



Liaison Committee

Corrected oral evidence: Special inquiry committee proposal – Gender Recognition Act 2004

Tuesday 14 November 2023

10.20 am

Members present: Lord Gardiner of Kimble (The Chair); Lord Bach; Lord Bichard; Lord Blencathra; Lord Collins of Highbury; Lord Haskel; Earl Howe; The Earl of Kinnoull; Baroness Scott of Needham Market; Lord Taylor of Holbeach; Baroness Walmsley.

Evidence Session No. 2

Heard in Private

Questions 7 - 13

Witness

[I](#): Lord Sandhurst.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence.

Examination of witness

Lord Sandhurst.

Q7 **The Chair:** Good morning, Lord Sandhurst. We would very much welcome a three-minute presentation on the Gender Recognition Act 2004 post-legislative scrutiny inquiry, followed by five minutes of questions.

Lord Sandhurst: I shall take our original proposal as read, because you all have that. I think you also have a report or a note of the meeting that some of us had with your clerk. Since then, there has been one important development: the decision handed down on 1 November in the Inner House of the Court of Session in Scotland, which is the equivalent of the Court of Appeal in this country. The Equality Act and the Gender Recognition Act are UK statutes, so its decision will be of persuasive power and influence here.

It is quite significant and far-reaching. I will read to your Lordships a few lines from it of general application. In paragraph 30, it said, "The issues which surround the whole subject of gender reassignment, gender identity, and gender recognition are difficult and sensitive. It is not always easy for the law to keep pace where societal attitudes and understandings are in a state of flux. The GRA was introduced almost 20 years ago; and the EA"—the Equality Act—"is over 10 years old, with many of the provisions thereof having their foundation many years before. In the last 20 years the debate and understanding about the issues at the heart of this case have moved on significantly".

At paragraph 31, it continued, "This is an area on which individuals and organisations hold firm, even entrenched views, where there is intense public debate. At its heart are matters of social policy which are best addressed by parliaments". I would suggest, respectfully, that that is an invitation to Parliament to have another look.

It is clear, we would suggest, on the back of that decision, that the certificate, when it is granted under the Gender Recognition Act—the GRC—has wide-ranging consequences that were not contemplated by Parliament. Sex in the Equality Act means biological sex, unless of course, now we know, it has been modified by a gender recognition certificate. Trans women with GRCs are to be classified as women. They have a presumptive right to use services intended for the opposite sex. It is important to bear in mind that the GRA does not impose a requirement to have had surgery, so an intact, if I can use that word, male or female holding a GRC is in law just as much now the acquired gender as someone who was born differently.

There is also an exception in the Equality Act that allows exclusion from access to sex-based services if it is proportionate. It may be lawful now, all the same, to exclude an intact natal male with a GRC from a woman's changing room, but not from a women's-only political association. It is unlikely that Parliament had that sort of subtle distinction in mind. It is the

interaction of the two Acts, because the Equality Act postdates the Gender Recognition Act.

The only other points I would make are that we would attempt to synthesise the international position, try to see what is actually happening around the world, and bring that together. Members of the House have wide expertise in law, social issues and medicine. We are confident that we could get it done in a year. There is certainly a live issue on social spaces and organisations, and there are many competing issues on fairness and inclusion. This has moved on since the assessment of the report done seven years ago. We suggest that it is time to have another look. Certainly when the Joint Committee on Human Rights did its pre-legislative scrutiny before this Act came into force, it did not imagine anything like the number of people acquiring certificates. That is my opening pitch.

Q8 Baroness Walmsley: Given the time allowed for this particular inquiry and what you have read to us at the beginning about the situation in Scotland, would you be concerned that the committee may very well go down the rabbit hole of looking at the constitutional arrangements between the UK and Scotland, rather than the substantive issue that you would like it to look at?

Lord Sandhurst: No, I do not think there would be any risk at all of that, because the Act is the same here and there. I do not see that as an issue. Properly chaired, it would leave that to another committee.

Q9 The Earl of Kinnoull: Thank you for the presentation. This is a pretty similar question. I wondered whether now is the time for this. We have two very significant things coming up. We not only have the court case going through on the Scottish law—it is still only a first instance and is going to dribble through, I presume, all of next year; certainly that was Lord Hope's view on radio—but we have a general election coming up. I thought that the timing might be better for this in a year's time, but I would love your thoughts on that.

Lord Sandhurst: We thought that this would help an incoming Government, because the situation on the ground is not going to change. What matters here is not the devolution issues but actually just getting the law right.

Q10 Lord Bichard: I will carry on in the same direction with a slightly different perspective. The timing may be right, but we are looking here at something where things are moving very quickly. As you say, the pace is immense. We are looking at an incredibly complex issue, which has legal, political, scientific, legislative, constitutional and international dimensions. Do you really think that an inquiry could do justice to this in 10 months, which is really the time that we have?

Lord Sandhurst: We think that it could have a pretty good crack at it. It is difficult. You cannot tell until you have embarked on it, can you? I think so, if it is properly chaired and you collect the evidence. Members of the House are very experienced at sitting on committees and covering a lot of ground. Last year, I sat on the inquiry into the Fraud Act and online fraud.

We covered a huge amount of ground in the end and produced a very comprehensive report. I do not see why we could not do the same here.

Q11 Lord Collins of Highbury: I have two questions. The Government conducted an extensive consultation on the GRA over a long period of time that looked at some of the issues.

Lord Sandhurst: Do you mean the 2015-16 consultation?

Lord Collins of Highbury: Yes. It looked at the impact on those who would be most affected and why there was the ease of use here.

The other thing you mentioned comes back to this multiplicity of the dimensions and the impacts. It clearly is a very controversial issue, for want of a better term, where people hold polarised opinions. In the next 12 months, we have a general election where we will be faced with these opinions being expressed. After the next election, when things have been settled, it may be an opportunity to have a more dispassionate look at the issue and try to take the polarisation out of it. I fear that your proposal will not depolarise but have the opposite effect.

Lord Sandhurst: I would hope not. People who will give evidence may have strong views, but the sort of evidence one would be looking at would be largely factual. There is opinion in it, but it will be based on data and the scientific position, the number of people and where issues are arising in the interaction with the Equality Act.

Lord Collins of Highbury: Can you answer my question in relation to the consultation before?

Lord Sandhurst: That was 2015-16. It was referred to by the Scottish court, which thought that things had moved on a lot since then. I think they have. If you go back to 2015 or 2016, people were not talking about it across the national press in the way they are now. It was not a big issue in the same way. It was important to the people involved.

Lord Collins of Highbury: Apart from those who are affected, yes.

Lord Sandhurst: Yes, I am not diminishing that at all, but it was not out there in the open. This has now become a big issue across the press and the public, or quite a big issue anyway. A sensible committee looking at this can take some of the heat out of it and produce a factual report, which those can look at later, afterwards, and produce amending legislation to bring it up to date. Otherwise, there will never be a right time.

Q12 Lord Haskel: I want to understand exactly what you are saying. Are you telling us that it is up to Parliament to sort this out and that the courts have not?

Lord Sandhurst: The courts have declared what the law is. They cannot sort out what they describe as the societal issues. That is for Parliament. It is a bit like assisted dying, is it not? That is another issue. The courts have lamented the fact that that has not been sorted.

Q13 **Lord Blencathra:** Related to that, I thought that the comments of the Court of Session were very telling. As a former Scots lawyer, of course I might think that. What is the status of that decision in England for our courts? You said that it is persuasive. What does that mean?

Lord Sandhurst: It is persuasive. It means that they will look at it to decide whether they agree with it. Having read it myself as an English lawyer, it seemed to me that it was pretty spot on. It does not necessarily make life any easier, and I think they were conscious of that. That is why they put these two paragraphs in in the middle. They said that it is clear that the law now is this interaction, but it is not a satisfactory state of affairs on the ground, as applied.

The Chair: Thank you very much indeed for your presentation and answering questions. I am most grateful to you.