

Why the Supreme Court is Mistaken in its Understanding of Transgender Conditions¹

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This is a conflict which has been brought to a head by a recent Supreme Court decision which has prevented transgender women from calling themselves “women” through their “*performance of gender*”, by decreeing that use of the word “woman” must be confined to “*biological sex*”. I conclude that this contradicts the intention of the 2004 Gender Recognition Act which had allowed the interchangeable use of the word “woman” for both purposes. The Supreme Court also declared that this conclusion must only be applied to the interpretation of the 2010 Equality Act. But people do not rely on legislation for their judgements. They rely on the particular diagnosis of transgender conditions which the Supreme Court adopts.

Transgender conditions are the subject of an intense dispute between two groups. The first is the scientific consensus, adopted by the World Authorities and Professional Medical Institutions; who consider *Gender Identities*: which are measured in terms of social relationships and searches for coherence of identity in society, and *Sexual Identities*: that are measured in terms of sexual attractions and orientation; by relying on interaction with others and allegiances previously created: Both are foundational; or core, elements of the personality that is created. They are independent of each other, although both develop together as part of a single complex very early in life: Our gender identities also depend on our interactions with others; and with no knowledge of biology or sex, we all start from the same base. But by adopting a gender-critical approach, which presumes that cognition and sexual motives alone drive development forward, gender-critical groups and others ignore how earlier development takes place. A popular theory which follows this line, identifies transgender conditions as perversions or paraphilic (male) homosexuality ... Which totally denies the diagnosis of the World Authorities and Professional Medical Institutions as searches for coherence of identity: And immediately creates the understanding that transgender conditions are driven by desires of sex. This also leads to the enforcement of an incorrect “*gender ideology*” which alleges that “*transgender people believe they can choose change or deny biological sex*”: It further argues that transgender conditions are only sexually motivated “*perversions, paraphilic or disruptions of the gender role*”: And it finally reduces the understanding of gender identity from a core element of the personality that is formed to a nebulous collectively created concept associated entirely with the gender role: while still continuing to treat sexual identity as a core element of the personality that is created. This leads to the conclusion that, unless some perversion or disruption occurs, gender identity should always be congruent with “*biological sex*”. It is manifested in the Supreme Court’s conclusion that “*inspection of the genitals at birth is sufficient to determine the appropriateness of all future gender and sexual behaviour*”. And that conclusion has been universally condemned by expert opinion as “*unfounded, transgender exclusive and totally incorrect*”²].

Therefore, the Court’s conclusion that; unless some perversion or disruption occurs, gender identity should always be congruent with “*biological sex*” is firmly rejected by the current worldwide consensus; which is adopted by the major medical institutions on how gender identities develop: These divide it into two components: The core gender identity which is a measure of the deeply held sense of belonging without behavioural implications, and the gender role identity, which instead measures and responds to what society expects: And where either or both usually; but need not, always correspond the expectations of biological sex. The Court’s decision is also confronted by the results of my own earlier work. Where: by mapping how development takes place during the first three to four years of life, I show elsewhere³ that the psychological and physiological aspects of brain development act pro-actively together in early years to form a finely tuned system in which the maximum amounts of individuality, possessiveness, intelligence, and inquisitiveness, together with the minimum degrees of energy expenditure are generated⁴. For these reasons, typical or atypical gender and sexual identities can develop without any obvious cause: I also show how strong and stable core identities; including transgender identities, are created: whose long-term stability provides the constancy required to permit the widest possible range of expression of the gender role identity and yet fit within an ordered life. By using the work of anthropologists, neurologists and others, I additionally show that far from considering early development to be a passive or reactive process which is driven by cognition alone, it is instead driven by strong, fragmented, innate and self-reinforcing processes. These dominate from birth, and only gradually come under control as the organising powers of cognition come into greater effect: Which means that, far from treating pre-cognitive development during first three years, as a time of limited or of no significance ... what happens is of crucial importance instead. This is further matched by the viewpoints of the World Authorities and Professional Institutions who consider these 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*”: And it is again supported by the worldwide consensus that human development for all of us is driven by some deeper and innate physiological force, where the development of gender identity is a multi-faceted process: in which elements of nature and nurture; including pre- and post-natal development are involved⁵; Also, that sexual identification and gender identification are parallel; but independent, manifestations of the same deep underlying force⁶. Almost every textbook on sexuality and psychiatry shows today that both gender and sexual identities develop together as independently functioning parts of a single complex, which forms very early in life⁷. So, both must be treated as core elements of identity; and managed as personality variations: Where development proceeds in a variant direction from the outset and no perversion or disruption takes place. Thus, there is no justification for the enforcement of an incorrect “*gender ideology*” which alleges that “*transgender people believe they can choose change or deny biological sex*”. And there is no justification for the Court’s adoption of a gender-critical ideology that relies on cognition and sexual motives alone to drive development forward, so all of these early development processes are ignored⁸.

In my own work I conclude that the core elements of personality and identity coalesce from previously fragmented thought around a median age of two years. However, the “*gender role identity*” can only develop as an overlay on the *core gender identity*: since awareness of self and the other must already be in place to be able to measure and respond to what society expects. And that happens around a median age of three years⁹. Either or both elements usually but need not always align with biological sex, and as

wide a range of sexualities are found within the transgender population as in society at large; It also confirms that gender and sexual identities are both independently functioning core elements of the personality that is created: Where conflict between them can have very traumatic effects: Where management of personality variations are needed, but those of personality disruptions are applied, which 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. And where transgender people cannot identify with the diagnosis being imposed on them. Despite the harmful effects of their denials, these concerns are totally ignored by gender-critical groups, by imposing a diagnosis on transgender conditions which presume they are driven by desires of sex¹⁰.

While gender-critical groups may be able to tell us everything about how the gender role identity, is created, they cannot tell us anything about how the core gender identity is formed, because all earlier development is ignored: Which means that the argument that transgender women pose as great a sexual threat as all males in women's spaces and services: which is used today by gender-critical proponents; including, Stock, Cass, Rippon, and others can only be correct if cognition and sexual motive alone drive these conditions, and if all earlier events can be ignored. Virtually all studies show that these earlier processes of separating the self from the other, play a crucial role in determining how the personalities and identities for all of us are formed, whose impact will be felt, even if the reasons for it are not understood. However, these conflicts are less about the abuse and more about where transgender people fit in. There is strong evidence to show, that while male and female behaviour on average falls into two categories, there is such a large spread in the natures of these identifications, that large overlaps occur¹¹. I also note that strong and stable core gender identities are created without behavioural implications. And 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. It follows that the core gender identity; rather than biological sex should be the primary factor in governing how people socially interact: with individual provisions for physiology; and those who object: And this also means that the gender-critical philosophy: which ignores pre-cognitive processes is the less effective approach¹². Aggression profiles follow similar patterns. And, instead of using aggression to attack women's identities, transgender women have a proud history of fighting for women's rights¹³.

The 2004 Gender Recognition Act recognised that the words “men”, “women”, “male” and “female” were interchangeably used, and the construct of “legal sex” was adopted, to ensure that all judgements and past and future legislation could be interpreted in the context which is correct. It should also be expected that all equality legislation would monitor behaviour through “*the performance of gender*”. But the Court's decree that the terms “men” and “women” in the 2010 Equality Act must be confined to “*biological sex*”: denies the right for transgender people to call themselves “*women*” through their “*performances of gender*”, it frustrates the operation of the 2004 Equality Act, and it breaches the terms of the 2004 Gender Recognition Act, regardless of the claimed intentions of the drafters of the Act. It can also be argued that it is a breach of a basic human rights. In such intense disputes it is essential that all approaches must be carefully and equitably considered. There is compelling evidence that this has not happened, because of a Supreme Court judgement which; by the Court's own admission, relies entirely on the views of “*Sex matters*” and other gender-critical groups. Examining the judgement and the references cited by the Court also reveals that the views of world Authorities and Professional institutions were not properly 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 available 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. Using “*biology*” as a marker to determine the determine the acceptability of social behaviour, maximises the exclusion of transgender people from social life. Using “*gender identity*” as a marker includes them. 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 sex¹⁴: Thus, turning the understanding of transgender conditions from coherences of identity into drives of sex¹⁵. In place of a coherence of identity, and the ability to live their lives without harassment, the Court now identifies transgender conditions as “*perversions, paraphilias or disruptions of the gender role*”: And the identification with of some unnamed perversion or disruption, creates plenty of opportunities for condemnation and attack: Which is found in the greatly increasing abuse and attacks¹⁶. The exclusions arising, not only from the Supreme Court judgment, but also from EHRC and current and previous Government actions¹⁷: Which are applied even more strongly by the EHRC, further maximise the exclusion of transgender people. And there cannot be any legitimacy for any judgment or advice, which holds a complete transgender group to ransom; by misdiagnosing transgender conditions as personality disruptions, driven by desires for a role or the attractions of sex; in place of a search for coherence of identity and fulfilment of life. Where it defies the scientific consensus; adopted by the World Authorities and Professional Medical institutions, by refusing to recognise that gender and sexual identities are core elements of the personality that is created: and by reducing gender identity from a core element of personality and identity to a nebulous concept associated only with the gender role. Which means that it denies the effects of the massive changes and transformations in neural and cognitive abilities during the first three to four years of life, to enforce a “*gender ideology*” which presumes that development is driven by cognition and sexual motives alone: I also confirm this in my own work. And by accepting and basing its judgment on the ideology that “*inspection of the genitals at birth is sufficient to determine the appropriateness of all future gender and sexual behaviour*”, the Court's verdict is universally condemned by these arguments, and by expert opinion as “*unfounded, transgender exclusive and totally incorrect*”. Therefore, this EHRC advice should be withdrawn; and the Court's verdict reviewed, with immediate effect. However, the Court is right in stating that single-sex spaces and services should always be provided. That could be achieved by restoring the interpretation of the 2004 Gender Recognition Act to its original inclusive understanding. And by applying the equivalent permissions and exclusions to the present EHRC advice on a proportionate, individual and objectively justified basis, but only to situations where physiology is of direct relevance, or as provision for those who object.

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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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All material is referenced back to original sources.

¹ Cite this document as: 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 See section 18:0 Feminist Issues and Decisions of the Supreme Court. Of 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/appJTpDvAuSGrX37/pagdNlqDLD38RXblt/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 as 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>

³ 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>

⁴ 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>

⁵ For detailed analyses see: Gilchrist, S. (2016): “Taking a Different Path”: Chapter 10 in: “This Is My Body: Hearing the Theology of Transgender Christians”, Ed: Beardsley, T. and O’Brien, M: Darton Longman and Todd. May 2016 ISBN 978-0-232-53206-7 also Gilchrist, S. (2016): “A New Approach to Identity and Personality Formation in Early Life”: <http://www.tgdr.co.uk/documents/218P-InfluencesPersonality.pdf> : also Gilchrist, S. (2013): “Personality Development and LGB&T People: A New Approach”: <http://www.tgdr.co.uk/documents/201P-PersonalityDevelopmentAndLGBTPeople.pdf>

⁶ Gilchrist, S. (2020): “An Overview of the Development of Transgender Behaviour and Identities in Early Life”:

<http://www.tgdr.co.uk/documents/243P-BehaviourSelfIdentity.pdf>

⁷ See for example Joel, D: (2020): “Beyond sex differences and a male-female continuum: Mosaic brains in a multidimensional space”. Chapter 2 in Handbook of Clinical Neurology: Volume 175, 2020, Pages 13-24

⁸ For more information on the understanding of the nature and origin of transgender conditions see: Gilchrist, S. (2013d): “Personality Development and LGB&T People: A New Approach”: <http://www.tgdr.co.uk/documents/201P-PersonalityDevelopmentAndLGBTPeople.pdf> Gilchrist, S. (2017p): “What does it mean to be Transgender?”. <http://www.tgdr.co.uk/documents/242P-TransgenderIdentities.pdf> Gilchrist, S. (2019c): “Transgender Questions and Arguments”: <http://www.tgdr.co.uk/documents/243P-TransgenderQuestionsAndArguments.pdf> Gilchrist, S. (2020b): “Responsibility in Transgender Disputes”: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>

⁹ Core elements formed Personality Development and LGB&T People: A New Approach”: <http://www.tgdr.co.uk/documents/201P-PersonalityDevelopmentAndLGBTPeople.pdf>: Gilchrist, S. (2019c): “Transgender Questions and Arguments”: <http://www.tgdr.co.uk/documents/243P-TransgenderQuestionsAndArguments.pdf> Gilchrist, S. (2020b): “Responsibility in Transgender Disputes”: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>

¹⁰ 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>

¹¹ Mitchell, K.J. (2018): “Innate: How the Wiring of our Brain Shapes Who We Are”: Princeton University Press; ISBN 978-0-691-17388-7.

¹² 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.

¹³ Wrangham, R: (2019): “The Goodness Paradox: How Evolution Made Us More and Less Violent” Pantheon Books ISBN 978 1 78125 583 4

¹⁴ Gilchrist, S. (2024): “What is a Woman?”. <https://www.tgdr.co.uk/documents/255P-WhatsAWoman.pdf>.

¹⁵ Gilchrist, S. (2019a): “Divisions: Self-Declaration and Gender Variant People”: <http://www.tgdr.co.uk/documents/243P-DivisionsSelfDeclaration.pdf>

¹⁶ Butler, Judith (2024): “Who’s Afraid of Gender” Allen Lane Published: 19/03/2024. ISBN: 9780241595824

¹⁷ 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>