



The Gay Men's Network

21-Nov-2023

Dear Lady Burt,

House of Lords Private Member's Bill: Conversion Therapy Prohibition (Sexual Orientation and Gender Identity) Bill

## Introduction

1. The Gay Men's Network is a not-for-profit organisation established to fight modern homophobia in all its various forms and advocate for the rights of homosexual males. We correspond in respect of the proposed Private Member's Bill ("**The PMB**") to raise serious concerns that this legislation is poorly drafted and would cause real unintended harm to homosexuals principally in the field of paediatric medicine. While we understand entirely that your sponsorship of the PMB stems from a genuine desire to protect homosexuals, we must ask in the strongest possible terms that you take seriously the objections we raise as a grassroots organisation for gay men. We are of course happy to meet and would be grateful for the opportunity to convey to you and colleagues first hand our serious concerns about this legislation.

## Effects on paediatric clinical practice

2. For context, "Conversion Therapy Bans" globally are a campaign objective of organisations who support "gender identity ideology", (the unevicenced belief that human beings possess a sexed soul that can in some cases be that of the opposite sex). The purpose of the so-called "bans" is to regulate the field of paediatric gender medicine by introducing draconian criminal law penalties into clinical practice. Proponents of gender identity ideology insist that any paediatric clinician should accept a child's self-diagnosis of being of the opposite sex and then "affirm" that self-diagnosis. This is known as the "affirmation only" approach and "conversion therapy bans" act to compel this approach and stifle clinical practice irrespective of the welfare of the child. This approach ignores the following facts:

- a. The vast majority of children presenting with cross sex ideation at gender clinics are same sex attracted. The Tavistock GIDS survey of 2012 highlighted in Hannah Barnes' book "Time to think" recorded 90% of girls and 80% of boys as being same sex attracted.
  - b. The diagnostic criteria (such as it is) for "Gender Dysphoria" relies heavily on gender non-conforming behaviour. Such behaviour is common in young homosexuals. If left to explore their cross-sex ideation, the vast majority of children desist from it. "Affirmation only" thus locks children into lifelong dysphoria.
  - c. 35% of the children at the Tavistock GIDS service were on the autism spectrum compared to 2% in the population.
  - d. 70% of referrals to the Tavistock GIDS service had more than five associated co-morbidities such as abuse, depression, self-harm, suicide attempts, anxiety, eating disorders, ADHD or bullying. This was acknowledged in Dr Hilary Cass OBE's interim report in which she warned of the danger of "diagnostic overshadowing" (i.e. focusing on gender, rather than other matters that might account for cross sex ideation).
  - e. Staff (including senior staff) at gender services record alarming examples of homophobia as a safeguarding risk. We have prepared a schedule of homophobic incidents at the Tavistock GIDS service which we append as Annex 1 to this letter.
3. In contrast to the "affirmation only" approach, Dr Hilary Cass OBE's interim report and the NHS interim service specification for England and Wales favour the opposite approach to "affirmation only" known as "exploratory therapy". This is the standard approach in any other field of paediatric psychiatry. Exploratory talking therapies allow children to discuss issues leading to cross sex ideation which forms the basis for clinicians to properly explore any co-morbidities. We are concerned the PMB would unintentionally criminalise such clinicians. We are further concerned that the children and young people in this patient cohort are overwhelmingly same sex attracted and that the PMB would do active harm to homosexuals and bisexuals. We also question how the PMB as drafted could possibly be reconciled with the Cass interim report or NHS interim service specification.

## Effects on family life

4. It is only right that we also draw your attention to the unintended problems "Conversion Therapy Bans" raise in family life. Where such bans have been enacted, such as in the Australian state of Victoria, parents face imprisonment for not "affirming" children and many report fear around this subject for that reason. Such bans also raise serious questions about what might and might not be discussed online, in therapeutic

environments or even in schools. That being the case, we question whether bans of this nature might be subject to a declaration of incompatibility with the Human Rights Act 1998. We are deeply concerned the PMB would unintendedly criminalise perfectly well-intentioned parents, teachers or therapists simply discussing issues with a cross sex identifying youth.

## Lack of evidence a ban is necessary

5. No party advancing a “conversion therapy ban” legislation has yet advanced any convincing data that conversion therapy is in fact occurring in the UK. When consulting on this matter the government relied upon data from Coventry University. That data was shown to be of extremely poor quality (see paragraphs 12-16 of Gay Men’s Network Conversion Therapy Bill Consultation Response, February 2022 at <https://www.gaymensnetwork.com/letters-and-responses> ). It is also unclear what criminal conduct might be captured by any ban that would not already be covered by existing criminal legislation. That alone suggests the real purpose of any ban by campaigners is to regulate paediatric clinical practice as we have suggested.

## Issues with the PMB as drafted

6. We are concerned as to the quality of the draft PMB the relevant text of which we append at Annex 2. Specifically, we regard the bill as unworkable because:
  - a. The term “gender identity” is not defined in the PMB. This is extremely unusual in a criminal statute which would ordinarily contain a section entitled “Interpretation”. Imprecision in statutes is generally undesirable, but it is particularly undesirable in the case of a criminal statute because it leaves the courts and potential defendants with no guidance on what conduct may or may not be criminalised.
  - b. The corollary of a failure to define the term “gender identity” will lead to two possible undesirable outcomes:
    - i. In the first place, the Administrative Court or Divisional Court will be required to define this term as cases are appealed respectively via judicial review or the criminal law mechanism of “case stated”. In both examples Judges of the High Court will, in effect, be forced to legislate because Parliament will have failed to do so. That is highly undesirable and suggests the PMB is badly drafted.

- ii. In the second place, a criminal court could easily dismiss any prosecution brought against a Defendant either at common law or via the Article 6 right to a fair trial on the basis that the Crown cannot define a core term in the offence. This too, is highly undesirable, as it indicates Parliament has passed an unworkable criminal a statute.
  
- c. The term “gender identity” is in any event a contested and unevidenced dualist theory of mind. Persons in the United Kingdom are free to reject this ideology and the very existence of the concept of a “gender identity” and there is legal protection for such a view following the case of *Forstater v CGD Europe and Others: UKEAT/0105/20/JOJ*.
  
- d. It follows from the above that any prosecution based on the claim a “gender identity” exists would necessarily require the Crown to adopt the ideological position that this is the case. This fundamentally changes the nature of standard criminal trials with the prosecution being required to advance an ideological position.
  
- e. It is further difficult to see how the Crown might go about proving the existence of a concept that remains a self-reported and contested phenomenon. Any effort so to do would likely flounder against the high criminal standard of proof which requires that the tribunal of fact be sure beyond a reasonable doubt of the Prosecution case. It also raises the prospect of the Defence being entitled to call evidence to suggest such a phenomenon does not exist. We respectfully observe that criminal courts are not the right venue for ideological debates of this kind.
  
- f. We note the wide drafting of section 2 (b) which proposes to criminalise a practice with the intended purpose of attempting to “*suppress a person’s expression of sexual orientation or gender identity*”. We are deeply concerned that the words “supress” and “expression” are undefined in this PMB. This wide drafting has the potential to criminalise a vast array of human behaviour which is not connected to what the public would understand by the term “conversion therapy” and it is difficult to reconcile this wide drafting with the intended targets of the PMB. The concept of “suppression” is of particular concern given recent proposed guidance from the Crown Prosecution Service on domestic abuse which suggests a failure to use preferred pronouns by spouses or parents might amount to such.
  
- g. The PMB at section 3 provides for a summary conviction penalty of a fine not exceeding level 5 (an unlimited fine). There is no provision for imprisonment or for conviction on indictment. This means the offence as proposed could only be tried in the Magistrates and would be categorised as a “summary only” offence (such as common assault or speeding). These penalty provisions and venue restriction are difficult to reconcile with some of the campaigning language by advocates of this legislation who routinely describe this offence as torture adjacent. We consider the penalties and classification in the PMB odd for this reason.

7. Taken together, we are concerned by the wide scope of the proposed offence in the PMB and we repeat our concern that it seeks to regulate clinical practice or family discussions via the blunt instrument of a criminal statute. The PMB as drafted could easily criminalise precisely the forms of talking/exploratory therapy recommended by Dr Cass OBE. Accordingly, however well-intentioned the PMB is, we respectfully ask that it is reconsidered given the serious matters we raise here as to the effect on homosexuals and the workability of this legislation. A conversion therapy ban should not fuel the very problem it claims to solve. This PMB would state mandate the "affirmation only" approach which would in turn adversely affect the primarily same-sex attracted cohort presenting at gender clinics.

Yours Faithfully,

The Directors, Gay Men's Network

#### Annex 1

##### Chronological Schedule of incidents at the Tavistock tending to suggest institutional homophobia

- (i) November 3rd, 2018 - Dr David Bell circulates an internal report raising serious safeguarding concerns saying "staff had "very serious ethical concerns" that children were making life-changing decisions with "inadequate" examination and consent. Some openly homophobic parents pushed their children to transition because they were gay, the report said. In other cases, youngsters seized on transition as a "solution" after abuse or bereavement. Their histories were not properly explored by clinicians struggling with "huge and unmanageable caseloads" and afraid of being accused of transphobia if they questioned the "rehearsed" surface presentation. The report said Gids had tried to "placate" lobby groups such as the Mermaids charity, which campaigns for children to be given sex-change treatment."
- (ii) February 17th, 2019 - doctors at the Tavistock say that "England's only NHS gender clinic for children is exposing young patients to "long-term damage" because of its "inability to stand up to the pressure" from "highly politicised" campaigners and families demanding fast-track gender transition"
- (iii) February 24th, 2019 - governor and consultant psychotherapist Marcus Evens resigns in protest from the Tavistock GIDS service saying it had "created a "climate of fear" and was trying to "dismiss or undermine" concerns raised by its own clinicians"
- (iv) April 8th, 2019 - GIDS staff report homophobia as a serious safeguarding issue, "So many potentially gay children were being sent down the pathway to change gender, two of the clinicians said there was a dark joke among staff that "there would be no

gay people left". "It feels like conversion therapy for gay children," one male clinician said. "I frequently had cases where people started identifying as trans after months of horrendous bullying for being gay," he told The Times. "Young lesbians considered at the bottom of the heap suddenly found they were really popular when they said they were trans. Another female clinician said: "We heard a lot of homophobia which we felt nobody was challenging. A lot of the girls would come in and say, 'I'm not a lesbian. I fell in love with my best girlfriend but then I went online and realised I'm not a lesbian, I'm a boy. Phew.'

- (v) October 12th, 2019 - mental health nurse Sue Evans "reported her alarm at the speed of assessment and feared that treatment plans were being influenced by groups such as Mermaids, a transgender advocacy charity... Ms Evans said: "When you work in the area of gender dysphoria you begin to see that many of these children have other areas of concern or difficulty, such as depression, autism, trauma, childhood abuse, internalised homophobia, relationship difficulties, social isolation and so on.."
  
- (vi) September 17th, 2020 - safeguarding lead Sonia Appleby wins a whistle blowers case against GIDS based on her concerns over homophobia and the influence of lobby groups and unregulated doctors being side-lined, suppressed and ignored. Among her "protected disclosures" (and other evidence in that case) are the following matters:
  - a. First protected disclosure, 30th October 2017 – "a number of GIDS staff have brought some concerns to my attention of late. Predictably, there are challenges regarding Mermaids, rogue medics and the political expectations of the national service. Perhaps more worrying are the manifestations of a number of splits within the team (not unusual) but I have been reported is quite potent: (a) team members feel they are coerced into not reporting safeguarding issues, and to do so is "trans phobic"
  
  - b. Second protected disclosure, 13th November 2017, "(i) Dr W is still prescribing despite being apparently suspended by the GMC (ii) the culture within the service has created a dynamic, which makes it hard for staff to raise safeguarding concerns and this is compounded by staff being referred to as being transphobic (iii) the model of service delivery is not properly take into account that some children are referred within the context of significant familial adversity (iv) a worry that some young children are being actively encouraged to be transgender without effective scrutiny of their circumstances (v) some staff have raised concerns the service, which now has a referral rate of nearly 2000 referrals annually is bound to be seeing some children, who falsely protect [sic] presenting as being transgender as a less oppressive option than acknowledging they are gay. There is apparently no acceptable mechanism for discussing these phenomena within the team14".
  
  - c. In a meeting in March 2018 Mrs Appleby "remarked that if they were not careful a Jimmy Savile type situation could arise, adding, when he looked upset, that she did not mean there was child abuse, but rather, an institution turning a blind eye to what was in front of them."

- d. May 15th, 2018 - Mrs Appleby “was approached by another worried GIDS staff member. The claimant reported their concerns to Dr Senior, listing patients’ limited understanding, the premature use of blockers, failure to address the fact that some children lived in homophobic environments, that some staff felt themselves unsafe in the group and were afraid to report these issues within the Trust, high caseloads, staff with anxiety symptoms, and concerns that the GIDS manager had no helpful model for the complexities of the work, nor understood the culture of discontent among the staff group.”
- e. Mrs Appleby went on to outline how her serious concerns were silenced, ignored and resulted in pseudo disciplinary action taken against her involving a note being placed on her permanent file.
- (vii) December 1st, 2020 - Divisional court hands down judgment in Bell v Tavistock [2020] EWHC 3274 (Admin) expressing grave concern for record keeping, unexplained rise in female patients, prevalence of autism in patient cohort and obtaining of Gillick consent.
- (viii) December 5th, 2020 - Dr David Bell faces disciplinary action for raising concerns following his report which “included testimonies from ten clinicians, who warned that children with complex histories were being referred for puberty blockers and cross-sex hormones after a few sessions and without proper investigation of their cases. Children were being prescribed the experimental drugs under pressure from transgender rights groups”.
- (ix) January 20th, 2021 – The Care Quality Commission publishes a damning report on the GIDS rating the service as inadequate, citing safeguarding risks as one of many deficiencies.
- (x) June 20th, 2021 - a report that a gay psychologist who worked at GIDS speaking about his fears that the clinic was running “conversion therapy for gay kids”<sup>20</sup>. This article records that Dr Matt Bristow “said he was one of several gay members of staff at the clinic who felt concerned that patients’ homosexuality — and the possibility that gay children were saying they wanted to change sex because they were being bullied — was ignored.”
- (xi) September 17th, 2021 - Appeal in Bell v Tavistock handed down with Lord Burnett CJ warning doctors that the obtaining of Gillick consent crucial and medical negligence actions likely to follow were this is not so secured<sup>21</sup>. 1. November 23rd, 2021 – Dr Bell comments that “Girls who do not like pink ribbons or playing with dolls are being treated as transgender at the NHS Tavistock clinic.... With “proper” treatment, he believed many of the children would go on to be gay or lesbian and instead wants gender-focused treatment to be scrapped with these issues looked at as part of general mental health support.”

- (xii) February 2022, interim Cass reviews reports “We have heard that some young people [...] are advised not to admit to previous abuse or trauma, or uncertainty about their sexual orientation...We have heard from young lesbians who felt pressured to identify as transgender male.”
- (xiii) July 29th, 2022, it is reported that the “Tavistock child gender clinic forced to close over safety fears” following the interim Cass report.
- (xiv) July 30th, 2022, government minister Rt Hon. Kemi Badenoch MP refers to events at GIDS in the following terms “The Tavistock scandal shows the dangers of civil service groupthink”
- (xv) August 11th, 2022, it is reported that 1000 families will join a medical negligence group litigation action against the Tavistock GIDS service, it is reported that “This includes allegations it recklessly prescribed puberty blockers with harmful side effects and adopted an “unquestioning, affirmative approach” to children identifying as transgender”.

Annex 2 – Text of the PMB

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1

Conversion therapy: prohibition

- (1) A person commits an offence if they practise, or offer to practise, conversion therapy.
- (2) In this Act, “conversion therapy” is any practice aimed at a person or group of people which demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to another, and which has the intended purpose of attempting to—
  - (a) change a person’s sexual orientation or gender identity, or
  - (b) suppress a person’s expression of sexual orientation or gender identity.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.