

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM TRANSGENDER TREND

Transgender Trend is a non-religious, apolitical organisation founded in 2015 by parents and professionals concerned about the trend in referrals of children and young people to gender identity clinics and the erosion of sex-based rights in particular for girls. We call for robust evidence-based policies in healthcare and education.

We focus our response specifically on the potential impact of the proposed Hate Crime and Public Order Bill on women and children and young people, with an emphasis on girls. We do not address the wider subject of hate crime legislation per se but only issues arising from this proposed Bill.

PART ONE – AGGRAVATION OF OFFENCES BY PREJUDICE

We are concerned that the omission of ‘sex’ and inclusion of ‘transgender identity’ creates an unbalanced Bill that protects men who identify as women (for whatever reason) but does not protect women and girls. Legislation that affords full protection to a man who claims to be a woman while denying protection to an actual woman or girl places women and girls at risk and denies them their full human rights to equal protection under the law.

An example of how hate crime legislation may be used to undermine the rights of women and girls was illustrated in the recent CPS Hate Crime guidance for schools, written with Stonewall (now withdrawn for review). In a ‘toilet scenario’ video, two women expressed discomfort by whispering together when a person easily identifiable as male entered the facility. This scenario would cause many women and girls to feel nervous, uncomfortable or afraid, not because the person is trans but because the person is male.

The teaching notes state:

“You are police officers called to reports of a disturbance in a gents’ toilet. Somebody passing has called the police. Your initial investigation identifies a distressed young trans woman who, on questioning, tells you that she has been made to feel threatened and unwanted and obliged to use the accessible toilet. On investigation you discover that there has already been an incident in the ladies’ toilets.”

Although the women only expressed their discomfort quietly to each other, the teaching notes state that:

“The students should find that the women and men can be charged with public order offences, in this case aggravated by hostility based on gender identity.”

This case illustrates how hate crime legislation can not only be misused, but can be used to specifically target women and girls for objecting to the presence of males in their private spaces and for legitimately wanting privacy in facilities where they are undressing or using the toilet. The Bill, if used in this way, silences women's discomfort as 'hate'. If girls are prevented from identifying a person as male, for fear of being accused of a 'hate crime', they are compelled to suppress the instincts and perceptions that protect them, putting them at risk.

This incident was reported to us by parents: A man entered a swimming pool female changing-room and began to undress in front of a group of 12 – 13 year-old girls, who left the changing-room quickly and reported the incident to their parents. A complaint was made but the pool manager informed the parents that nothing could be done because the man said he was a woman. The fathers of the girls became very angry. If they had shouted at or threatened the man, under this proposed Bill would they be charged with a public order offence aggravated by hostility based on transgender identity? How does the Scottish government fulfil its duty to protect teenage girls from incidents like this?

A government must be alive to the unintended consequences of proposed legislation. An assumption of bigotry may apply in a scenario where, for example, a group of men attack a transsexual person while using verbal abuse such as 'tranny' which is clear indication of hostility and discrimination towards a protected group. The same assumption cannot be made in the case, for example, of teenage girls muttering 'what's he doing in here?' when someone they perceive to be male enters their toilet or changing-room, even if it is perceived as 'transphobia' by that person. We are not confident that the proposed Bill allows recognition of the distinct lived experience of women and girls or affords allowance for the legitimate safety concerns and privacy needs of women and girls which are based on a person's biological sex, not their identity.

Stonewall defines 'prejudice' as follows:

"It is important to record, monitor and report all incidents that are motivated by a prejudice, including those that fall below the definition of bullying. A prejudice-based incident is a one-off incident of unkind or hurtful behaviour that is motivated by a prejudice or negative attitudes, beliefs or views towards a protected characteristic or minority group." (Getting Started, Primary Schools, 2016, p. 14)¹

Stonewall goes on to define prejudice against trans people ('transphobia') in the following way:

"TRANSPHOBIA is the fear or dislike of someone based on the fact they are trans, including denying their gender identity or refusing to accept it. Transphobia may be targeted at people who are, or who are perceived to be, trans." (An Introduction to Supporting LGBT Young People, 2020, p. 68)²

¹ <https://www.stonewall.org.uk/resources/getting-started-toolkit-primary-schools>

² <https://www.stonewall.org.uk/resources/introduction-supporting-lgbt-children-and-young-people>

This is an example of the obfuscating language used in this area. A woman or girl may accept that a man identifies as a woman, but not accept that this means his biological sex is female. To be able to recognise and set boundaries with the opposite sex is an intrinsic right of women and girls and this has nothing to do with transphobia or prejudice and everything to do with privacy, safety and the right to withhold consent.

The definition of ‘transgender identity’ includes the categories ‘a non-binary person’ and ‘a person who cross-dresses.’ There is no way of knowing that a person identifies themselves as ‘non-binary’. People who choose to identify themselves as ‘non-binary’ are still male or female. A cross-dresser may be a fetishist who derives sexual pleasure from wearing the clothes of women. Brook provides this definition:

“Cross dressing is a lifestyle choice and is often driven by feeling comforted or turned-on by wearing clothes of the opposite sex.”³

This group of men may derive sexual pleasure from performing their fetish in women-only spaces. The proposed Bill would enforce women and girls’ compliance with this violation of their boundaries without their consent.

Cross-dressing men and people who have an internal feeling of being ‘non-binary’ are not historically oppressed groups and have suffered no historic discrimination by an oppressor group. Conversely, the discrimination and levels of violence and misogynistic crime against women and girls is a serious problem in society. It is not acceptable that women and girls are the group left out of hate crime legislation. Although women and girls are the group least likely to commit a violent offence, this proposed Bill may increase the likelihood of offences committed against them; for example, voyeurism and indecent exposure. This is because the Bill would shore up confidence in men that they may get away with these crimes with impunity under protection of the law, while decreasing the confidence of women and girls that they have a right to protest with the full backing of the law.

Any legislation sends a clear message about who is important and who is not in society and this Bill sends the message that women and girls don’t count. Unless the Scottish government is willing to concede that women and girls have not just a right, but a need, to distinguish between human beings on the basis of their biological sex – no matter what their identity is – it is inevitable that legislation will fail women and girls.

PART TWO – OFFENCES RELATED TO STIRRING UP HATRED

We are very concerned about the second part of the proposed Bill on “stirring up hatred” and “possessing inflammatory material”. To behave in a “threatening, abusive or insulting manner” or to communicate “threatening, abusive or insulting material to another person” invokes purely subjective concepts open to interpretation. These are allegations used consistently and expressly to silence women, along with anyone who expresses disagreement with any opinions of trans

³ <https://www.brook.org.uk/your-life/gender-a-few-definitions/>

activists, states biological facts or campaigns for evidence-based treatment pathways for children and young people with gender dysphoria.

The recent case of J K Rowling, who wrote a blog post in which she expressed genuine support for transgender people and also shared details of her experience of male violence as a woman, illustrates how this part of the Bill would suppress freedom of speech, in particular for women exercising their democratic right to discuss legislation that affects them. J K Rowling was accused of transphobia and spreading hate and she received an avalanche of misogynistic and violent abuse. She also received an outpouring of support and gratitude from women, many of whom are afraid to speak out themselves for the legitimate fear of losing their jobs and livelihoods.

The transgender charity Mermaids suggested that simply sharing J K Rowling's blog could be construed as "a deliberate act of aggression and cruelty":

"Simply sharing Rowling's blog online "mightn't necessarily be treated as a deliberate act of transphobia", Mermaids said in a statement. An employer could seek "a calm conversation, explaining why the article caused hurt and identifying common ground". But if an employee shared it "in a deliberate act of aggression and cruelty, then surely that should be treated as a severe case of harassment".⁴

Even without this Bill, women cannot talk about the experience of being female, or fight for their rights as the female sex, without being accused of 'transphobia.' This situation represents a failure to uphold the democratic rights of women and girls. If this section of the Bill was passed, it would effectively mean that the right to speak openly about the experience of being a woman would be held by men who identify themselves as women, but not by women themselves. A woman talking about female experience could be accused of being offensive or insulting and stirring up hatred against trans people, as J K Rowling was. Women who find language such as 'menstruators' or 'uterus havers' offensive and insulting could not bring a charge of 'stirring up hatred against women' because women are not included in this proposed Bill.

This part of the Bill would also have a serious impact on the rights and responsibilities of professionals to safeguard children and young people. There are legitimate concerns about the current approach towards children and young people who self-identify as transgender and the medical pathway that has serious life-long consequences for them. Duty of care for these young people has already been compromised through a climate of fear, silencing and 'no debate.' The freedom of professionals to disagree, question and challenge prevailing orthodoxy is vital for the protection and safeguarding of children and young people.

Researchers such as Lisa Littman have had their research suppressed⁵ because trans activists didn't like the suggestion that social contagion may play a part in the development of a transgender identity in adolescence. Such vital research could be

⁴ The new rules on what you can say in the office, Financial Times, 24/07/2020

⁵ <https://quilllette.com/2019/03/19/an-interview-with-lisa-littman-who-coined-the-term-rapid-onset-gender-dysphoria/>

construed as “threatening, abusive or insulting material” if this section of the Bill goes forward. Simple biological facts are deemed threatening, abusive or insulting by the most extreme transgender activists so this would also have a chilling effect on teachers and the dissemination of biological and scientific information in schools within the biology curriculum itself.

If this Bill is passed, there are any number of activists, including funded lobby groups, who would no doubt bring a charge against Transgender Trend for disseminating evidence- and research-based materials and providing critical analysis of queer theory-influenced identity politics and its impact on treatment pathways and educational resources for children. Since we published our own schools guide in February 2018 we have been subject to a sustained campaign of vilification, defamation and harassment. Unsubstantiated and unevidenced charges are made against us continually on social media.

We are continually accused of being ‘anti trans’, a ‘hate group’, a ‘pro hate speech group’ an ‘anti LGBT hate group’, and of disseminating ‘harmful and misinformed transphobia’ and ‘transphobic propaganda’. We are accused of telling teachers to ‘bully trans kids’, of ‘promoting conversion therapy’ and demonstrating ‘virulently transphobic attitudes’ and that we are funded by the ‘US Evangelical Right’ and ‘bankrolled by Right Wing Hate organisations’. We are accused of being ‘complicit in teenagers self-harming and worse’, of ‘abusing the human rights of people who are transgender’ and ‘openly abusing trans people’. Our schools guide has been compared to Mein Kampf.

We have documented a selection of defamatory tweets about Transgender Trend.⁶ This is not just a group of extremists who harass and defame us, it is powerful organisations in receipt of government and corporate funding, such as Stonewall, who have used their authority to spread unsubstantiated defamation about Transgender Trend and attempt to prevent the use of our materials in schools.⁷ For our schools pack, the founder of Transgender Trend, Stephanie Davies-Arai, was shortlisted for the John Maddox Prize 2018, a joint initiative of the charity Sense About Science and the science journal Nature, which “recognises the work of individuals who promote sound science and evidence on a matter of public interest, facing difficulty or hostility in doing so.” The pack was also voted the most consistent with EHRC Technical Guidance for Schools and the only school guide to be based on safeguarding in a review of all available transgender schools toolkits in the TES last year. Nevertheless, under this section, anyone sharing our resource would almost certainly be accused by trans activists of disseminating ‘inflammatory material’.

All grassroots women’s organisations that have been set up for the express purpose of challenging proposed changes to the GRA towards a system of ‘self ID’ would face the same threat. All groups are exercising their democratic right to question, challenge and raise awareness of potential legislation that would have an impact on the lives of women, just as transgender organisations are exercising their right to organise and lobby for the changes to become law. Part Two of this proposed Bill

⁶ <https://www.transgendertrend.com/wp-content/uploads/2019/10/Twitter-responses-to-schools-pack.pdf>

⁷ <https://www.transgendertrend.com/our-statement-stonewall/>

would shut down one side of a controversial political debate and deny democratic rights and freedom of speech to women and anyone opposing changes to the GRA. In our view this section would confuse 'disagreement' with 'hate' and we therefore call for Part Two to be removed from the Bill.

Transgender Trend
25 July 2020