

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM DSDFAMILIES

We thank the committee for inviting dsdfamilies to give evidence and wanted to add a couple of points around the inclusion of VSC in the Hate Crime Bill.

We were grateful for the comments of Annabelle Ewing in the last meeting, but we still fear that the Justice Secretary has an incomplete understanding of the issues. dsdfamilies is incredibly wary about trespassing into what has become an increasingly polarised debate. Our role is to provide support and information for families and we do not want to jeopardize that by engaging in ideological or politically charged conversations. We are aware that many of the networks for condition-specific support are likewise nervous. This is an inhibiting factor for many who are closely involved with the practical work of support and engagement, but these are the people with whom the Scottish Government should really consult.

We were not familiar with the 2009 Klinefelter survey mentioned by Mr Dutton, but, having reviewed it, we feel that many of the issues around better healthcare and psychological support are similar to the findings of our “Listen to Us” report, neither of which appear to suggest that hate crime legislation is the most pressing concern for people living with variations (or difference) of sex development.

We use Variations of Sex Development as opposed to VSC advisedly. These conditions are ones of development, occurring in utero between 8-14 weeks. “Sex characteristics” is less precise and we are still unsure what the Justice Secretary believes to be captured by this term. Mr Yousaf pointed to stakeholders who preferred it and we imagine that he means Equality Network who seem to have influenced much of the draft bill. We have frequently tried to engage with the Scottish Government to explain why VSD should not be conflated with LGBT. We have been made aware of a freedom of information request released last week¹, which revealed that Tim Hopkins of EN had advised government not to use the word “conditions” in definitions of VSC as it was “pathologising”. We feel this is misguided and demonstrates a misunderstanding of the nature of these rare and complex medical conditions.

Naturally, we are concerned with ensuring that genital difference is not pathologised, and rather presented as healthy variations, however, we fear that the real health risks associated with some of these conditions, and which for some e.g. require life-long medication, are at risk of being minimised. This is why our focus on ensuring that thinking in the NHS is changed to support young people and their

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https://www.whatdotheyknow.com/request/definition_of_transgender_identi#incoming-1667959

families seems to us to be the critical need. We are hard-pressed to imagine that the government would consider the advice of any other non-expert to reframe any other serious medical conditions in this manner.

In our experience, most people do not use the umbrella terms, preferring to refer to their particular diagnosis. Indeed, a simple search reveals that none of the websites for the condition-specific support groups use VSC.²

If the government is determined to add VSC to the hate crime bill, we would urge them to provide a clear definition of what conditions they cover, an evidence base for the sort of hate crime they believe people may experience, and the reason why this is not the same for anyone else with more readily obvious body difference. We are aware that intersex was included in the Aggravated Offences Act and we wondered if you were aware of any reported or charged offences relating to intersex conditions?

From our perspective, different sex development is generally applied to a range of around 40 conditions affecting genital and reproductive development³ which, in total, affect around 130 babies born in the UK per annum (12 in Scotland). These are the conditions which people usually think of when talking about “intersex”. In the majority of cases, sex determination is possible after karyotype and hormone testing. Only around 7 babies pa across the UK (possibly one every 2 years in Scotland) could be raised as either sex: in such cases, our concern is to ensure the support is there to raise a resilient and confident child. Other conditions, including those in which a different chromosomal pattern⁴ is present, have, more latterly, been included under the descriptor.

While there is commonality between some of the conditions, there is also much divergence. Of late, we have witnessed attempts to broaden “intersex” to include hormone variations which would cover conditions like Polycystic Ovarian Syndrome (which affects 1 in 10 women). Indeed, a book recommended in the LGBT Youth schools guidance (originally endorsed by Scottish Government), included a chapter which does just that⁵. Without a clear understanding of what you are attempting to protect and why, we are concerned that misunderstanding and misdirection will only be further embedded in policy.

² Klinefelter association website , the Turner Syndrome website, the Living with CAH website and the dsdfamilies website reveals no mention of 'VSC'. Also: no mention of intersex on CAH and Turner website. It occurs twice on KSA - once in a news item and as below:

“KS is classified as a Disorder of Sexual Development (DSD) which is the new nomenclature for intersex. The KSA prefers the usage Variation of Sexual Development (VSD).”

Source: <https://www.ksa-uk.net/home/information-concerning-ks-children/> On dsdfamilies we use intersex a couple of times in our FAQ section

³ <https://www.dsdfamilies.org/parents/what-dsd/brief-overview>

⁴ 47, XXY aka Klinefelter’s syndrome and 45, XO aka Turner Syndrome

⁵ <https://www.lgbtyouth.org.uk/media/1344/supporting-transgender-young-people.pdf> p49 recommended books: Beyond Magenta

There is also currently a concerning trend to enable self-identification of intersex conditions. We would ask the committee to reflect if this would be considered appropriate in any other long-term medical conditions. This is, in turn, affecting the quality of data collected, especially if it comes from non-specialist organisations.

We also noted that the Justice Secretary seemed to claim that there were more than two sexes in his reply to the question about the use of the phrase “different sexes” rather than “opposite sex”. This conflated gender-identity with sex (he referred to people who are non-binary), however, we would be very concerned by any attempt to enshrine the concept of a third sex in Scots Law. This can only rebound and have implications for those with VSD, especially as, from our experience of discussions with MSPs and civil servants, many in government do believe that non-binary is synonymous with intersex. “Othering” or “misgendering” are also one of the most common and distressing things said to people with VSD online. We must stress again that some of the most egregious comments and assumptions, including on the part of Government⁶, regarding VSD are often made from a place of ignorance which might be ameliorated by better engagement with specialists. Christina McKelvie promised a consultation on intersex in a reply to a question from Johann Lamont last year⁷. We would hope that would be forthcoming before the government did anything quite so radical as to recategorise sex.⁸

Finally, we note that the Justice Secretary said he is minded not to include sex in the bill on the advice of some of the women’s organisations. As our representative addressed, we do feel that including sex would cover any prejudice those with VSDs might face, **especially** as the most hurtful comments generally relate to not being a “real” man or woman or being something “other”. We understand that there are wider issues here, however, we are bewildered why he is prepared to defer to what he considers specialist knowledge in this instance but not on VSD.

As we said at the outset, we do not want to be a part of very public criticism of policy and feel this could be averted by proper engagement in the initial stages of policy development: we would also request that the government does not go as a first port of call to non-expert groups simply because they receive public funding. As we have said many times before, we urge the Scottish Government to pause its policy-lead approach to ‘people living with variations of sex development’ and involve with some urgency the Health Secretary before real harm is done as a result of the misrepresentations endorsed by government.

dsdfamilies

30 November 2020

⁶ For example the inclusion of the document by Peter Dunne in the GRA consultation which referred to intersex people under the header “abnormal bodies”.

⁷<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-23930&ResultsPerPage=10>

⁸ dsdfamilies has been meeting with the family law team since March 2017, yet there is still a troubling lack of engagement / consultation. There has been no-follow up since December 2018.

