTransgenderChildrenDoc.pdf> I consider some of the issues that are involved.

It is commonly accepted that attempts to fight or suppress these conflicts fail to succeed, and it is why approaches such as “*Reparative Therapy*” have such a devastating effect. Therefore, it is crucial that understanding and the methods of management are correct. There are four absolute demands that must be met if a compulsion of any type is to be effectively managed. The first is the absolute requirement to accept the reality of the condition, the second is the total need to recognise that willpower and determination cannot suppress or control it, the third is the unqualified requirement to recognise that the support and help of others is needed, and the fourth is the complete need to accept that, for no matter how long one has managed to calm the compulsion, even to the extent that conflicts may seem to have disappeared, the trauma and the disruption it creates may erupt at any time. That means welcoming and acknowledging in full one’s identity.

For alcoholics, total abstinence is a recognised route. For trans people it means accepting and embracing the complexity of the identity that is possessed. However, for trans people abstinence would mean denying something that would lead to fulfilment of life; so, an approach based on inclusion, acceptance, and welcome must be used in its place. When the reform of the Gender Recognition Act is being considered, it is these factors which must be used as a guide.

My own approach is described in Gilchrist, S. (2013): “*Management Techniques for Gender Dysphoria with Particular Reference to Transsexuality*”:

<http://www.tgdr.co.uk/documents/205P-ManagementTechniquesInGenderDysphoria.pdf>

also Gilchrist, S (2015): “*A Path of My Own*”: Person Centred Care and Support: NHS Transgender and Non-binary Symposium 30 June 2015

<http://www.tgdr.co.uk/documents/SuF0630s-FINALSymposiumReport.pdf>

Should the requirement for a diagnosis of gender dysphoria be removed?

Currently, the process of recognition under the Gender Recognition Act is unnecessarily invasive, cumbersome, and costly. Therefore, Government’s statement that it would place the whole procedure online, reduce the fee from £140 to a “nominal amount” and open at least three new gender clinics this year in order to reduce waiting lists are welcome

developments. However, this does nothing to alleviate or remove concerns about the process of obtaining the diagnosis⁶. It is a process which is anonymous which treats the applicant more like an object than a person. It undermines the dignity of trans people because it approaches trans people's lives in terms of mental illness, an indignity shared by gay and lesbian people until 1973 when homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders.

It also fails to recognise that transgender conditions have similarly since been removed, from the Diagnostic and Statistical Manual, or that the scientific community now considers these conditions to be as naturally expected variations of the human condition, which are intrinsic to the personality created, that arise very early in development and cannot be changed either by the individual concerned or by the predations of others in subsequent life. Furthermore, it recommends that no medical intervention is either appropriate or necessary, unless it causes the individual distress, and that is usually because of the attacks and discrimination which others inflict on the person concerned.

In addition to this the nature of the process also impedes the attempts of the person to manage their own situation. It presents such a person to the public as someone who may be a possible predator and it attacks the self-esteem that is needed to manage the compulsions which drive the demand. If trans conditions are instead understood to be driven by rejection and the search for identity, the freedom to self-identify is needed, since having self-esteem and self-acceptance is a key element in managing the compulsive demands. Knowing that other people recognise and accept that trans people can self-identify, is a crucial feature in avoiding guilt and creating the freedom to handle these needs.

These are the reasons why I believe the ability to self-identify is an important element in the reform of the 2004 Gender Recognition Act. However, this does not mean that it should be a free-for-all act. Necessary provision must be made to ensure that people do not abuse this provision, and I do not recommend that any of the protections presently included in the 2010 Equality Act or adjusted according to my proposals should be dropped. Where other countries, Argentina (2012), Denmark (2014), Malta (2015), Norway (2015), Ireland (2015), Colombia (2015), Belgium (2017), Brazil (2018), Portugal (2018) and Pakistan (2018) have already adopted the principle of self-declaration, equivalent protections have been kept in place, and no problems or increase in abuse has been encountered.

Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?

Current requirements demand that people have lived fully for the last two years in their acquired gender, they continue to do so and that they intend to live permanently in their acquired gender until death. Significant concerns with the process are that only binary options are available. Other people who are excluded from the provisions of the act are transgender people who struggle to maintain all the love, relationships and commitments they have created in their birth assigned role, even when they feel equally as strongly as others about their own need to transition. Instead of just testing the need to transition, this stipulation of living permanently may promote it since it forces people into transitioning and into a binary role because of the social transformations that must be made. Therefore, a more flexible approach is required. For many transgender people, a period of two years may be too long; and previous history should be accounted for. However, any procedure must have the trust of the general population, and the recent attacks by others on the legitimacy of transgender identities makes that more difficult to obtain.

⁶ <https://www.gov.uk/government/news/government-responds-to-gender-recognition-act-consultation>

There is another caveat to consider which arises from the rapid rise in teenage girls seeking to undergo transition and the well-publicised stories of later regret. This is despite the gender identity clinics reporting very low figures of such regret. One side in the present disputes alleges that predation by other trans people is the cause of this rise. However, in this analysis I show that the conflicts are created are bipolar in nature and form very early in life. Thus: they may manifest themselves with extreme intensity at one time and seem to disappear at another. For some they may explode into conscious awareness when puberty occurs. Therefore, sufficient time must be allowed for stability to be established. This issue is of greater significance for natal girls since irreversible changes through the application of hormones can take place at an earlier stage. I would suggest that a delay of about eighteen months between the time of application of a gender recognition certificate and its granting might be appropriate, but that this delay should be accompanied by a less rigorous interpretation of living in the gender role and that all the other reforms suggested in this response should be implemented, so that any delay is made less threatening or onerous. Clearly clinical judgments about the use of puberty blockers must also be made, using the correct application of experiential evidence and the correct understanding of the nature of the conflict.

Will the Government’s proposed changes meet its aim of making the process “kinder and more straight forward”?

Yes

Should a fee for obtaining a Gender Recognition Certificate be removed or retained? Are there other financial burdens on applicants that could be removed or retained?

The reduction is welcome, but it is not a governing factor

What is your view of the statutory declaration and should any changes have been made to it?

It is a necessary and appropriate means of identification

Does the spousal consent provision in the Act need reforming? If so, how? If it needs reforming or removal, is anything else needed to protect any rights of the spouse or civil partner?

These are serious matters which need to be resolved by the couple concerned. It should not be part of the legislative process

Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?

It is necessary that the Gillick competence tests should be applied to all forms of management or treatment. The granting of any gender recognition certificate or the use of irreversible medication should not be made before the age of maturity is reached. This is not just because of the needs of transgender people it is also to assure the public of the responsibility of the process.

What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?

Making the process easier, providing more resources, and making it less intrusive are of great benefit but the presumptions behind the proposed reforms do not just create a missed opportunity, they are also a setback for transgender people.

While it is right that all viewpoints are fully and objectively considered, the approach presented by gender critical feminists seems to dominate in the proposed reforms. In my introduction to this consultation response I explain why this mis-diagnoses transgender conditions. The government House of Commons briefing paper pays much more attention to disruptions caused by transgender protests than it does to the misdiagnoses promoted by feminist groups⁷. More specifically I have concerns about the removal of all reference to the protection of transgender children and bullying in the school environment in the briefing paper: which is intended to support the interpretation of the act: Gilchrist, S. (2020): “A Comparison Of Changes To The House Of Commons Briefing Paper On “Gender Recognition And The Rights Of Transgender People” Made On The 16th July 2020”:
<http://www.tgdr.co.uk/documents/SuM0720a-BriefingComparisonDocument.pdf>

The use of work by Blanchard, Zucker which presume that sublimated sexual motivation underlie the origins of transgender conditions and consider them to be a paraphilia associated with a perversion of male homosexuality, refers back to previous Freudian presumptions about sexual motivations being the driving force behind much of personal development. People do disrupt gender and sexuality for many reasons. Motives may be misjudged, and many describe the current plight of transgender people as being equivalent to that of the gay rights movement in the 1980s and 1990s. The toxic environment created by these disputes and the derogations of all opposing viewpoints means that the capacity to listen has been destroyed and advances in understanding have been ignored. The use of this information without regard to the experiential evidence provided by the medical institutions and international bodies means that transgender conditions are misdiagnosed.

Does the Scottish Government’s proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

The Scottish Government Ministers accepted in full 33 recommendations from their LGBTI Inclusive Education Implementation Group in 2018. The proposals include removing the need for applicants for a GRC to provide medical evidence, but they would still need to provide a statutory declaration that they intend to live permanently in their acquired gender; requiring applicants to live in their acquired gender for at least six months – three. months before applying for a GRC and three months after applying – before a GRC could be granted. It retains the position that a false statutory declaration is a criminal offence and introduces a new offence of false application - each with a potential punishment of up to two years’ imprisonment; and it reduces the minimum age of application from 18 to 16. The Scottish model and consultation avoid the pitfalls I describe in the previous sections and is in accord with the provisions recommended in many other countries, professional medical associations, and international bodies. Therefore, I recommend that this approach is adopted in place of the UK government consultation which would apply to England and Wales.

I have one caveat however which relates to the bipolar nature of the conflicts encountered. I describe this in the previous section. Allowing only a period of six months to complete the period of transition seems too short and it may be necessary for a longer period to be prescribed. Steps should also be taken to make any delay less threatening or onerous to the person concerned.

Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

⁷ <https://commonslibrary.parliament.uk/research-briefings/cbp-8969/>

The Gender Recognition act was passed at a time when the understanding was very different, and its seen purpose was to enable people to marry in their gender role. Subsequent legislation, including the same-sex marriage acts have removed almost all of the discriminatory features that then applied. Therefore, having a Gender Recognition Certificate has relatively little impact on transgender people's lives, and many people may not be inclined to apply.

It might be argued that this is also a case for repeal, rather than reform. However, it still has one very important function regardless of the provisions it makes. It provides the legal confirmation that gender identity is the primary marker for all social identification and not biological sex.

Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.

A transgender person is protected from sex discrimination based on their legal sex. This means that a trans woman who does not hold a GRC and is therefore legally male would be treated as male for the purposes of the sex discrimination provisions, and a trans woman with a GRC would be treated as female. The sex discrimination exceptions in the Equality Act therefore apply differently to a trans person with a GRC or without a GRC despite the stated intention of the Equality Act.

This also raises issues for those people who are in the process of transitioning, where protection remains unclear. It also creates difficulties for those who adopt a non-binary role. There is therefore a clear need to include a provision in the Gender Recognition act which puts beyond doubt that having a GRC is not a determining factor in how the exceptions relating to gender reassignment discrimination apply.

Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?

Some of this is addressed in the previous comment. The Equality Act lists "Gender Reassignment" as the protected characteristic, not sex. This distinction is confusing to many and clarifications are required. In their guidance and "fact sheets", certain organisation take advantage of this confusion to describe ways in how you can discriminate against transgender people, instead of describing what exclusions are appropriate, and how you should avoid discrimination taking place.

Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed

The government has made clear that both the general right enjoyed by trans women to access women-only spaces, and the rights enjoyed by those who provide women-only services to limit that access in circumstances where this is "a proportionate means of achieving a legitimate aim," will remain in force. Therefore, the proposed reforms will make no difference whatsoever to the current legal position. Greater clarity is needed in the descriptions that are applied.

What issues do trans people have in accessing support services, including health and social care services, domestic violence, and sexual violence services?

Although the law is generally adequate, and trans women do get the necessary access, major difficulties arise from prejudice in societies and attitudes of certain campaigning

groups This whole area has become a political minefield where the validity of transgender experience and the freedom of self-identification are being condemned. Transgender people are being alleged by some radical feminist groups to erase the validity of lesbian relationships⁸. As far as these feminists are concerned transgender people are perceived to weaken their own campaigns against the oppression of women, so that the mantra that male to female transsexuals are really men who masquerade as women, has to continually be reinforced⁹. That anger is greatly compounded by the way in which such radical feminist groups have used the proposals of self-declaration to accentuate what are very genuine fears and concerns of women by ignoring the restrictions that are currently placed, and will continue to remain in the process, by refusing to acknowledge that self-declaration has effectively been practiced for the last eight years and by arguing that reform of the gender recognition act will create a deluge of sexual abuse and invasions of women's private spaces¹⁰. The Government has made it clear that there will be no change to the 2010 Equality act. Therefore, crucially, the proposed reforms to the Gender Recognition Act will have no impact whatsoever in women's bathrooms or in other gender segregated spaces. This is because, by virtue of Section 7 of the Equality Act, all the present protections remain in place.

Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

At the present time, four fifths of transgender people are identifying themselves in non-binary roles. The Gender Recognition Act makes no provision whatever for such people. One obvious approach would be to make all legislation not gender specific, another would be to legislate for a gender marker to identify such people in addition to the terms of male or female that are presently used.

While access to women's private spaces must be full recognised and the discrimination that women face and have faced over the centuries must be totally condemned, restriction of access should be based on legislation preventing abuse. It should not be based on physical characteristics. There is a whole raft of legislation preventing such abuse which can be applied to those who abuse the permissions that are given to gay, lesbian, transgender and bisexual people: and these should be rigorously applied. To exclude all transgender people from any space simply because of the abuse, or the fear of abuse by some, is to scapegoat the whole of the transgender community. The same applies to gay and lesbian people and to other minority communities. The world knows of the harm that has been created by the scapegoating of whole communities because such discrimination has been applied.

Commentary

The discrimination against women is appalling, and it should never take place in any society. However, many feminist groups concentrate only on battles between power and sex. There is another viewpoint which allows a gender complementarity in which men and women find delight and love in each other (or in same-sex partnerships) while at the same time attacking with the same degree of vigour the gross discrimination that all women face. Clearly

⁸ As in the Woman's Place Website <https://womansplaceuk.org/>

⁹ Stock, K., (2018): "Why self-identification should not legally make you a woman" "The Conversation" October 1, 2018 <https://theconversation.com/why-self-identification-should-not-legally-make-you-a-woman-103372>

¹⁰ Freedman R., Auchmuty, R: (2018) 'Women's Rights and the Proposed Reforms to the Gender Recognition Act' (OxHRH Blog, 17 August 2018) <http://ohrh.law.ox.ac.uk/womens-rights-and-the-proposed-changes-to-the-gender-recognition-act/> [accessed 10 October 2020].

Women's Rights and the Proposed Changes to the Gender Recognition Act: *Oxford Human Rights Hub*

- 17th August 2018 <http://ohrh.law.ox.ac.uk/womens-rights-and-the-proposed-changes-to-the-gender-recognition-act/>

biology plays a supremely important role in how men and women are treated in society, but in practice we make the distinctions between men and women on appearance, behaviour, integrity, and how people present. Such inbuilt differences can be used to delight in each other or to attack each other, and both need to be considered in any arguments... for enmity exists when one or the other is denied. Many transgender women have played leading roles in feminist movements and many still do. Current evidence supports the view that the majority of natal women and many who are feminists, do accept trans women fully as women who are allies in a common cause, but others do not, and trans people suffer co-lateral damage in these gender wars. That is made clear in the public response to the Government's consultation on the reform of the 2004 Gender Recognition Act, which showed wide support for all aspects of reform, including 64% in favour of removing the requirement for a diagnosis of Gender dysphoria and 80% in favour of removing the requirement for a medical report. That these conclusions have not been followed through is a matter of regret.

Susan Gilchrist

November 2020