

Written evidence from TransActual (FOE0103)

Introduction and Abstract

1. This submission is by TransActual CIC, a not-for-profit community interest company established in 2017 and incorporated in July 2020 which aims to educate trans people and society about the realities facing trans people.
2. In this submission we wish to restrict ourselves particularly to the question around the protection of the right to freedom of expression.
3. In any discussion of freedom of speech or freedom of expression, consideration must be given to equality and reasonableness. Freedom of speech does not and must not absolve one from the consequences of such speech.
4. Trans people have particular experience of being cast on one side of an argument, whilst the reality of our lives and the hurdles we face is different to the now usual media narrative.
5. It is our assertion that terms like no-platforming and cancelling have been weaponised by the powerful. Freedom of speech cannot and must not be restricted as a right for only the rich and powerful.

Definitions

6. Freedom of expression is a qualified right¹ meaning that, in certain situations, curbs may be placed upon it. Article 10 of the Human Rights Act 1998² allows restrictions to be placed where necessary in a democratic society in order to protect the state's integrity and judiciary, from crime, peoples' health, morals or reputations.
7. The Equality and Human Rights Commission agree that unrestrained freedom of expression can run counter to an individual's right to privacy and family life under Article 8 of the Human Rights Act. Article 8 was the driver behind the protections offered to trans people who had obtained legal gender recognition under the Gender Recognition Act 2004³.
8. Just because something is true (or alleged to be true) doesn't give people the unrestrained right to say it. Hassling people over medical conditions or women over the existence of miscarriages would be considered harassment under the Protection from Harassment Act 1997⁴. Note that section 1(1) doesn't allow the defence that the accused didn't know they were harassing the defendant if it could be shown that it would be reasonable to understand that the accused's behaviour was harassment.
9. The Human Rights Act does not innately give one group of people more rights than another group unless that group breaches the conditions around freedom of expression or freedom of assembly.
10. It should be noted that freedom of speech is always qualified. The press moderate themselves, at least in principle, by adopting some editorial restrictions, usually but not always applied by external bodies such as IPSO and Impress. Broadcasters are restricted by the Ofcom

¹ <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression>
"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

² <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/1/chapter/9/paragraph/2>

³ <https://www.legislation.gov.uk/ukpga/2004/7/section/22>

⁴ <https://www.legislation.gov.uk/ukpga/1997/40/section/1>

Broadcasters' Code. Advertisers are restricted by various codes issued and monitored by the Advertising Standards Authority. Courts regularly consider defamation and libel cases. It is an offence to spread lies about parliamentary candidates during election campaigns⁵.

Inequalities

11. Access to justice, however, is greatly influenced by privilege. Those who wish to prosecute a case for libel must either fund the case themselves or find lawyers who will do the work pro-bono or on a conditional fee arrangement (commonly known as “no-win, no-fee”) basis⁶. This is a significant deterrent to those who find themselves the target of libellous publication.
12. It also means that the rich and powerful can often act with impunity when deciding to publish material on those without access to the large amounts of money required. Lord Justice Leveson noted the problems faced by those seeking to sue the press for libel⁷.
13. The same situation is faced by those facing libel and defamation on social media. While the cost escalations described by Lord Justice Leveson might not be on the same scale as when pursuing cases against press organisations, they still exist.
14. The overall effect is to create an imbalance of justice which protects those who are already privileged, and disadvantages further those who are already disadvantaged.
15. The Government's 2018 LGBT Survey reported that “*the discrimination, harassment and bullying that disproportionately affect LGBT people ... continue to be an issue in the workplace for those with minority sexual orientations and even more so for those with minority gender identities.*”⁸ The report went on to reveal that, while 87.6% of those who identified as gay or lesbian had been in employment in the previous 12 months, only 65.3% of trans women and 56.9% of trans men had been similarly employed.
16. This survey reinforces a number of earlier surveys which show that trans people are more likely to experience discrimination and poverty than cis people.
17. Analysis of the press by Trans Media Watch shows that, once you take circulation into account, the pieces against GRA reform over the summer of 2020 outnumbered the pieces advocating GRA reform by a factor of roughly 6 to 1. This increases to a factor of 20 to 1 if you remove the “pink press”. Out of the pieces discussing trans issues over that time, trans people were only reported in 5% of them. The relative size of the audience was not considered in that analysis but we suspect, if taken into account, will only further increase the imbalance.

Contradictions around “Cancel Culture”

18. Media coverage is full of discussion around “cancel culture” and “no platforming”, given a further boost by US President Trump's removal from Twitter and Facebook earlier this month.
19. According to Merriam Webster, the US-based web dictionary, “*Canceling and cancel culture have to do with the removing of support for public figures in response to their objectionable behavior or opinions. This can include boycotts or refusal to promote their work.*”⁹
20. However, media appears to define those terms fluidly, usually to its own advantage.
21. In December 2017, Peter Tatchell stated to this Committee that he had not been “no-platformed” as he had spoken at the events in question¹⁰. Despite this, later that month Nick Robinson on the

⁵ s106, Representation of the People Act 1983 – <https://www.legislation.gov.uk/ukpga/1983/2/section/106>

⁶ <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=07565660-1393-4528-A4C0-5BDC973F8B7C>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf - Section J, Chapter 3, pp1499-1501

⁸ National LGBT Report, Research Report, July 2018, Chapter 7, p 130

⁹ <https://www.merriam-webster.com/words-at-play/cancel-culture-words-were-watching>

BBC Today programme stated that Tatchell had been no-platformed. A complaint to the BBC was ultimately rejected following the BBC's re-definition of the term, asserting this Committee had found the term to not be clearly defined or understood.

22. Trans people are forefront of the marginalised groups often associated by the media as those doing the cancelling¹¹ or no platforming and are usually now presented as threats to the values underpinning our society.
23. A lot of this media outcry has been from people who are not used to having their opinions challenged. It was notable that the piece written by Suzanne Moore about why she'd left the Guardian was given a lot of affirmation by the commentariat but was almost unanimously condemned by LGBT communities.
24. The pattern of people claiming to have been silenced or cancelled and subsequently giving a large number of high profile media interviews continues – as highlighted by Jane Fae in her evidence to this Committee in December 2017¹². A recent example is that of Prof Kathleen Stock¹³ who has just been awarded an OBE, an action protested by over 600 other philosophers.
25. The image from 13 January 2021 of US congresswoman Marjorie Taylor Green speaking to the US House of Representatives and being broadcast live to the nation while wearing a facemask imprinted “CENSORED”¹⁴ is a good demonstration of this paradox.
26. This is aligned with some of the questions this Committee were asking in December 2017. As Helen Belcher said in her evidence to the Committee, “*These people tend to be demanding a right to be heard. There is no such right, because then you end up in absurd positions.*”¹⁵ One of these positions is that individual or an organisation would not be allowed to cancel a contract with someone if that someone makes statements they understand to be prejudicial to their organisation or otherwise harmful or criminal.
27. As explained in para 17 above, trans people were more-or-less completely ignored by the mainstream press over the summer of 2020 in the discussions around reform of the Gender Recognition Act. This omission of voices by the press is its own form of cancelling – yet the concerns over that are not published or broadcast within the mainstream media.
28. Indeed, people opposed to reform of the Gender Recognition Act appear to be criticising trans people for responding to the Government consultation¹⁶, as if it was unacceptable for trans people to express views on legislation which directly affects them. This is an egregious attempt to intimidate trans people into not responding to future Government consultations.

¹⁰ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/oral/75775.html> - Q31 “*There have been several attempts to no-platform me, but none of them has come to anything in the end. The most famous example was not strictly a no-platforming. It was in February 2016, ... The upshot was that she did not speak, but I did. ... So I have not yet personally been a victim of a no-platform policy, despite some attempts and variations.*”

¹¹ The BBC Radio 4 programme *Broadcasting House* on 16 January 2021 had a discussion with Baroness Bakewell, which included a session on “cancel culture”. The very first thing Baroness Bakewell referenced after she had somewhat ironically been refused “permission” to say something was to reference the way the media landscape around trans people had changed, in her view for the better, from the 1990s.

¹² *ibid* – “*There are a few instances that I think are genuine no-platforming. Germaine Greer in Cardiff was one. There was a suggestion that Germaine would be no-platformed in Cardiff. She then gets on to ‘Newsnight’, and her words get echoed around millions of people. Then Cardiff has her anyway. If that is no-platforming, I would like a bit of that, please.*”

¹³ <https://www.dailymail.co.uk/news/article-9155659/I-refuse-bullied-silence-PROFESSOR-KATHLEEN-STOCK.html>

¹⁴ <https://www.independent.co.uk/news/world/americas/us-election-2020/marjorie-taylor-greene-mask-trump-impeachment-b1786952.html>

¹⁵ *ibid* - Q31

¹⁶ <https://committees.parliament.uk/oralevidence/1393/html/> - Q29, Prof Freedman's response

29. Another example of silencing was on 22 December 2020, when the BBC published a piece by Ben Hunte which included personal testimonies on the impact of the recent high court ruling on puberty blockers¹⁷. While this featured on the news site's front page for around an hour, it then appeared to disappear without trace. The piece still exists but isn't indexed from anywhere. This demonstrates another issue with freedom of expression – in that the BBC could claim balance in their coverage while effectively hiding the pieces that constitute that balance from public view.
30. The right to protest is also established under Article 11 – freedom of assembly and association – of the European Convention of Human Rights¹⁸. Nowhere in the mainstream dialogue around cancel culture and no platforming has there been any discussion of the balancing of rights under Articles 9 and 11. By trying to shame or outlaw protest on issues of free speech, those with positions of privilege are trying to deny those without privilege their Article 11 rights. There has been no explanation as to why an individual's Article 11 rights should be denied when they have been negatively impacted by someone else exercising their Article 9 rights.
31. A person or group is not “silenced” simply because others disagree with their views or because they haven't won an argument.
32. It is our assertion that terms like no-platforming and cancelling have been weaponised by powerful voices within the media to demonise anyone who dares to criticise them or call out their behaviour or opinions. Any restrictions of that ability, either through law or societal pressure, will simply reinforce the current status quo, effectively making it unassailable.
33. Freedom of speech cannot and must not be restricted in such a way that only the rich and powerful can benefit from it.

20/01/2021

¹⁷ <https://www.bbc.co.uk/news/education-55369784>

¹⁸ https://www.echr.coe.int/documents/convention_eng.pdf