

Why you should Contest the Supreme Court Decision and the Revised EHRC Guidance for Transgender Access to Spaces and Services¹

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A recent Supreme Court judgement has resulted the United Kingdom Equality and Human Rights Commission (EHRC) issuing revised guidance which greatly reduces the access that transgender women traditionally have had to women's spaces, services and facilities. Of course, transgender women and natal women are different in terms of the *"biology of sex"*. But all women; transgender women and biological women together, instead base their experiences of being *"women"* on the *"performance of gender"* in everyday life. However, the recent Supreme Court Judgement no longer allows transgender women to call themselves *"women"*, because it has declared that *"transgender women are men"* for the purpose of the 2010 Equality Act. And it now restricts the interpretation of the Act to the *"biology of sex"*. The Supreme Court has also decided that *"inspections of the genitals at birth is sufficient to determine the appropriateness of all future gender and sexual behaviour"*. Since the purpose of all equality legislation is to moderate behaviour in terms of the *"performance of gender"*, that denial immediately turns an approach which had previously sought to maximise the inclusion of transgender people in everyday life, into one which focusses on exclusion instead ... By using a conclusion that has utterly been condemned by expert opinion as *"unfounded, transgender exclusive, and totally incorrect"*^{2,3}.

In practice most definitions of gender identity divide it into two components, where either or both usually; but need not, always correspond the expectations of biological sex. Our gender identities depend on the natures of our interactions with others; and with no knowledge of sex, we all start from the same base. The core gender identity, which is the first to be created, is a measure of the deeply held sense of belonging without behavioural implications and not drives of sex. Transgender people are able to call themselves *"women"* because of their shared *"performance of gender"* in society: This is why so many feminists are happy to welcome transgender people into their ranks; and see them as allies in the feminist cause; who seek the same coherences of roles and identity, not of sex. My study, described in this account, shows that; far from the presumptions of all traditional social learning and psychodynamic theories: which understand that it is only the cognitive processes of thinking, feeling, and imagining which drive development forward⁴: Early development is instead understood to be driven by strong, innate, compulsive, and pro-active neural forces which dominate from birth. These involve mirror neurons, possessive imitation, empathy, and the like. Therefore, the impact of these driving forces, and the massive changes in neural and cognitive capabilities in the first three to four years of life cannot be ignored. This allows all women, including male-to-female transsexuals: acting as women with women, to pursue the same feminist arguments with the same vigour, from a stronger base. Equally for any female-to-male transsexual: acting as men with men, to pursue any equivalent male arguments from a similarly stronger base. Transgender women do not offer any greater threat to women than all women, in women's spaces and services: because these personality variations, or incongruences of gender; form as part of social interactions and the separation of the self from the other very early in life ... So that these harmonies of early development for many years now, have justified approaches which maximise the inclusion of transgender people in everyday societies. It follows that the core gender identity; rather than biological sex should be the primary factor in naming and governing how people socially interact, with individual provisions for physiology or those who object: And this also means that the gender-critical philosophy: which ignores pre-cognitive processes is the less effective approach⁵. It is also incorrect because this is a search for coherence of identity instead of the drives of sex. The results of this study entirely support the scientific consensus of the World Authorities and Professional institutions which consider transgender conditions to be *"naturally expected variations of the human condition, intrinsic to the personality created, arising very early in life, and cannot be changed either by the individual concerned or by the predations of others in subsequent life"*. It must be treated as a personality variation since it develops as a difference of identity from the outset: and with nothing to replace it, the effect of its destruction leaves a vacuum or disorder in its place.

The second is the gender role identity, which forms from a median age of three years. It can only develop as an overlay on the core gender identity, which has already been formed, since awareness of self and the other must already be in place; together with the ability to measure and respond to what society expects. It is what we consciously aware of in our *"expressions of gender"*. But, quite clearly, both elements must be considered in any examination of how gender identity should be managed and treated⁶. However, the impact this early pre-cognitive period is dismissed by cognitive neuroscientists and others, who adopt gender-critical approaches; which presume that cognition and sexual motives alone are the primary organising forces that drive development forward: And must deny that anything of significance during this earlier period occurs. Cass sets the frame of reference for her review to ignore the massive and often unique transformations in neural and cognitive development which takes place during the first three years; even though she considers their effects when puberty occurs, she also uses arguments from the 1960s to justify the conclusions she reaches. Rippon dismisses the approaches of those who argue that what happens during this early period is crucial for development, as *"whack-a-mole"* myths, or untrue statements which are repeated so often, they come to be believed. Sullivan argues the gender identity and sex are different things, and the impact of gender is almost totally ignored. Stock denies the influence of any departure during the first three to four years by relying exclusively on cognition and logic to justify her approach, so that the pre-cognitive influences are dismissed or ignored⁷. There is also no justification for any approach, that similarly attempts to ignore this early period by adopting a *"gender critical ideology"* which reduces the diagnosis of transgender conditions to sexual desire; and to *"perversions, paraphilias and disruptions of the gender role"*, by imposing an assumed *"gender ideology"*, which alleges that *"transgender people believe they can choose, change or deny biological sex"*: So that these groups reduce the concept of gender identity, from a core element of the personality that is created, to a nebulous socially created concept associated only with the gender role. Not only does this force a diagnosis on transgender people, which they cannot identify with, it totally

transforms the situation. Which destroys the legitimacy of transgender identities; by presenting them as drives of sex: and the harms that are created by a diagnosis which is incorrect: Where transgender women are seen to be as great a danger as all males in women's spaces and services, and with all the fears of male abuse and attacks⁸.

Clearly an objective and impartial approach is needed. The conclusions of the World Authorities and Professional Institutions are consistently condemned as *"not being based on credible science"*, merely the work of transgender activists, with the denigration of the motives of those who pursue this approach. The approaches of Stock, Rippon, Sullivan, Cass, groups like *"Sex Matters"* and others who, for various reasons, ignore pre-cognitive development, are accepted without question. One of the Supreme Court judges, Lord Hodge has said. *"Did we realise that would cause an outrage for people? Yes, because people had been led to believe by public authorities, among others, for the last 15 years that they had rights, which they didn't have"*⁹. However, these rights are not the expectations transgender people did not have. They are the expectations of human rights which have now been taken away by a Supreme Court judgement, which relies almost entirely on the gender-critical approaches; including those currently adopted by the present EHRC: They are expectations of human rights which are taken away by the refusal to allow transgender women to describe themselves as *"women"* through *"the performance of gender"*. And they are rights which have been removed by the misdiagnosis of transgender conditions as perversions or disruptions, instead of searches for coherence of identity and fulfilment of life.

It is only seven years since Penny Mordaunt; on the grounds of *"performance of gender"* said in Parliament: *"Transgender women are women, that's the starting point of the conversation"*, to today when the Supreme Court actively denies it, and confines the Equality Act to the biology of sex¹⁰: Thus, turning the understanding of transgender conditions from coherences of identity into drives of sex¹¹. The definition of a woman as an *"adult human female"* is not the only one to be used. The feminist pioneers: and many today, still distinguish men from women through their *"performances of gender"*; as a matter of principle, without reference to any restrictions of the biology of sex. And when this is all about equality, that ought to be reflected in the 2010 Equality Act. The approaches of public bodies who rely on the World Authorities and Professional Institutions are also dismissed as mistaken or unreliable by Lord Hodge, and the many advances in science, clinical, medical, experiential evidence and public understanding since the 1960s are ignored. Transgender people who rightly protest about these misuses, often find themselves being abused and attacked by those in Government; and elsewhere, who believe that these arguments; or a gender-critical ideology, is correct.

Attempting to treat transgender conditions as personality deviations or disruptions when the diagnosis should be that of personality variations is potentially disastrous, because the time when transgender children and their parents most need help to manage these conditions occurs from early childhood, not later in life. Moreover, when the motives, timescales and methods of management of these two approaches differ to the extent that what one side considers to be those of compassion and concern, are almost inevitably regarded as recruitment, grooming, capture, and coercion by the other, it is essential to get the diagnosis correct¹². Unlike personality variations: where development proceeds in the variant direction from the outset, a diagnosis of disruption applies, where some unnamed perversion, paraphilia or disruption is presumed to have caused transgender conditions to arise: With the Court's definition that indicates; *"inspections of the genitals at birth is sufficient to determine the appropriateness of all future gender and sexual behaviour"*, takes the understanding; not just of transgender behaviour, but of all gender and sexually variant behaviour back to a time when all of these manifestations were condemned as intrinsically disordered, depraved, and in pursuit of inappropriate sex: With past centuries of condemnations, scapegoating and attacks. And that fear today is found in the many conspiracy theories, false allegations, *"woke"* cultures, populist governments, threats and attacks: And in the UK; issues of human rights¹³.

If the major concern with the Court, is over its misdiagnosis of transgender conditions, a greater concern comes from the draft EHRC guidance: Which, now goes further than the Supreme Court's decision; by forcing the exclusion of all transgender women by one woman's demand, from all clubs, spaces and services reserved for women: purely on the grounds of biology of sex: This contradicts the many years of clinical understanding and experiential evidence, which has shown that the opposite approach of maximising the inclusion of transgender people in everyday life has already worked successfully ... Because it recognises the impact of both pre- and post-cognitive elements in the development of personality and identity: and it accepts that gender and sexual identities are both core elements of the personality that is created. An impartial and objective approach is needed, but that has been taken away by a Supreme Court judgement which; by the Court's own admission, relies entirely on the views of *"Sex matters"* and other gender-critical groups. A study of the judgement and the references cited by the Court reveals that the views of world Authorities and Professional institutions were not meaningfully considered: The Court's refusal to accept the intervention of the *"Good Law Project"* also meant that expert opinion, which would have provided a counterpoint to the arguments was denied. And without any other expert input the advances in science, clinical, medical, experiential evidence and public understanding since the 1960s are also denied. In place of an approach which had sought with no problems for many years to maximise the inclusion of transgender people in everyday it now focusses on exclusion instead^{14 15}. It dismisses the impact of the key neural transformations and changes in pre-cognitive and early development. It makes the mistake that considering sexual motives and cognition alone drive development forward. It destroys the legitimacy of transgender identities as searches for coherence of identity, by representing these as drives of sex. Therefore, transgender conditions are misdiagnosed as personality disruptions instead of personality variations, with dangers to others. And anything which further excludes an already vilified group, from everyday life, has very damaging results, not just for transgender people, but for all LGBT people. And no judgement can be valid if all sides are not considered. So, this is why it is essential that the new EHRC advice is withdrawn with immediate effect.

For a full explanation of these arguments see Gilchrist, S: (2025) *"Actions of the United Kingdom Supreme Court and the Diagnosis of Transgender Conditions"*: <https://www.tgdr.co.uk/documents/256P-TransActions.pdf>

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Gilchrist, S. (2025): *"Why you should Challenge Supreme Court Decision and the Revised EHRC Guidance for Transgender Access to Spaces and Services"* 256P

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Notes and Endnotes

This is one of a series of documents: These are:

Gilchrist, S: (2025) *"A Challenge the Supreme Court Decision and the Revised EHRC Guidance for Transgender Access to Spaces and Services"*: <https://www.tgdr.co.uk/documents/256P-TransDamage.pdf> (1 page)

Gilchrist, S. (2025) *"Why the Supreme Court is Mistaken in its Understanding of Transgender Conditions"*: <https://www.tgdr.co.uk/documents/256P-TransMisdiagnosis.pdf> (2 pages)

Gilchrist, S: (2025) *"Why You should Contest the Supreme Court Decision and the Revised EHRC Guidance for Transgender Access to Spaces and Services"*: <https://www.tgdr.co.uk/documents/256P-TransContest.pdf> (2 pages)

Gilchrist, S: (2025) *"Verdict of the United Kingdom Supreme Court: Overview of the Effects of Misdiagnoses and the Independence of the Cass and Sullivan Reports"*: <https://www.tgdr.co.uk/documents/256P-TransVerdictOverview.pdf> (2 pages)

Gilchrist, S: (2025) *Actions of the United Kingdom Supreme Court and the Diagnosis of Transgender Conditions"*: <https://www.tgdr.co.uk/documents/255P-TransActions.pdf> .

Gilchrist, S: (2025) *"Verdict of the United Kingdom Supreme Court: The Consequences of Misdiagnoses and the Independence of the United Kingdom Cass and Sullivan Reports"*: <https://www.tgdr.co.uk/documents/255P-TransVerdict.pdf> .

For other documents go to the bibliography tab on www.tgdr.co.uk

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² See section 18:0 Feminist Issues and Decisions of the Supreme Court in Gilchrist, S: (2025) *"Verdict of the United Kingdom Supreme Court: The Consequences of Misdiagnoses and the Independence of the United Kingdom Cass and Sullivan Reports"*: <https://www.tgdr.co.uk/documents/255P-TransVerdict.pdf>. The Royal College of Psychiatrists responded to the Supreme Court judgment and its implications via its input into a consultation on the Equality and Human Rights Commission's (EHRC) updated Code of Practice. Its primary concerns centre on the risk of deepening mental health inequalities for trans and non-binary individuals. It is extremely concerned that the updated legal definition of sex, following the ruling, will significantly harm the mental health of trans and non-binary people and could put lives at risk. It notes that trans and non-binary people already face higher rates of mental illness, self-harm, and suicide compared to the general population, and the ruling risks exacerbating this. The BMA Resident Doctors Association stated: "This meeting condemns the Supreme Court ruling defining the term 'woman' with respect to the Equality Act as being based on 'biological sex', which they refer to as a person who 'was at birth of the female sex', as reductive, trans and intersex-exclusionary and biologically nonsensical. We recognize as doctors that sex and gender are complex and multifaceted aspects of the human condition and attempting to impose a rigid binary has no basis in science or medicine while being actively harmful to transgender and gender diverse people. It reiterates the BMA's position on affirming the rights of transgender and non-binary individuals to live their lives with dignity, having their identity respected. Reminds the Supreme Court of the existence of intersex people and reaffirms their right to exist in the gender identity that matches their sense of self, regardless of whether this matches any identity assigned to them at birth. Condemns scientifically illiterate rulings from the Supreme Court, made without consulting relevant experts and stakeholders, that will cause real-world harm to the trans, non-binary and intersex communities in this country. Commits to strive for better access to necessary health services for trans, non-binary and gender-diverse people. For letters, see also: London Economic (2025) *"Biologists tell government to restore trans people's access to public spaces after Supreme Court ruling"* <https://www.thelondoneconomic.com/news/biologists-tell-government-to-restore-trans-peoples-access-to-public-spaces-after-supreme-court-ruling-392997/>; Airtable (2025) *"An open letter to the Equality and Human Rights Commission from the Culture Sector, April 2025"* <https://airtable.com/appJiTpDvAuSGrX37/pagqDNIgDLD38RXblt/form>. For more on management see: Gilchrist, S. (2024): *"Why the Present United Kingdom Government Advice on Transgender Children Must be Challenged"*. <https://www.tgdr.co.uk/documents/040B-GovAdviceTransChildren.pdf> And for a specialist overview: see: *"the essence of the court's decision is (in broad purposes) as follows: a) the Gender Recognition Act 2004 states that a person with a GRC [gender recognition certificate] is to be treated as the sex stated in the GRC "for all purposes" unless a statute provides otherwise; b) although the Equality Act 2010 doesn't explicitly state otherwise, it contains various references to the word "woman" in contexts where it makes more sense if it is read as "biological woman"; Thus, c) the Equality Act therefore rebuts the presumption in the Gender Recognition Act and, for its purposes, "woman" means "biological" ("cis") woman. Therefore, by statute, the 2018 act must be read as excluding trans women from the class of "women". However, that argument can only make sense if you consider the definition of "woman" to be that of "someone who was at birth a member of the female sex". The court acknowledged that, should a trans woman be discriminated against because someone thinks she is a cis woman, then she will still be entitled to make a claim for sex discrimination in the same way as a cis woman. But if someone recognises a trans woman is a trans woman, no such protection applies"*. Although the appeal was made only in the context of public boards, the Court extended it to consider access to all same sex allocated services and spaces. Thus, the effect of the Court's decision is to introduce a statute which means that in no circumstances, can trans women call themselves women, and in no circumstances can trans men call themselves men. Therefore, trans women and men can be excluded by default from all same sex allocated spaces, and public boards on the grounds of appearance and of identity alone, regardless of the capabilities they may be seen to provide. The right to offend is also a basic human right, although nobody should wish to apply it at any time. At first sight, imposing exclusions entirely on the grounds of physicality or identity; with the unequal treatment of natal women and trans women seems to be a breach of all international conventions on human rights. See also Gilchrist, S. (2022): *"No Blacks, No Irish, No Homosexuals, No Transgender People"*: <http://www.tgdr.co.uk/documents/252P-NoBlacks.pdf>

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- ⁴ For more on the development of transgender identities; see Gilchrist, S. (2024): “*On the Diagnosis of Transgender Conditions: A Study of Current Understandings and a Commentary on the Cass Review*”: <https://www.tgdr.co.uk/documents/255P-CassFinalCommentary.pdf>; Gilchrist, S. (2020b): “*Responsibility in Transgender Disputes*”: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>; Gilchrist, S. (2013d): “*Personality Development and LGB&T People: A New Approach*”: <http://www.tgdr.co.uk/documents/201P-PersonalityDevelopmentAndLGBTPeople.pdf>
- ⁵ My own study examines in detail precognitive development between birth and the age of three to four years, and there are many optimising processes available, including “*quorum sensing*” and “*bootstrapping*”, which do not need cognition to take effect.
- ⁶ Gilchrist, S. (2020b): “*Responsibility in Transgender Disputes*”: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>
- ⁷ See section 3:0 .0 and 7:0 of Gilchrist, S. (2024): “*On the Diagnosis of Transgender Conditions: A Study of Current Understandings and a Commentary on the Cass Review*”: <https://www.tgdr.co.uk/documents/255P-CassFinalCommentary.pdf>
- ⁸ See section 19:0 Scapegoating and Fear in Gilchrist, S. (2025): “*Why the Supreme Court Misdiagnoses Transgender Conditions*”: <https://www.tgdr.co.uk/documents/256P-TransMisdiagnosis.pdf>
- ⁹ Gilchrist, S. (2025) “*Judgement of the United Kingdom Supreme Court and the Diagnosis of Transgender Conditions*”: <https://www.tgdr.co.uk/documents/255P-9TransJudgement.pdf> .
- ¹⁰ Gilchrist, S. (2024): “*What is a Woman?*”: <https://www.tgdr.co.uk/documents/255P-WhatIsAWoman.pdf>.
- ¹¹ Gilchrist, S. (2019a): “*Divisions: Self-Declaration and Gender Variant People*”: <http://www.tgdr.co.uk/documents/243P-DivisionsSelfDeclaration.pdf>
- ¹² Gilchrist, S. (2013e): “*Management Techniques for Gender Dysphoria with Particular Reference to Transsexuality*”: <http://www.tgdr.co.uk/documents/205P-ManagementTechniquesInGenderDysphoria.pdf> Gilchrist, S. (2020f): “*Managing Transgender Conditions Correctly: A Commentary on the Bell v Tavistock Case*”: <http://www.tgdr.co.uk/documents/249P-JudgmentResponse.pdf>
- ¹³ Disputes”: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>
- ¹⁴ Wrangham, R. (2019): “*The Goodness Paradox: How Evolution Made Us More and Less Violent*” Pantheon Books ISBN 978 1 78125 583 4
- ¹⁵ Gilchrist, S. (2025) “*Verdict of the United Kingdom Supreme Court: Overview of the Effects of Misdiagnoses and the Independence of the Cass and Sullivan Reports*”: <https://www.tgdr.co.uk/documents/255P-TransVerdictOverview.pdf> .
- Gilchrist, S. (2025) “*Judgement of the United Kingdom Supreme Court and the Diagnosis of Transgender Conditions*”: <https://www.tgdr.co.uk/documents/255P-14TransJudgement.pdf> .
- ¹⁵ Gilchrist, S. (2019a): “*Divisions: Self-Declaration and Gender Variant People*”: <http://www.tgdr.co.uk/documents/243P-DivisionsSelfDeclaration.pdf>