

Written evidence submitted by Professor Alex Sharpe [GRA2022]

Women and Equalities Committee, Transgender Inquiry Oral Hearings 9/12/20

Dear Committee Members,

In the evidence given by Professors Stock, Freedman and Sullivan (Panel 2) certain claims were made and certain ‘evidence’ was relied on. In my view, some of the claims made and ‘evidence’ relied on raise significant concerns:

1. Prof Sullivan expressed concern about the impact reform of the Gender Recognition Act 2004 may have on women’s sport. Yet, the Equality Act 2010 (**Section 195**) provides for exclusion of trans women from women’s sports where it is appropriate to do so in the interests of ‘fair competition’ and ‘safety.’ This provision (exception) will remain in force. Whatever concerns some people may have about women’s sport, proposed changes to the GRA will have absolutely no impact on the current position. The reality is all trans women, with or without a GRC, both now, and in the future, will be subject to this legislative provision. In practice the matter is left with sporting bodies to regulate and they set rules as they see fit bearing in mind the above provision. Reform will not change this reality.

2. Professor Freedman referred to the infamous ‘**Swedish study,**’ (2011) a study widely circulated and relied on within gender critical circles (<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885>). She described the study as having “very robust data.” Gender critical feminists interpret this study to argue offending rates of trans woman are similar to those of cis men. They then rely on this interpretation to foreground ‘dangers’ posed by trans women. Yet, the study does not actually support these conclusions. It is a much more nuanced study than has been suggested. Moreover, as I imagine Professor Freedman must be aware, the study’s own author (**Cecilia Dhejne, Professor of Psychiatry, Karolinska Institute, Stockholm**) has had to repeatedly disavow the claims made by gender critical feminists about what her study means. See interview with the author in Trans Advocate (2015): <https://www.transadvocate.com/fact-check-study-shows-transition-makes-trans-people-suicidal-n-15483.htm> What the author actually says is that the matter is complex and as trans women access necessary healthcare, offending patterns taper off and do not mirror a male pattern of offending. Indeed, so exasperated is Professor Dhejne with attempts to misrepresent her study that she has stated in the above interview: “It’s very frustrating! I’ve even seen professors use my work to support ridiculous claims.” Professor Dhejne elaborated further on this problem:

“The individual ... who is making claims about trans criminality, specifically rape likelihood, is misrepresenting the study findings. The study as a whole covers the period between 1973 and 2003. If one divides the cohort into two groups, 1973 to 1988 and 1989 to 2003, one observes that for the latter group (1989 – 2003), differences in mortality, suicide attempts, and crime disappear. This means that for the 1989 to 2003 group, we did not find a male pattern of criminality. As to the criminality metric itself,

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we were measuring and comparing the total number of convictions, not conviction type. We were not saying that cisgender males are convicted of crimes associated with marginalization and poverty. We didn't control for that and we were certainly not saying that we found that trans women were a rape risk. What we were saying was that for the 1973 to 1988 cohort group and the cisgender male group, both experienced similar *rates* of convictions. As I said, this pattern is *not* observed in the 1989 to 2003 cohort group.”

3. In her evidence, Professor Stock, appears to acknowledge that when you “drill down” it may be reform of the GRA will not impact the sex-based exceptions. However, she insisted “in the ordinary person’s mind they [the GRA/EA] seem to relate” by which I understood her to mean, there is a (mistaken) belief reform will undermine the sex-based exceptions. She confirmed the same when she stated: “it’s normal people will assume that if someone has a GRC they will be entitled to access all the spaces, resources and groups someone of the opposite sex would.” It is clear under the Equality Act that trans women can be excluded from women-only spaces, whether or not they have a GRC, wherever exclusion is ‘a proportionate means of achieving a legitimate aim,’ but not otherwise. If people are labouring under a misapprehension about this legal position, it is likely to be due, at least in part, to the way gender critical feminists have created a moral panic around gender segregated spaces over the last two years.

4. Professor Freedman stated in her evidence that there “is a need to look at the GRA.” I understood this to mean that her concern lay not only with gender self-declaration but was oriented toward rolling back the rights given by the GRA to trans people. Professor Freedman’s concern with the scope of existing trans rights seemed to be extended by comments made by Professor Stock to trans rights under the Equality Act, when she stated: “it should be absolutely commonplace that exceptions can be invoked.” Yet, the Act is clear that the threshold for granting an exception is high, and for this to change it would be necessary to legislate to reconfigure the balancing of rights already achieved through the provisions of the Equality Act 2010, provisions which appear to have worked well since 2010, and prior to the government’s announcement to reform the GRA in 2017, without drama.

5. In relation to the claim trans women pose some kind of existential threat to cis women and girls, a claim, which in my view, has helped generate a moral panic about trans women and has led to trans women being viewed in predatory terms, there is little empirical evidence to support it. As I detail in my article in the **Modern Law Review** (**‘Will Gender Self-Declaration Undermine Women’s Rights and Lead to an Increase in Harms?’** 11 January 2020) <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2230.12507>, to which Angela Crawley referred in the parliamentary session, US studies have shown there is little evidence trans women, or indeed cis men pretending to be trans women, pose any significant danger to cis women. Thus, one recent study in the US compared localities in Massachusetts with and without gender identity inclusive public accommodation nondiscrimination ordinances. Crucially, it found “the passage of such laws not related to the number or frequency of criminal incidents in these spaces”¹ and “reports of privacy

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and safety violations in public restrooms, locker rooms, and changing rooms [to be] exceedingly rare.”² This chimes with the findings of institutional actors on the ground such as police departments and human rights bodies: “**no problems** since passage of 2011 [non-discrimination] law” (Las Vegas Police Department); “**no factual basis** for sexual assault fears” (Maine Human Rights Commission); sexual assaults stemming from non-discrimination law “**not even remotely**” a problem (Minneapolis Police Department); “**zero allegations**” of bathroom sexual assault (Oregon Bureau of Labor and Industries).³ In another study, which focused on seventeen school districts around the US with protections for trans people, and which collectively cover more than 600,000 students, no harassment in bathrooms or locker rooms was found after implementation of non-discrimination policies.⁴

6. We might think a concern over harm is more apposite in the context of rape crisis centres and domestic violence refuges. However, a recent report commissioned by Stonewall, which interviewed representatives of fifteen of the largest national and regional women’s organisations in the UK (including **IDAS, LAWA, Oasis, RISE, Women’s Aid, and Rape Crisis Scotland**) found no evidence of problems associated with providing access to and catering for trans women.⁵ The study found that such bodies have been supporting trans women for a long time and that no real problems on the ground have been experienced. As one interviewee explained: “[w]e recognise trans women as women, therefore they’re included in our women only times and spaces, and that’s been our practice for years, like years and years.”⁶ Indeed, several women’s organisations already operate on the basis of gender self-declaration. And perhaps, most significantly, none reported having used the sex-based exceptions to exclude trans women. We should trust these dedicated women’s groups to do this important work.

7. Gender critical feminists often emphasis that the trans community is not a monolith and that there are some trans people who support their gender critical views. Such claims were made before the committee. Indeed, elements of the press often play this card in an attempt to portray themselves as non-biased in their accounts of trans related issues. Of course, both claims are true. What they mask however, is the fact there are very few trans

¹ A. Hasenbush, A. R. Flores and J. L. Herman, ‘Gender identity nondiscrimination laws in public accommodations: a review of evidence regarding safety and privacy in public restrooms, locker rooms, and changing rooms’ (2018) *Sexuality Research and Social Policy* 1-14. See also B.S. Barnett, A.E. Nesbit & R.M. Sorrentino, ‘The transgender bathroom debate at the intersection of politics, law, ethics & science’ (2018) 46(2) *Journal of the American Academy of Psychiatry and the Law* 232-241.

² *Ibid.*

³ G. Lopez, ‘Myth 3: Letting trans people use the bathroom or locker room matching their gender identity is dangerous,’ *Vox* 14/11/18 <https://www.vox.com/identities/2016/5/13/17938102/transgender-people-bathrooms-locker-rooms-schools> (accessed 12/3/19).

⁴ R. Percelay, ‘Seventeen school districts debunk right-wing lies about protections for transgender students,’ *Media Matters* 3/6/15 <https://www.mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867> (accessed 12/3/19).

⁵ Stonewall, ‘Supporting trans women in domestic and sexual violence services: interviews with professionals in the sector’ (2018) https://www.stonewall.org.uk/sites/default/files/stonewall_and_nfpsynergy_report.pdf (accessed 12/3/19).

⁶ *Ibid* at 21.

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women, and even fewer trans men, who support the gender critical position out of a population numbering in the hundreds of thousands. While it is difficult to know the basis or motivations for such views, what is important to grasp is that these individuals function very conveniently for gender critical feminists and the media interests that promote them, but crucially belie the fact they are a tiny percentage of the trans community.

8. Professor Stock stated that even if there is no evidence trans women pose a danger to cis women, the onus ought to be on trans women or the government to demonstrate the absence of danger. I found this claim remarkable and consider it analogous to the claim made in the 1980s that gay men pose a danger to little boys.

9. Professors Freedman and Stock both argued that ‘sex’ means biological sex, and in Professor Freedman’s case, that it actually has this meaning in law. Nobody is denying the materiality or biology of bodies, though there are clearly different ways people, including scientists, think about biological sex. What is important to grasp here is that ‘sex’ (and male/female) as legal concepts do not need to be based on biology. Moreover, they are not based on biology. Sex has never been defined in legislation to have a biological meaning. It is unlikely that the question was ever considered by parliament. It is true that Justice Ormrod held 50 years ago that sex is determined by reference to a congruence of chromosomes, gonads and genitalia at birth (*Corbett v Corbett* [1970] 2 All ER 33). However, he did so *only* for the purposes of marriage law, and his decision is no longer legal authority on this point as it is premised on the idea two men cannot legally marry. Clearly, they can and have been able to do so since the **Marriage (Same-Sex Couples) Act 2013**.

Moreover, the GRA was a response to the decision of the European Court of Human Rights in *Goodwin and I v UK* (2002) 35 EHRR 18, which found the UK to have violated the applicants’ Article 8 and 12 rights under the Convention. I draw the committee’s attention to the following passages from the court’s judgment: “It is not apparent to the Court that the chromosomal element, amongst others, must inevitably take on decisive significance for the purposes of the attribution of gender identity ... The Court is not persuaded ... the state of medical science or scientific knowledge provides any determining argument as regards the legal recognition of transsexuals” (paras 82-83). And at para 100: “The Court is not persuaded that at the date of this case it can still be assumed that these terms (man and woman) must refer to a determination of gender by purely biological criteria (as held by Ormrod J. in the case of *Corbett v. Corbett*).”

Indeed, sex and gender are, and have been, used interchangeably in law and culture for a long time, as recently pointed out by Law Professor, Sharon Cowan and her colleagues (‘**Sex and Gender Equality Law and Policy: A Response to Murray, Hunter Blackburn and Mackenzie,**’ *Scottish Affairs* 2020 <https://eupublishing.com/doi/pdfplus/10.3366/scot.2020.0347>). ‘Legal sex’ clearly includes trans people who have a GRC by virtue of the GRA 2004. But the legal concept of ‘sex’ is much wider than this and encompasses all trans people irrespective of possessing a GRC. This is because ‘sex’ as an anti-discrimination law category was held

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by the European Court of Justice, as long ago as 1996 and unanimously, to include not only men and women but people who undergo gender transition (*P v S and Cornwall County Council* [1996] CMLR 247). Legal categories, like sex and gender, are not set in stone but adapt and evolve to changing circumstances. Thus, sex discrimination has also been found to cover gender-based discrimination involving gender stereotypes. In reality, it is often difficult to disentangle sex-based and gender-based aspects of discrimination.

10. Finally, I attach some important information concerning trans people and prisons which is relevant to appreciating the problematic nature of claims made about ‘dangers’ allegedly posed by trans women in this particular context. The information has been compiled by **Bent Bars** (<https://www.bentbarsproject.org>) an LGBT prisoners’ rights group that has been working with LGBT prisoners for over a decade. In particular, I draw the committee’s attention to sections 7, 10, 12 & 13 of Information Sheet 2: https://uploads-ssl.webflow.com/5f008e177bc6f82d3047d132/5fccb7f83e0fae043ce1b2b8_BB_TIS_2.pdf

Yours Sincerely,

Alex

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