

Transgender Misdiagnoses and Human Rights: Introduction¹

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1:0 Introduction

For many centuries in religion, societies, and in many parts of the world today, any attempt by gender and sexual variant people (LGBTQIA people) to express their gender and sexual identities is being attacked; and has been attacked with severe penalties and scapegoating, including death, imprisonment, damnation, discrimination, persecution, and other condemnations. Before 1967, in the United Kingdom, sexual intercourse between men in all circumstances was a criminal act. It was the feminist movements; from Simone De Beauvoir and Judith Butler onwards, who liberated the words “*men*” and “*women*” from the biology of sex: by using them to describe the “*performance of gender*” which each sex enacts³. Transgender people also use the same descriptions of “*performance of gender*” to describe their own experiences⁴: But unlike the allegations of gender-critical feminist groups, they do not claim to be able to “*choose, change or deny biological sex*”⁵: They recognise instead that gender is a core or foundational element of the personality that is created, and that transgender conditions are searches for coherence of identity: instead of motives of sex^{6 7}. So that methods of managing transgender conditions as personality variations; and not as personality disruptions are needed⁸. Some may look for variations in physiology to trigger a direction. And when surgery is sought to make the body conform more closely to the gender identified with, the terms “*gender confirmation*” or “*gender reassignment*” surgery are invariably used. None of these action or identifications ever represent the gender-critical accusations of “*changes in sex*”. I use the word “*Transsexual*” instead of the word “*Trans Woman*” with great reluctance in this account: Because it is needed to describe the way the Supreme Court has removed the word “*Trans Women*” from the category of “*Women*” in the 2010 Equality Act. And instead of treating transgender issues as matters of the “*performance of gender*”, the Court now considers these conditions to be matters of sex⁹.

The ability of transgender women to call themselves “*women*” has always been supported in the 2004 Gender Recognition Act: which recognised that the words “*men*”, “*women*”, “*male*” and “*female*” are used interchangeably to describe “*the performance of gender*” and “*biological sex*”¹⁰ ... And which introduced a legal artifice to ensure that interpretation was always made in the context that was correct. But, when a clear and original purpose of the 2004 Gender Recognition Act was to allow people to marry according to their “*performance of gender*”, and not to exclude them through their “*biology of sex*”: It is hard to see how the Supreme Court can justify its exclusion of transgender women from the category of “*women*”, by restricting the definitions of “*men*” and “*women*” in the 2010 Equality Act, to that of “*biological sex*”. And by denying them the right to call themselves women: and be treated as women; alongside other women, for their “*performance of gender*” given to them under the 2004 Gender Recognition Act. Nor can I find any other substantive evidence to justify this change in approach^{11 12 13}

In this article I examine the nature of the intense conflict over transgender conditions today in the United Kingdom, where one side uses the scientific consensus adopted by the World Authorities and Professional Medical Institutions: who consider transgender conditions to be searches for coherence of identity; where gender identity; including transgender identity, is a core or foundational element of the personality that is created. While gender-critical feminist groups, consider them to be hysterias and as “*perversions, paraphilias¹⁴ or disruptions*” of the gender role; so that motives of sex, behaviour and desire are considered to be the driving force behind them. And the understanding of gender is reduced to that of a nebulous collectively created construct associated only with the gender role. Therefore, the existence of gender as a core element of the personality is denied. Thus, in place of considering transgender conditions to be personality variations which search for coherence of identity; and as core elements of the personality that is created, they must instead be considered as sexually motivated perversions, paraphilias or disruptions driven by attractions of sex or desires for a role. This conclusion also means that cognition and sexual motives alone

are understood to drive development forward: But these do not come fully into effect until about the age of three years. Therefore, all pre-cognitive and earlier development processes are ignored.

Most modern definitions of gender identity divide it into two components, where either or both usually, but need not always align with biological sex. Gender identities cannot form before birth because they depend on relationships with others, therefore they are consequent effects. The first component is concerned with the development of the “*Core Gender Identity*”. It involves the process of “*separating the self from the other*” and creates a deep-seated sense of belonging without any behavioural implications, which involves the search for coherence of identity and not drives of sex. It has been shown to be established very early in life and is known to be very difficult to change after the first three years. It is mirrored in the scientific consensus adopted by the World Authorities and Professional Medical Institutions who consider transgender conditions to be “*naturally expected variations of the human condition, which lie within the normal range of development, are 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*”. With no knowledge of sex, we all start from the same base. This is why transgender women should be included in the category of women: For we all share these common identities with our “*performances of gender*” from early in life: Transgender women may even more strongly hold onto their identification as women; because of the alienation that has been present from earliest in life.

The second element of gender identity is the “*Gender Role Identity*”, which acts as an overlay on the “*Core Gender Identity*”. This involves the cognitive processes, which include the mental actions involved in acquiring knowledge and understanding through thinking, sensing, and experiencing. These processes include fundamental operations like perception, attention, and memory, as well as higher-order functions such as reasoning, problem-solving, and decision-making: Where motives of behaviour, sex, and desire respond to what society expects. They are all part of the “*Default Mode Network*”, and the “*What makes me, me?*” neural networks, where actions, capabilities, identifications, and motor functions are present; without conscious thought being required, some of which are active from birth; others develop through life¹⁵. Recent work at Stanford University using Artificial Intelligence techniques has recently discovered a computationally independent and pre-cognitive “*who am I network?*”: and: as I examine later, that may be a missing link in establishing how consciousness and awareness develop from the beginning of life. Management methods for the core gender identity must be considered as personality variations: for taking actions that would destroy it leave a vacuum in its place: Whereas disturbance to the gender role must be managed as personality disruptions, since the objective is to return to some biologically or divinely ordained path. Whereby gender identity ... created through search for a coherence of identity and social relationships with society: And sexual identity ... created through sexual orientation and love and attractions of sex, are equal but independently functioning core elements of the personality that is created: Which many studies show them to form together as a single complex from very early in life¹⁶.

The recent decision of the United Kingdom Supreme Court to endorse a gender-critical and feminist ideology, and to confine the definition of “*men*” and “*women*” in the 2010 Equality act to “*biological sex*”, sets the clock back by many years. Instead of the welcome and inclusion in society which for years has recognised that transgender conditions are searches for coherence of identity and fulfilment of life, it now by default seeks to exclude them, because it presumes they are driven by desires and attractions of sex. Not only does it deny the right of transgender women to call themselves women through their shared “*performances of gender*” given to them in the 2004 Gender Recognition Act: It denies them the fundamental right to express their gender identities under international human rights legislation: Because: instead of personality variations and expressions of identity, they are now regarded as personality disruptions, involving these desires for a role or the attractions of sex¹⁷. The Court’s decision that “*biological sex*” instead of the “*performance of gender*” should be the gateway category or primary criterion for moderating behaviour in society: also takes away that right: and it turns an approach which by default has included transgender women in the category of women, in all clubs, associations, hospitals, shops schools and societies: into one which now specifies their exclusion instead¹⁸. The Supreme Court correctly states that transgender people are as equally protected under the protected characteristic of “*gender reassignment*” as lesbian and gay people are under that of “*sexual orientation*”. This should provide protection in law for all gender and sexually variant people through their “*performances of gender*”¹⁹ or for their “*performances of sex*”.

That would justify the continued retention of an approach which maximises the inclusion of transgender people in everyday life. But the Court contradicts this by its identification of “*biological sex*” as the gateway category or moderating factor in any equality legislation: Most notably for the 2010 Equality Act: It also makes

the Court's decision reminiscent of a religious tradition; whereby the expression of any gender or sexually variant behaviour for any purpose, is automatically regarded as an intrinsically disordered sexual act: And where the additional identification with the existence of some unnamed perversion or disruption, creates plenty of opportunities for incrimination and attacks^{20 21}: Therefore, this disregard of all pre-cognitive elements and the later advances in the understanding of how gender and sexual identities develop, takes us back some 60 years, and creates the perceived threats to women and children, because of its presumed motives of sex. There must never be a justification for any approach which ignores the massive advances in the neural and cognitive understanding of early development to justify its arguments. But, the Court's endorsement of a gender-critical ideology which declares that *"inspection of the genitals at birth is sufficient to determine the appropriateness of all future gender behaviour and that unless some unnamed sexual perversion occurs, gender identity must be congruent with biological sex"*, does exactly that: And the Court's total dismissal of all of these advances in science; medicine and experiential evidence on the understanding of all these early and pre-cognitive developments: which have since become available; together with its adoption of a gender-critical ideology, which presumes that sexual motives and cognition alone drive development forward, has been roundly condemned by whole swathes of expert opinion as being *"Unfounded, transgender exclusive, and totally incorrect"*.

These are not just condemnations by some minority group. The Council of Europe has accepted a report which considers that the transphobia and homophobia now developing in the UK directly infringes upon Article 14 of the Human Rights Act; which is designed to shield marginalised people from discriminatory treatment²²: It has issued a warning letter; it its role of representing the European Court of Human Rights (ECHR), stating that the Supreme Court gender ruling risks leaving transgender people in an *"intermediate zone"* and could breach its protection of human rights²³. The Lemkin Institute for Genocide Prevention and Human Security has issued a red-flag alert on Anti-Trans and Intersex Rights in the UK²⁴. On the domestic and medical front, the Royal College of Psychiatrists responded to the Supreme Court judgment by saying it will significantly harm the mental health of trans and non-binary people and could put lives at risk. The BMA Resident Doctors Association stated: *"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"*. Open letters come from many sources, including many biologists telling government to restore trans people's access to public spaces, also from the culture sector, with these letters being signed by many people. And many specialist overviews have produced critical results. Instead of recognising that transgender conditions are searches for coherence of identity, the Supreme Court misdiagnoses these as drives of sex. Instead of recognising that the reason for seeking full inclusion of transgender women, is because of the ways in which natal women and transgender women share in common their *"performances of gender"* in everyday life. Including their fight for women's rights. Against a feminist and gender-critical ideology which seeks to exclude transgender women by default from all allocated spaces and public boards set aside for women on the grounds of appearance and of identity alone; regardless of the capabilities they may be seen to provide ... Because, instead of recognising them as a search for a common identity; and as allies in a common cause, they are claimed to be seeking power over women, attacking women's identities, and destroying their *"sex-based rights"*^{25 26}.

It is extremely important to note that these arguments also involve a minority of people who take a more radical approach: For we must also remember that there are a great many people; maybe a great majority, who take a *gender-critical* approach: But do not concern themselves with these arguments: For they simply accept and welcome transgender women; as the women they say they are; on their *"performances of gender"* and the evidence they see before them in everyday life. That welcome is very much appreciated, and many see transgender women as allies in a common cause. Nevertheless, all of the traditional psychodynamic and social learning theories rely on cognition for their explanations, so none can adequately explain how pre-cognitive development occurs. Freud could not identify any constructive features either because he too relied on cognition for his explanations. But instead of treating this period of the first three years, as one of being unknown; or of needing investigation: these more radical gender critical groups justify their explanation of transgender conditions as hysterias and *"perversions, paraphilia or disruptions of the gender role"*, by specifically denying that anything beforehand occurs. And it is this denial of all earlier and pre-cognitive elements, which lead to the incorrect diagnosis of transgender conditions being driven by motives of sex; instead of searches for coherence of identity, being applied.

This is also a conflict where the views of those who oppose these gender-critical viewpoints are being attacked 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: In a recent Court case Kathleen Stock outlined the context of her own gender-critical approach. Which of course she is absolutely entitled to do and must be heard²⁷. But her outspoken views on Stonewall and others who oppose her do not help²⁸. This is a situation where exactly the same behaviour can be interpreted in totally different ways: Which differ profoundly, depending on the starting point that is taken. With differences like these experiential evidence must stand in their place. And the intensity of the present conflict comes from the actions of certain gender critical groups, such as “*Sex matters*” who try to enforce a diagnosis on transgender people, which dismisses this experiential evidence by alleging that these conditions are driven by the motives of desire and sex: when transgender people and many others know that they are driven by searches for coherence of identity, instead: So that these attempts to enforce a feminist ideology on transgender people, totally misinterprets their motives: presents them as potential dangers to others, and imposes a diagnosis that is harmful and incorrect.

The major area of contention in these is the role of the core gender identity and how development proceeds during the first three years of life. All of the present theories rely on cognition for their explanations, but work pioneered by neurologists and anthropologists, including Girard, Dawkins, Gallese and many others; from the 1960s onwards, present a very different picture. Instead of early development being a passive and reactive process., it is shown that these are driven by strong, innate and pro-active forces, where individual, fragmented, and initially isolated strands of thought, compete and combine with each other, to build larger structures which bring order to life. It is these influences which has led me from 2011 to conduct a study which uses transgender conditions together with these largely pre-cognitive processes, to seek greater insight into how personalities and identities for all of us are formed. In it I show that these processes are driven by strong, innate and pro-active forces which dominate from birth, and only gradually come under control as the organising powers of cognition come into greater effect. I also confirm that the identities these create also the result of a fragmented processes, so a different end point for every individual is found. Where the core elements of personality and identity coalesce from fragmented thought, during a unique period of rapid neural development which takes place around a median age of two years²⁹. And by mapping how development takes place during the first three to four years of life I show how the psychological and physiological aspects of brain development can act pro-actively together in these 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 generated. Other optimising process, which do not require cognition, such as *bootstrapping* and *quorum sensing* may also be involved. So, core gender and sexual identities can be created this early in life, which do not align with biological sex.

It is now well established that, although on average there are significant differences in male and female behavioural patterns, with men more prone to engage in physical violence, considerable overlap occurs³⁰. Aggression profiles follow similar patterns³¹. And differences in neural maturation rates can have a similar effect³². Which supports the experiences that show transgender women are of no greater danger to other women; than all women are, in all spaces and services³³ : And enables a great many people to welcome transgender women as the women they say they are: Which considers them to be of no danger to women and children's safety identities and lives: And can recognise them as true allies in the feminist cause. In this study I show that 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: And this also means that the gender-critical approach, which ignores these pre-cognitive processes, is the less effective approach. Our gender identities also depend on the natures of our interactions with others; and with no knowledge of sex, we all start from the same base. Therefore, transgender women should be included in the category of women: For together they share the same “*performances of gender*” from early in life. And the long-term stability of these core elements of personality and identity ... which includes transgender identities³⁴, enables the widest possible range of gender expressions to be encountered: while providing a stable base to bring order to life: Since gender identities are measured through the “*performances of gender*”, and the interactions and behaviours that have already been created, it follows that the “*core gender identity*”, and “*performances of gender*”: instead of “*biological sex*” should be the primary standard and gateway to determine how people should socially interact.

It is therefore essential that all approaches are equally considered in any Supreme Court judgement. But that does not happen. One of the Supreme Court judges, Lord Hodge has said. *“Did we realise that [our decision] 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”*³⁵. However, there is the counter argument; which I adopt, that these are instead expectations of human rights that have 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: Who dismiss the scientific consensus adopted by the World Authorities and Professional Medical Institutions as “*not being a credible*” approach. Examining the judgement and the references cited by the Court reveals that the views of World Authorities and Professional institutions were not seriously examined, and dismissed as unreliable or incorrect: No other justification for this dismissal is given: 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, without any reason being given. No other expert input the advances in science, clinical, medical, experiential evidence and public understanding since the 1960s was consulted in the hearings. And the same strong denial of the many advances that have taken place is also encountered in the universal condemnations by expert opinion expressed since the Court's judgement was released. Where the Court has replaced an approach which had sought with no problems for many years to maximise the inclusion of transgender people in everyday life into one that now focusses on exclusion instead³⁶.

It is only seven years since Penny Mordaunt; on the grounds of “*performance of gender*” said in Parliament that: “*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 sex³⁷: Thus, turning the understanding of transgender conditions from coherences of identity into drives of sex³⁸. The imposition of this gender critical ideology by the United Kingdom Equality and Human Rights Commission (EHRC), in its interpretation of the Supreme Court judgement even more strongly maximises exclusion. This approach 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 ignores the understanding that transgender condition are incongruences of the core gender identity, instead of personality disruptions. It destroys the legitimacy of transgender identities as searches of coherence of identity, by representing these as drives of sex. And anything which further excludes an already vilified group, from everyday life, has very damaging effects.

However, it is not just the judgement of the Supreme Court that should be considered. There are major concerns over the actions of the current and previous United Kingdom Governments: and most particularly the United Kingdom Equality and Human Rights Commission (EHRC), all of whom have uncritically adopted a gender-critical approach. It should be expected that all of these bodies, particularly the EHRC would take an impartial approach, and that people who are “*at a distance*” would be better able to take an objective view: in what is a toxic dispute. Therefore, questions have to be asked about the reliability of results, when known campaigners have been appointed to boards and have been entrusted to conduct independent reviews. I believe this adoption of one approach to the exclusion of all others, raises major concerns over the protection of all our human rights. And I consider this in sections 11 and 12 of this article³⁹. Of significant concern is the response which the present UK Home Secretary; Shabana Mahmood, gave to the criticism of the Council of Europe; in its role of representing the European Court of Human Rights: when she wrote. “*Lastly, I want to address your comments in your letter to Lord Alton and Sarah Owen MP on the human rights situation of trans people in the UK. I would like to take this opportunity to emphasise that I consider it unacceptable to question the validity of the Supreme Court in making this decision. The court has provided legal clarity on this issue, exactly as they are expected to. I find any attempt to cast aspersions on the Supreme Court's decision disappointing*”: And she support her rejection by arguing that this EHRC concern would be justification for leaving the jurisdiction of the European Court of Human Rights.⁴⁰

But that “*clarity*” comes at the expense of adopting a gender-critical ideology which totally ignores the work by Girard; Dawkins; Gallese; and many others: which dates from the 1960s and shows that these processes of early development are driven by strong, innate and pro-active forces which dominate from birth, and only gradually come under control as the organising powers of cognition come into greater effect. Far from adopting a gender-critical viewpoint, which reduces transgender conditions to “*perversions, paraphilias or disruptions of the gender role*” and considering the first three years to be a time when little of significance happens: I show that is of crucial importance instead. And adopting a gender-critical approach which relies on

sexual motives and cognition alone to drive development forward: means that these early processes must be denied or ignored. So: for example 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 believed⁴¹. Cass set the frame of reference for her review to ignore how development takes place during the first three years: And she uses arguments from the 1960s to justify the conclusions she reaches⁴². The Cass Review has since received criticism from many quarters⁴³. 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 also ignored: And she dismisses the approaches of Stonewall; and others who challenge her views, as being unworthy or unscholarly instead⁴⁴. Sullivan argues that gender and sexuality are different things: And then she presents these as perversions, paraphilias, or disruptions of sex: In which, sex alone is considered, and the influence of gender is totally ignored⁴⁵. Rippon and other cognitive neuroscientists argue that gender differentiation must be due to social learning alone because up to now; no differences using fMRI techniques in the neural organizing of male and female babies and children below about six years of age; have been found. However, this simple reliance on discrete brain structures is dismissed by Joel⁴⁶, Swaab and others, who show that the brain is a closely knit mosaic instead. There is also whole known raft of sex differences that impact on behaviour, maturation and relationships which begin at the pre-natal stage⁴⁷. Therefore, these denials do not justify any gender-critical group; such as “*sex matters*”, writing gender incongruences totally out of existence, so the core gender identity is treated as a nebulous collectively created concept, associated only with the gender role: And who use this to attack transgender people by imposing a false “*Gender Critical Ideology*” which alleges that they believe they can “*choose, change or deny biological sex*”. So that, transgender people become the aggressors: with claims that they seek power over women, are threats to women and children’s safety, attack women’s identities and destroy their sex-based rights: Therefore, instead of recognising that gender identity; including transgender identity, is a core element of the personality that is created, is a personality variation, a search for coherence of identity, and allowing its expression as a fundamental human right: It is now presented as a disruption or disturbance of sex.

In my own work I have used transgender experiences as case studies with the aim of gaining greater insight how personalities and identities for all of us develop from early in life. And by mapping how development takes place during the first three to four years of life I show how the psychological and physiological aspects of brain development can act pro-actively together in these 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 generated.: Elsewhere I explain in more detail how these peak periods provide the basic scaffolding through which constancies of personality, identity, and capability develop, and why, in common with other core elements of personality and identity, these continuities may be expected to last until dementia or physical brain injury destroys the structures that have been formed⁴⁸. The well studied “*What make me, me*” network in the brain contains many elements which affect behaviours and feelings, some of which are active from birth. Recent work at Stanford University has identified a separate, and computationally independent “*Who am I*” brain network which forms very early in life⁴⁹. Much more work is needed, but this combination of the “*who am I*” network”, the “*what makes me: me?*” network; together with the often hidden but long-term stabilities of the core elements of personality and identity: which I identify in his study, might give some greater insight into how awareness and consciousness for all of us arise⁵⁰.

Therefore, gender-critical groups and investigators, such as Rippon, Stock, Cass, Sullivan and others, may be able to tell us many things about how the gender role identity develops; how perversions and disruptions are created, and how they are driven by motives of sex: But they cannot tell anything about earlier development and how the core gender identity is created ... Because the magnitudes of the neural and cognitive transformations, and the influence of all of the early and pre-cognitive developments processes described in this account are too strong to be denied. Therefore, there is no foundation for any theory or for any Supreme Court Judgment which relies on these denials to justify a gender-critical approach. The Court judgement may seem to be a victory for gender-critical groups, but it is likely to be a pyrrhic victory: for the adoption of an approach which presumes that sexual motives and cognition alone drive development forward, does not just affect transgender people. The same dismissal affects all gender and sexually variant people, and it takes everyone back to a time when all forms of gender and sexually variant behaviour; regardless of purpose, were regarded as intrinsically disordered behaviour in pursuit of inappropriate sex.

This is not just a social issue either. We have seen that 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 correct. 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. Today, and for centuries that perception that transgender conditions are sexually motivated perversions or disruptions, instead of searches for coherence of identity has put all gender and sexually variant people under suspicion, persecution, condemnation, criminalisation and attack⁵¹. The 2004 Gender Recognition act gave two legal gateways. One based on the performance of gender and sex, the other based on the physiology of gender and sex: I conclude that identifying the biology of sex as the sole legal gateway, denies the intention of the 2004 Gender Recognition Act, and it can only work if it is considered that all acceptable gender and sexual identities must always be congruent with biological sex. Transgender conditions are not perversions, “*paraphilias of disruptions of the gender role*”, driven by motives of desire or sex. They are instead incongruences of the core gender identity, where the search is for coherence of identity, and the ability to find fulfilment in life. Where the reason for this misdiagnosis arises: not because of any increases in understanding, but by the Court’s decision to totally ignore how the development of gender and sexual identities proceed, during the crucial first three to four years of life.

An equal or greater concern is the lack of monitoring. Any Government and every Equality and Human Rights Commission must operate in an informed and impartial manner: But I do not find any evidence that this has happened. For most people it also seems natural to assume that gender identity should always align with biological sex. But there is no justification for endorsing one side of a toxic dispute, without equitably considering the views of another. The consequence of these failures in the United Kingdom raises serious concerns over the state of our own human rights. At present an appeal over the Supreme Court Decision is being made to the European Court under Article 6, which is the right to a fair trial⁵². The decisions post-1998 beginning with the *Christine Goodman v. UK*⁵³ in 2002 to *Y.V v. Turkey*⁵⁴ in 2015, which alleged violations of Articles 8, 12, 13 and 14 of the Convention in respect of the legal status of transsexuals in the United Kingdom. Including violations of Article 8 which requires that interference with the applicant’s right to respect for their private life, which involves disclosing private information to the authorities, could not be permitted in a democratic society, which were upheld by the European Court. The Council of Europe has accepted a report which considers that the transphobia and homophobia now developing in the UK directly infringes upon Article 14 of the Human Rights Act, which is designed to shield marginalised people from discriminatory treatment⁵⁵. The Trans Advocacy and Complaints Collection, and the Trans Exiles Network have asked the Council of Europe for the *Goodman v. UK* to be re-opened⁵⁶. United Nations experts have also warned of legal uncertainty and rights implications following UK Supreme Court ruling⁵⁷. The “*Good Law Project*” is taking legal action which challenges the present EHRC Interim Advice⁵⁸. Groups representing transgender people, Translucent, Trans Actual and others, are making representations. As of the 15th. October 2025, the EHRC withdrew its interim advice⁵⁹. However, various parties in the United Kingdom are still proposing withdrawing from the jurisdiction of the European Court of Justice and the Convention of Human Rights. If what has now happened in relation to transgender issues in the UK, were also to happen in other circumstances, we should all be concerned about how any withdrawal of the UK from the jurisdiction of the European court would affect the protections of all our human rights.

It is earlier noted that the Supreme Court correctly states that transgender people are as equally protected by the protected characteristic of “*gender reassignment*” as lesbian and gay people are under that of “*sexual orientation*”. This should provide protection in law for all gender and sexually variant people through their “*performances of gender*” or for their “*performances of sex*”. But the Court denies this by demanding that the correctness of all gender and sexual behaviour must instead be moderated by “*biological sex*”. This reliance on biology; and the need for a consistent judgement, enforces a gender complementarity onto society which demands that transgender conditions must always be defined as “*perversions paraphilias of the gender role*”, and never a core element of the personality that is created. It also leaves transgender people vulnerable, since it is natural for most people to assume that unless some disruption occurs, gender identity should always be congruent with biological sex. And my own experience of working for reconciliation in communities

divided by tribal violence is that; fear of the unknown alone, is sufficient to create violence, scapegoating and attacks. However, there are those aspects of physiology when a criterion of “*biology*” which does not reduce the “*performance of gender*” is needed. And I would not object to any exemption for this being specifically written into any legislation, even though it is already present by implication in the 2004 Gender Recognition Act. Although I would not judge on the Court’s intention, another strand of my work has been on examining the interface between LGBTI issues and religious impacts: This is a form of regression that is remarkably similar to traditional religious approaches, which enforce a gender complementarity: by condemning all forms of gender and sexually variant behaviour; regardless of purpose, as intrinsically disordered; and in pursuit of inappropriate sex⁶⁰.

Lord Hodge has made it clear that: although these separation of spaces and services must now be provided on the grounds of biological sex, the court did not mandate how they should be implemented. And the separations demanded by the EHRC interim guidance, which it has now withdrawn, may have gone well beyond what the Court expected. People do not just judge on the legislation that is enacted. They judge on the diagnosis that is used. The Court has argued that all exclusion must be justified on a reasoned and proportionate basis. But what is reasoned and proportionate depends on the diagnosis that is used. An enormous amount of damage has been caused since the judgement was released. The decision of the Court to adopt a diagnosis, which totally ignores all of the massive neural and cognitive transformations known about since the 1960s, has set the understanding of, not just transgender conditions. It has also set the understanding of the nature and origin of all gender and sexually variant conditions back by many years. Not only does it force a diagnosis on transgender people which they cannot agree with. It imposes a verdict on these people which claims that; instead of a search for identity, they are driven by desires of sex. And because of an ideology it adopts which decides that transgender conditions are driven by cognition and sexual motive alone, it dismisses all or most of, the major changes and advances in neural and cognitive development over the first three years of life. No court judgment can have any validity if it ignores all of these advances in neurology and the supporting clinical, medical and experiential evidence available since the 1960s.. And no approach which ignores such key features can ever justify a claim to be correct. Transgender conditions are not disturbance of the gender role identity, which look instead for the pleasures of a role or attraction of sex. They are incongruences of the core gender identity, which search for fulfilment in life: I confirm in this analysis that the identification of transgender conditions as incongruences of gender is correct. And there cannot be any justification on imposing a blanket ban on transgender people’s access to any spaces and services on a diagnosis which is incorrect.

These are not just matters of judgement. I conclude that they are also deficiencies of process; at Government; EHRC; and legal levels, which have prevented a correct diagnosis being made. Therefore, I would draw this matter to the attention of the European Court of Human Rights, the Supreme Court itself, the UK Government, Parliament, The Parliamentary Women and Equalities Select Committee, and the joint Committee of the House of Commons and the House of Lords on Human Rights.

The EHRC’s interim advice was withdrawn on or around October 15, 2025. It was replaced with a recommendation for organizations to seek specialist legal advice, while the government considers the EHRC’s revised statutory Code of Practice. This was in advance of the appeal by the Good Law Project against this EHRC advice, in the High Court on the 12th and 13th November 2025. Therefore, the implementation of this advice depends on two things. These are the High Court’s awaited judgement and the decision of the Government to proceed. And even if both decide to go ahead, the implementation of this advice will depend on its conformity with the Strasbourg; or European, Convention on Human Rights. All I believe would agree that the right to express our gender identities is a basic human right. And if transgender conditions are personality variations, the right for transgender people to express their gender identities is also a basic human right⁶¹. But that is taken away if transgender conditions are reduced to perversions, paraphilias or disruptions of sex. Any Court judgement which makes “*biological sex*” the gateway for access to all such spaces and services: And which ignores the viewpoint of the World Authorities and Professional Medical Institutions, who consider both gender identities and sexual identities as core elements of the personality that is created, also takes away that right⁶². I conclude that none of these satisfy the Strasbourg Convention on human rights. Lord Hodge states that the Supreme Court decision would cause outrage among transgender people. That should not be unexpected when its decision imposes an incorrect diagnosis on transgender people, and it also removes this human right.

A list of resource documents is given at the end of this article. And a companion article which more briefly considers these issues is also available⁶³ In the following sections of this document I consider in more detail, some of the issues involved.

Resources and Endnotes

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

Gilchrist, S. (2024): "*What is a Woman?*": <https://www.tgdr.co.uk/documents/255P-WhatIsAWoman.pdf>. (Text: 15 pages). This is a document I prepared for intervention in advance of the Supreme Court hearing.

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) "*Actions of the United Kingdom Supreme Court and the Diagnosis of Transgender Conditions*": <https://www.tgdr.co.uk/documents/256P-TransActions.pdf> .

Gilchrist, S. (2025): "*The Misdiagnosis of Transgender Conditions by the Supreme Court*": <https://www.tgdr.co.uk/documents/256P-TransDevelopment.pdf>

Gilchrist, S. (2025): "*Transgender Misdiagnoses and Human Rights*": <https://www.tgdr.co.uk/documents/256P-TransRights.pdf>

Gilchrist, S. (2025) "*Transgender Misdiagnoses and Human Rights: Introduction*": <https://www.tgdr.co.uk/documents/256P-TransRightsIntro.pdf>

The following two documents were submitted to The Parliamentary Women and Equalities Select Committee, and the joint Committee of the House of Commons and the House of Lords on Human Rights in June 2025.

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) "*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/256P-TransVerdict.pdf> .

See Also:

Gilchrist, S. (2022): “No Blacks, No Irish, No Homosexuals, No Transgender People”: <http://www.tgdr.co.uk/documents/252P-NoBlacks.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) “Transgender Misdiagnoses and Human Rights: Introduction”:

<https://www.tgdr.co.uk/documents/256P-TransRightsIntro.pdf>

² Gilchrist, S. (2025) “Transgender Misdiagnoses and Human Rights”: <https://www.tgdr.co.uk/documents/256P-TransRights.pdf>

³ Gilchrist, S. (2021a): “Gender Identity, Feminism, and Transgender People”: <http://www.tgdr.co.uk/documents/250P-GenderIdentityAndTrans.pdf>

⁴ This document was prepared for use as part of an intervention in the Supreme Court Case: Gilchrist, S. (2024): “What is a Woman?”: <https://www.tgdr.co.uk/documents/255P-WhatIsAWoman.pdf>.

⁵ Although the majority of feminists support the viewpoint of the feminist pioneers, including Simone De Beauvoir, Judith Butler and others who separated the definitions of “men” and “women” from each other, entirely through the “performance of gender”, and as manifestations of identity which are independent of biology. And welcome them on that basis. Other feminists deny this welcome and argue that transgender conditions must be treated as hysterias, or as “paraphilias, perversions, or disruptions to the gender role”, where the perceived sexual threats and fears which have been created, mean that this inclusion must be denied. Religious and other groups come to the same conclusions, but from the opposite directions, by arguing that transgender conditions are driven by departures from some divinely or biologically ordained path, which states that gender and sexuality should always be congruent with “biological sex”. And, although each approach this issue from opposite standpoints, both have the same effect. Throughout history; or at least since the first millennium, all gender, and sexually variant behaviours have been condemned as being intrinsically disordered acts of grave depravity, for they have been seen as sexual, “perversions, paraphilias, or disruptions of the gender role, that are contrary to the “natural law”, for they do not proceed from “genuine affective and sexual affections and instead choose the sexual act to the gift of life” For more information on this: See Gilchrist, S. (2024): “Religion and Psychology in Transgender Disputes”

<https://www.tgdr.co.uk/documents/255P-ReligionPsychology.pdf> : Gilchrist, S. (****): “East and West: A Comparison of How the Apostles Interpreted the Gospel Message in Roman and Persian Cultures”: <https://www.tgdr.co.uk/documents/035B-EastAndWest.pdf> See also Article 2357 in the Catechism of the Roman Catholic Church.

⁶ This also exposes a contradiction in the gender-critical arguments; which on the one hand adopt this feminist approach of Butler and others; by stating that men and women should only be distinguished from each other through their performance of gender: Which means that they, can freely cross this notional gender boundary, while asserting at the same time that it cannot be crossed because biology or social conditioning means that gender identity and gendered behaviour should always be congruent with a biological sex. It also declares that no male-to-female transsexual can ever be identified as a woman, because biology or social conditioning means they will always be seen to seek power over women and threaten women’s identities, safety, and lives. Therefore, only two legitimate gender identities can exist: Where any transgressions of this binary identification can be perceived as intrinsically disordered or disruptive acts: And where the legitimacy of all non-binary identities is likewise denied. Gilchrist, S. (2024): “What is a Woman?”. This article was prepared for an intervention in the Supreme Court case. <https://www.tgdr.co.uk/documents/255P-WhatIsAWoman.pdf>. (Text: 15 pages)

⁷ See section 13:0 Gender Formation and Aggression 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/256P-TransVerdict.pdf>

⁸ See section 4:0 Management in Gilchrist, S. (2024): “Transgender Misdiagnoses: EHRC and Government Advice”: <https://www.tgdr.co.uk/documents/040B-MisdiagnosesAndAdvice.pdf>

⁹ Today the word “transsexual” is very strongly discouraged within the transgender community, since these are matters of gender, coherence of identity, and not of sex,

¹⁰ Strictly should be the physiology of sex, but the Court does not make this distinction an interprets it as biological sex

¹¹ Gilchrist, S. (2024): “What is a Woman?”: <https://www.tgdr.co.uk/documents/255P-WhatIsAWoman.pdf>.

(Text: 15 pages). This document predates the Court verdict and was prepared for intervention in the Supreme Court Case.

¹² Carrell, Severin: Brooks, Libby. (2025): “Court ruling on ‘woman’ at odds with UK Equality Act aim, says ex-civil servant”: The Guardian Fri 18 Apr 2025 <https://www.theguardian.com/world/2025/apr/18/ruling-on-woman-definition-at-odds-with-uk-equality-acts-aim-says-ex-civil-servant>

¹³ The particular issue being addressed in the Supreme Court’s judgement is about where transgender women should be included in; or excluded from, all-women shortlists. Up to now In United Kingdom society we have used the words “men”, “women”, “male” and “female” interchangeably to describe both matters of gender and sex. The construct of “legal sex” in the 2004 Gender Recognition Act was introduced to ensure that all past and future legislation could be interpreted, and legal decisions could be made in the context which is correct. That was expanded on in the EU Gender Directive (Directive 2004/113) and the Recast Equal Treatment Directive (Directive 2006/54) which equalised treatment in the provision of goods and services for both sexes. The requirement that the 2010 Equality Act must adopt the interpretation provided in the Gender Directive, flows directly from EU case law: It had been intended to draft the Equality act in a way that conforms to the Gender Directive, but that had not yet been incorporated into UK Law. However, that failure does not replace the greater interchangeability provided for in the 2004 Gender Recognition Act. There is no evidence that the drafters of the 2010 Equality act ever intended anything other than an inclusive approach. So regardless of the state of implementation of the Gender Directive, the inclusive interpretation of the 2010 Equality Act, in accordance with the 2004 Gender Recognition Act, should still remain in

effect. See section 7 of: Gilchrist, S: (2025) "Judgement of the United Kingdom Supreme Court and the Diagnosis of Transgender Conditions": <https://www.tgdr.co.uk/documents/255P-TransJudgement.pdf>

¹⁴ For details of my own research, see <https://tgdr.co.uk/articles/bibliography.htm> Including: 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>

¹⁵ See: Gilchrist, S. (2024): "Transgender Misdiagnoses: EHRC and Government Advice": <https://www.tgdr.co.uk/documents/040B-MisdiagnosesAndAdvice.pdf> Also Gilchrist, S. (2024): "An Overview of Current Disputes on the Natures of Transgender Conditions and a Commentary on the Cass Review": <https://www.tgdr.co.uk/documents/255P-CassFinalOverview.pdf>

¹⁶ See section D:2 Gender Attacks in Gilchrist, S. (2020b): "Responsibility in Transgender Disputes": <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>

¹⁷ ECHR Factsheet www.echr.coe.int/documents/d/echr/fs_gender_identity_eng

¹⁸ Trans men are also affected: See: Alge, Daniel (2025): "There are similar concerns for transgender men What does the UK Supreme Court's gender ruling mean for trans men?" Brunel University News 23 April 2025 <https://www.brunel.ac.uk/news-and-events/news/articles/What-does-the-UK-Supreme-Court-s-gender-ruling-mean-for-trans-men>

¹⁹ However, a strict interpretation states that only the binary gender categories of "men" and "women" are protected. But 2010 Equality Act also states that it also applies to: "A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex".

²⁰ In a strongly worded article in the Guardian Newspaper, Judith Butler wrote "With such strongly divergent views and opinions being expressed it is essential that an impartial and objective approach is taken. That does not happen. In a 2021 article in the Guardian Newspaper Judith Butler, a major authority and pioneer in the feminist movements expressed her views on these gender-critical approaches: She said: "It is not easy to fully reconstruct the arguments used by the anti-gender ideology movement because they do not hold themselves to standards of consistency or coherence. They assemble and launch incendiary claims to defeat what they see as "gender ideology" or "gender studies" by any rhetorical means necessary. For instance, they object to "gender" because it putatively denies biological sex or because it undermines the natural or divine character of the heteronormative family": "The anti-gender movement is not a conservative position with a clear set of principles. No, as a fascist trend, it mobilizes a range of rhetorical strategies from across the political spectrum to maximize the fear of infiltration and destruction that comes from a diverse set of economic and social forces. It does not strive for consistency, for its incoherence is part of its power". See Gilchrist, S. (2024): "Transgender Misdiagnoses: EHRC and Government Advice": <https://www.tgdr.co.uk/documents/040B-MisdiagnosesAndAdvice.pdf> Butler, Judith, (2021): "Why is the idea of 'gender' provoking backlash the world over?" the Guardian 23 October 2021. See Discussion of Butler in Gilchrist, S. (2022): "No Blacks, No Irish, No Homosexuals, No Transgender People": <https://www.tgdr.co.uk/documents/252P-NoBlacks.pdf>

²¹ Similar comments are being made in the United States: Lempinen, Edward; Pohl, Jason; Thulin, Lila: (2005) "Experts React to U.S. Supreme Court Ruling on Medical Care for Trans Minors" Berkley Research June 18, 2025 <https://vcresearch.berkeley.edu/news/experts-react-us-supreme-court-ruling-medical-care-trans-minors>

²² The Council of Europe has published a report, adopted by a committee of parliamentarians from across the continent, which condemns the UK's treatment of transgender people. Adopting a report by Fourat Ben Chikha, a member of the Belgian Senate, the Committee on Equality and Non-Discrimination condemned "the extensive and often virulent attacks on the rights of LGBTI people for several years" in Hungary, Poland, the Russian Federation, Turkey and the United Kingdom. Transphobia and homophobia in the UK directly infringe upon Article 14 of the Human Rights Act, which is designed to shield marginalised people from discriminatory treatment. The parliamentarians warned: "The scapegoating and violations of LGBTI people's civil rights come to a large extent from political figures, including government representatives, as well as religious leaders."

https://pace.coe.int/en/news/8431/committee-highlights-rise-in-hatred-against-lgbti-people?cf_chl_jschl_tk_=dBvpVaTmOm4tCKfhHpAZiA5cPivU88GH7KyZ00mu3to-1641559647-0-gaNycGzNCP0

²³ Independent "Supreme Court gender ruling risks leaving trans people in 'intermediate zone' and could breach ECHR, UK warned" Tuesday 14 October 2025 <https://www.independent.co.uk/news/uk/politics/trans-ruling-supreme-court-uk-b2844987.html> Read the letter to the Home Secretary: <https://rm.coe.int/letter-to-the-home-secretary-of-united-kingdom-by-michael-o-flaherty-c/488028b2a8> Read the letter to the Chairs of the Joint Committee on Human Rights and the Women and Equalities Committee <https://rm.coe.int/letter-to-parliament-and-house-of-commons-of-te-united-kingdom-by-mich/488028d4dd7> Read the last paragraph in the letter of reply from the UK Home Secretary to the Commissioner: "Lastly, I want to address your comments in your letter to Lord Alton and Sarah Owen MP on the human rights situation of trans people in the UK. I would like to take this opportunity to emphasise that I consider it unacceptable to question the validity of the Supreme Court in making this decision. The court has provided legal clarity on this issue, exactly as they are expected to. I find any attempt to cast aspersions on the Supreme Court's decision disappointing". <https://rm.coe.int/reply-home-secretary-to-commissioner-o-flaherty-letter-response/488028fcbce>

²⁴ Lemkin Institute (2025): "The Lemkin Institute for Genocide Prevention and Human Security would like to bring attention to and condemn recent judicial and governmental developments in the United Kingdom, which attempt to harm transgender and intersex people in the UK by stripping them of privacy and segregating them as 'others.' The Lemkin Institute believes these moves are part of a broader process of erasure. It is not only government action but also the media narrative that has fuelled hostility to and debate about the humanity of trans and intersex people while ignoring their voices" Lemkin Institute 30 June 2025 <https://www.lemkininstitute.com/red-flag-alerts/red-flag-alert-on-anti-trans-and-intersex-rights-in-the-uk>

²⁵ 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

Gilchrist, S. (2025): "Transgender Misdiagnoses and Human Rights" 256P

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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/appJjTpDvAuSGrX37/pagdNlgDLd38RXbIt/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>

²⁶ Alge, Daniel (2025): "There are similar concerns for transgender men What does the UK Supreme Court's gender ruling mean for trans men?" Brunel University News 23 April 2025 <https://www.brunel.ac.uk/news-and-events/news/articles/What-does-the-UK-Supreme-Court's-gender-ruling-mean-for-trans-men>

²⁷ "Kathleen Stock in a recent court case (Smith v Northumbria Police), finally provided us with a definition of what those with gender critical beliefs consider should be banned. This involves, i) Banning easier access to Gender Recognition Certificates. ii) Refusing to treat gender identity as a protected characteristic in law and policy. iii) Denying recognition of gender identity in medical, educational, and judicial contexts. iv) Banning conversion therapy for trans people. v) Denying access to gender-affirming medical care, including for young people. vi) Preventing access to single-sex spaces (like changing rooms, prisons, sports) based on gender identity

²⁸ For Stock's views on Stonewall See section 13:00 Conflict in Gilchrist, S. (2021a): "Gender Identity, Feminism, and Transgender People": <http://www.tgdr.co.uk/documents/250P-GenderIdentityAndTrans.pdf>

²⁹ Freud also noted that a process of separating the self from the other is needed, and he did this through the Oedipal Complex. But, because he relied on cognition for his arguments he placed this to between the ages of three to five years. Therefore, he regarded it as part of the development of the gender role identity. Which means it has no independent effect.

³⁰ Mitchell, Kevin J. (2018): "Innate: How the Wiring of our Brain Shapes Who We Are": Princeton University Press; ISBN 978-0-691-17388-7.

³¹ Wrangham, Richard: (2019): "The Goodness Paradox: How Evolution Made Us More and Less Violent" Pantheon Books ISBN 978 1 78125 583 4

³² See: Gilchrist, S. (2016a): "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 Notes for this chapter are available on: <http://www.tgdr.co.uk/sourcesA/index.htm>

³³ This is an area where false allegations, conspiracy theories an misuse of information abound. Individual cases are highlighted and presented as typical when the evidence shows they are not. See section16:0 Abuse. 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/256P-TransVerdict.pdf>. Rather than concentrating on individual cases it is better to look at overall figures Social self-identification in the UK since 2010, and legal self-identification has been available in many other countries, without any concerns being raised about abuse.

³⁴ See Section 8:0 in 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>

³⁵ For a more extended review of Lord Hodge's comments: 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>.

³⁶ 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-36TransJudgement.pdf>.

³⁷ Gilchrist, S. (2024): "What is a Woman?": <https://www.tgdr.co.uk/documents/255P-WhatIsAWoman.pdf>.

³⁸ Gilchrist, S. (2019a): "Divisions: Self-Declaration and Gender Variant People": <http://www.tgdr.co.uk/documents/243P-DivisionsSelfDeclaration.pdf>

³⁹ The full document is available at Gilchrist, S. (2035) "Transgender Misdiagnoses and Human Rights": <https://www.tgdr.co.uk/documents/256P-TransRights.pdf>

⁴⁰ "Shabana Mahmood says rights watchdog undermines UK case to stay in ECHR. Read the letter to the Home Secretary: <https://rm.coe.int/-reply-home-secretary-to-commissioner-o-flaherty-letter-response/488028fcb>

The Council of Europe had criticised the government's stance on transgender rights and said that banning Palestine Action may breach the freedom of peaceful assembly" Times 14 October 2025 <https://www.thetimes.com/uk/politics/article/trans-people-human-rights-news-g6k3r8pzt>

⁴¹ Rippon, Gina. (2019): *"The Gendered Brain: The new Neuroscience that shatters the myth of the female brain"*: Penguin Random House, London 2019: ISBN 9781847924759. Reviewed in Gilchrist, S. (2021a): *"Gender Identity, Feminism, and Transgender People"*: <http://www.tgdr.co.uk/documents/250P-GenderIdentityAndTrans.pdf>. Gilchrist, S. (2020b): *"Responsibility in Transgender Disputes"*: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>

⁴² Gilchrist, S. (2025): *"Correctly Diagnosing Transgender Conditions: the Consequences of Misdiagnoses and the Independence of the Cass and Sullivan Reports"* <https://www.tgdr.co.uk/documents/255P-CassIndependence.pdf>.

⁴³ The Cass Report has been a subject of great controversy. Originally commissioned by the UK's National Health Service to evaluate the scientific evidence for medical gender transitions of those under 18, it reached a series of recommendations that essentially indicated that medical transition for transgender youth should be all but eliminated. The findings of Cass have been embraced by the English government and used to justify the elimination of transition services for minors, while elsewhere it has been very heavily critiqued: a Yale Law School *"evidence-based critique"* of the Cass Review rebutted nearly every major conclusion of Cass, The Royal Australian and New Zealand College of Psychiatrists *rejected implementation* of Cass in Australia, and many other research teams have offered *in-depth debunking and rebuttals*. The French Society of Paediatric Endocrinology and Diabetology (SFEDP) recently commissioned *its own version of the Cass Review*, and this study reached almost the exact opposite conclusions of Cass: In the United Kingdom, the *BMA have announced that they will be undertaking an evaluation of the Cass Report* and have called for a pause on the implementation of the Cass Report's recommendations until the BMA working group publish their findings. *More than 200 Educational Psychologists signed an open letter to expressing concerns about the Cass Review*. See also: McNamara et al (2024). *An Evidence-Based Critique of "The Cass Review" on Gender-affirming Care for Adolescent Gender Dysphoria*: Noone et al (2024). *Critically appraising the Cass Report: Methodological flaws and unsupported claims*. : Horton, C. (2024). *The Cass Review: Cis-supremacy in the UK's approach to healthcare for trans children*. *International Journal of Transgender Health*, 1-25. Horton, C. and Pearce, R. (2024) *The U.K.'s Cass Review Badly Fails Trans Children*. *Scientific American*: Grijseels, D. M. (2024). *Biological and psychosocial evidence in the Cass Review: a critical commentary*. *International Journal of Transgender Health*, 1-11. FGEN (2024). *Letter from academics concerned about The Cass Review*. See also: <https://www.consortium.lgbt/trans-healthcare-coalition/> <https://ruthpearce.net/2024/04/16/whats-wrong-with-the-cass-review-a-round-up-of-commentary-and-evidence/> <https://transactual.org.uk/wp-content/uploads/TransActual-Briefing-on-Cass-Review.pdf> or recent work includes the BMA report: See also Gilchrist, S. (2024): *"Current Disputes on the Natures of Transgender Conditions and a Commentary on the Cass Review: Part 2, Implementation"*: <https://www.tgdr.co.uk/documents/255P-CassTransImplementation.pdf>.

⁴⁴ Stock's work is extensively reviewed in Gilchrist, S. (2021a): *"Gender Identity, Feminism, and Transgender People"*: <http://www.tgdr.co.uk/documents/250P-GenderIdentityAndTrans.pdf>. Gilchrist, S. (2020b): *"Responsibility in Transgender Disputes"*: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>

⁴⁵ See section 5:0 Sullivan Report

⁴⁶ Joel, Daphna; Garcia-Falgueras, Alicia; Swaab, Dick: (2019). *"The Complex Relationships between Sex and the Brain"* *Sage Journals Review Article* Find in PubMed <https://doi.org/10.1177/1073858419867298> See also Gilchrist, S. (2020b): *"Responsibility in Transgender Disputes"*: <http://www.tgdr.co.uk/documents/248P-Responsibility.pdf>

⁴⁷ . See the 2020 Handbook of Clinical Neurology Volume 175: *"Sex Differences in Neurology and Psychiatry"* for descriptions of these

⁴⁸ See section 7:0 *Social Construction of Gender* and section 8:0: *Gender Dysphoria* in Gilchrist, S. (2013d): *"Personality Development and LGB&T People: A New Approach"*: <http://www.tgdr.co.uk/documents/201P-PersonalityDevelopmentAndLGBTPeople.pdf>

⁴⁹ In my own work I have used transgender experiences as case studies with the aim of gaining greater insight how personalities and identities for all of us develop. And the combination of the *"who am I"* network, the *"what makes me: me?"* network; and the often hidden but long-term stabilities of the core elements of personality and identity; I identify in this study might give some greater insight into how awareness and consciousness arise. A Stanford Medicine study using some 1500 individuals and Artificial Intelligence techniques has identified distinct brain organization patterns in women and men. While answers to questions of *"What makes me, me?"* are claimed to dwell in the well-studied network of neurons in the default mode network there's no official name yet for the equivalent *"Who am I"* network. Nor has it been similarly studied. And that may be a key element in determining how senses of identity are formed. Although they are separate, the two brain areas constantly interact with each other. While stimulation of the default mode network does not cause any change to the sense of selfhood that a person possesses, considerable disruption to this sense of selfhood arises when this *"Who am I"* area is stimulated instead. See Section 9:0 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>

⁵⁰ Much more work on consciousness, awareness and these issues is required, including confirmation as to whether various brain areas are active before birth or if they only become active after birth. It is also much too early to say if any of these modules contain generically determined behavioural traits which leads directly to consciousness and gender identification: and that need not depend on the presence of XX or XY chromosomes. It should also be expected that this would only set the direction of travel. Therefore, it is the massive neural, social, and cognitive advances and changes during the first three years which result in stable core gender and other identities to be created, And the recognition of this may lead to greater insights into how or own sense of consciousness is formed. However, these features should only be considered as part of the explanation. Other influences, including the important influence of hormonal or endocrinal effects are as certain to be involved. Nevertheless, the early development of these behavioural traits and the experiences with intersex children does suggest there may be some genetically and hormonally associated contributions: And these considerations support the presence of distinct neural modular structures in the brain which are computationally independent, in the way that Fordor describes. Thus, it is the combination of the *"who am I"* network, the *"what makes me: me?"* network; and the often hidden but long-term stabilities of the core elements of personality and identity; I identify in this study might give some greater insight into how awareness and consciousness arise. See Section 9:0 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>

⁵¹ Gilchrist, S. (2023): *"How to Trash the Economy, Transgender Identities and Human Rights"* <https://www.tgdr.co.uk/articles/255P-HowToTrash.pdf>

⁵² Brooks, Libby (2025): *"UK's first trans judge appeals to European court of human rights over supreme court ruling"*: The Guardian 20 April 2025 <https://www.theguardian.com/society/2025/apr/29/uks-first-trans-judge-victoria-mccloud-appeals-to-european-court-over-supreme-court-ruling>

⁵³ *Christine Goodman v. UK* App no. 28957/95 (ECHR 11 July 2002)

⁵⁴ *Y.V v. Turkey* App no. 14793/08 (ECHR 10 May 2015)

Gilchrist, S. (2025): *"Transgender Misdiagnoses and Human Rights"* 256P

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⁵⁵ Independent “Supreme Court gender ruling risks leaving trans people in ‘intermediate zone’ and could breach ECHR, UK warned” Tuesday 14 October 2025 <https://www.independent.co.uk/news/uk/politics/trans-ruling-supreme-court-uk-b2844987.html> Read the letter to the Home Secretary: <https://rm.coe.int/letter-to-the-home-secretary-of-united-kingdom-by-michael-o-flaherty-c/488028b2a8> Read the letter to the Chairs of the Joint Committee on Human Rights and the Women and Equalities Committee <https://rm.coe.int/letter-to-parliament-and-house-of-commons-of-te-united-kingdom-by-mich/488028ddd7> Read the last paragraph in the letter of reply from the UK Home Secretary to the Commissioner: “Lastly, I want to address your comments in your letter to Lord Alton and Sarah Owen MP on the human rights situation of trans people in the UK. I would like to take this opportunity to emphasise that I consider it unacceptable to question the validity of the Supreme Court in making this decision. The court has provided legal clarity on this issue, exactly as they are expected to. I find any attempt to cast aspersions on the Supreme Court’s decision disappointing”. <https://rm.coe.int/reply-home-secretary-to-commissioner-o-flaherty-letter-response/488028fcb6>

⁵⁶ The Trans Advocacy and Complaints Collective and the Trans Exiles Network submitted a communication to the Council of Europe on 14 October 2025, requesting the re-opening of enforcement supervision against the UK related to the cases of Goodwin v UK and Grant v UK. These cases established that the rights of transsexual individuals were violated by UK law, which did not recognize their acquired sex for all purposes. The recent Supreme Court ruling in *For Women Scotland v Scottish Ministers* (2025) has raised concerns that the UK has not complied with the earlier judgments, effectively placing trans individuals back in an “intermediate zone.”

⁵⁷ UNHCR (2025) “UN experts warn of legal uncertainty and rights implications following UK Supreme Court ruling” Office of the United Nations High Commissioner for Human Rights: 22 May 2025 <https://www.ohchr.org/en/press-releases/2025/05/un-experts-warn-legal-uncertainty-and-rights-implications-following-uk> “The experts recalled that the UK has previously been found in violation of the European Convention on Human Rights for failing to provide adequate legal recognition for trans individuals, leading to the adoption of the Gender Recognition Act in 2004. They warned that, without corrective changes to law and policy, the current ruling could lead to similar legal challenges being reopened. “The law must be clear, coherent, and consistent with international human rights standards,” the experts said. “We urge UK lawmakers to act decisively to reform and align the legal framework in a way that ensures dignity, equality, and non-discrimination for all.”

⁵⁸ Good Law Project (2025) “We’re challenging the EHRC’s interim guidance. The ‘interim guidance’ that the EHRC issued after the Supreme Court’s decision on trans rights was transphobic, harmful – and legally wrong. We’re bringing a challenge in the High Court. <https://goodlawproject.org/case/were-challenging-the-ehrcs-interim-guidance/>

⁵⁹ The EHRC’s interim advice was withdrawn on or around October 15, 2025. It was replaced with a recommendation for organizations to seek specialist legal advice while the government considers the EHRC’s revised statutory Code of Practice.

⁶⁰ See for example Gilchrist, S. (2024): “What Celtic Christianity and the Ancient Church of the East Can Tell us about Christian Attitudes to Women and LGBTI Relationships”: <https://www.tgdr.co.uk/documents/040B-CelticChristianityWomenGenderSex.pdf> Gilchrist, S. (2022): “Christian Communities, Transgender People and Christian Traditions” (Presentation): <http://www.tgdr.co.uk/documents/037B-PresDoctrinesDisputesTransPeople.pdf> And other material on my website www.tgdr.co.uk

⁶¹ Gilchrist, S. (2022): “No Blacks, No Irish, No Homosexuals, No Transgender People”: <http://www.tgdr.co.uk/documents/252P-NoBlacks.pdf>

⁶² These requirements to conform would also seem to be supported in the Supreme Court’s Judgement: Part of Clause 217 states that “trans women may in practice choose to use female-only facilities in a way which does not in fact compromise the privacy and dignity of the other women” and part of Clause 221 states that “Their exclusion would amount to unlawful gender reassignment discrimination not sex discrimination”. That statement demands full inclusion, unless proportionate and justified reasons for exclusions can be given on an individual basis, for example in women’s refuges. However, both clauses should be read in full for a complete understanding of the ruling. For they only gives permission, it does not define it as a human right. Gilchrist, S. (2025) “Judgement of the United Kingdom Supreme Court and the Diagnosis of Transgender Conditions”: <https://www.tgdr.co.uk/documents/255P-TransJudgement.pdf>

⁶³ Gilchrist, S. (2025): “The Misdiagnosis of Transgender Conditions by the Supreme Court”: <https://www.tgdr.co.uk/documents/256P-TransDevelopment.pdf>