

Introduction

This is a response to the call for inputs by the UN Independent Expert in advance of his visit to the UK at the end of April.

TransActual^[1] are a community interest (not-for-profit) company incorporated in 2020 with the express aim of advocating for and educating people about trans and non-binary people and the issues we face, as well as empowering trans and non-binary people to overcome the issues we face.

We submitted evidence to the UN Independent Expert's call for evidence in 2021 – a document that was co-signed by leaders of a number of other LGBT community groups. We do not propose to repeat the evidence we submitted then. We have attached that document to this response for further information.

Evidence

Since we sent our response in 2021, TransActual has published the results of a survey^[2] of nearly 700 trans and non-binary people, including over 100 Black trans people and trans people of colour. This is one of the biggest surveys into trans and non-binary people's personal experiences ever conducted in the UK.

We have also recently published the results of a survey focusing on trans and non-binary peoples' experiences of accessing transition-related healthcare^[3].

These results, together with conversations we have with trans and non-binary people around the country, show that trans and non-binary people feel the UK's protections for trans and non-binary people have deteriorated and continue to deteriorate rapidly, with underfunded public services collapsing under demand and the UK government intent on pushing "culture wars" for assumed short-term electoral gain.

The existing rights of trans and non-binary people are threatened by a narrative which presents what rights we already have as novel and threatening. This approach seems to be supported by almost all the mainstream media who are making no substantive attempts to platform trans people or present the issues impartially. Those opposed to trans inclusion are frequently given unfettered space in the media, while trans people are almost always expected to debate with those opposed to their inclusion.

From our surveys of the UK's trans and non-binary population:

- 85% of trans women reported being subjected to transphobic harassment in the street from strangers.
- 99% of trans people have experienced transphobia on social media.
- 93% of trans people reported that media coverage had impacted their experiences of transphobia from strangers on the street.
- 14% of trans people reported that they were refused primary healthcare on at least one occasion on account of being trans.
- 57% of trans people reported avoiding going to the doctor when unwell.
- Less than 15% of those referred to a Gender Identity Clinic after 2017 had attended a first appointment by the start of 2022.

[1] <https://www.transactual.org.uk/>

[2] Trans Lives Survey 2021: Enduring the UK's hostile environment - <https://www.transactual.org.uk/trans-lives-21>. **Note** that some responses which were aimed to derail the survey had been included in the resulting analysis.

[3] Transition Access Survey 2022 - <https://www.transactual.org.uk/transition-access-22>. 1,183 people responded to the survey.

- More than half of respondents told us that their workplace had not been supportive of their medical transition.

Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) has lodged objections against reform of the Gender Recognition Act^[4] to a self-declaration model, but has not responded to requests for clarification^[5] of why its position has changed so completely in just 4 years.

Additionally the EHRC has issued new non-statutory guidance on single-sex spaces^[6] which, rather than promoting a message that trans people should be included, assumes that service providers wish to exclude trans people. The legality of the EHRC's guidance has been questioned^[7].

The CEO of the EHRC (Marcial Boo) has only recently (4 March 2023) reached out to TransActual after our managing director, Helen Belcher, was awarded an OBE in the King's New Year's Honours List^[8]. (We think Helen was the only trans person recognised in this honours list of over 1,000 people – which can be contrasted to just 3 years earlier.) Another EHRC commissioner made informal contact with Helen at a meeting in late January 2023.

We are concerned that the EHRC misrepresented the UN Independent Expert's recent review of them by claiming they had a clean bill of health^[9] – something reported across mainstream media – while ignoring or side-stepping the criticisms that the Independent Expert had made. To us this indicates a desire to persist in their current government-influenced direction rather than learn or adapt.

We are aware that other communities, such as disability and race groups, also have concerns about the EHRC's current actions^[10], but note that they find it difficult to raise their concerns because either it jeopardises their funding or they believe that no action will be taken as a result. Our surveys indicate that disabled trans people and trans people of colour have worse experiences and outcomes than trans people in general.

Crime and Hate

The Government's own statistics^[11] show that recorded homophobic and transphobic hate incidents are rapidly increasing^[12], and there is no evidence to show that those who are on the receiving end of such incidents are now more likely to report them to the authorities than before^[13]. On 8 March 2023, Sarah Dines MP, Under Secretary of State at the Home Office, said in the House of Commons the increase was a good thing^[14], making it clear she didn't understand what the statistics actually were.

^[4] <https://www.equalityhumanrights.com/sites/default/files/letter-to-convener-ehjc-gender-recognition-act-2004-reform-15-june-2022.pdf>

^[5] <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-equalities-human-rights-and-civil-justice-committee/correspondence/2022/ehrc-position-on-reform-of-the-gender-recognition-act-2004>

^[6] <https://www.equalityhumanrights.com/en/advice-and-guidance/separate-and-single-sex-service-providers-guide-equality-act-sex-and-gender>

^[7] <https://www.personneltoday.com/hr/ehrc-single-sex-spaces-guidance-could-lead-employers-into-unlawfulness/>

^[8] <https://www.bbc.co.uk/news/uk-england-wiltshire-64121653>

^[9] <https://www.equalityhumanrights.com/en/our-work/news/equality-and-human-rights-commission-re-accredited-%E2%80%98-status%E2%80%99-organisation>

^[10] <https://www.theguardian.com/society/2021/sep/19/britains-equality-watchdog-colluding-in-denial-of-institutional-racism>

^[11] <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2021-to-2022/hate-crime-england-and-wales-2021-to-2022>

^[12] <https://www.bbc.co.uk/news/uk-63157965>

^[13] <https://galop.org.uk/news/galops-statement-on-the-release-of-the-2021-2022-official-statistics-for-hate-crime/>

^[14] <https://hansard.parliament.uk/Commons/2023-03-08/debates/0952163E-4DC9-44CA-97ED-129940D34224/TransphobiaAndHateCrimesAgainstTransPeople#contribution-FD9B10AB-A61C-4EA9-BE60->

A number of Police and Crime Commissioners around England have made various comments regarding trans and non-binary people^{[15] [16] [17]} which has further dented people's trust in the police and their ability or desire to properly investigate or pursue hate incidents directed against trans and non-binary people.

Misleading information about the Equality Act and the rights trans and non-binary people, particularly trans women, already have are routinely questioned or demeaned as if they are something new or dangerous^{[18] [19]}.

Numerous groups have emerged in the last few years with a specific intention of excluding trans people. Examples include LGB Alliance, Sex Matters, Transgender Trend, Fair Play for Women, Wings Over Scotland and the recently launched Lesbian Project. Their funding is opaque and many of the groups seem to have the same small group of people behind them^[20]. Yet they have an extensive reach in the media^[21].

UK Politics

The political situation in the UK continues to deteriorate as far as trans and non-binary people are concerned.

Scottish Gender Recognition Reform Bill

The Scottish Parliament convincingly passed the Gender Recognition Reform Bill in December 2022, changing the system to a self-declaration one. Members of all parties voted for the Bill, and it passed with two thirds of all MSPs voting for it^[22].

On 17 January 2023, the UK Government then invoked section 35 of the Scotland Act 1998^{[23] [24]}, which prevents the Presiding Officer of the Scottish Parliament for sending the Bill to the King for Royal Assent, making it an Act of Parliament. A debate in the House of Commons was held on this decision^[25] before the UK Government's statement of reasons^[26] was published, meaning that the debate could not address any particular specifics. An emergency second debate was held later in the day after the statement of reasons was published^[27].

8A7B679A3540 – specifically *“The increase to 56% from 43% is a good thing, because it means that people have more confidence in the police.”*

[15] <https://www.getsurrey.co.uk/news/surrey-news/watch-surrey-pcc-snubs-chance-23757859>

[16] <https://www.independent.co.uk/news/uk/home-news/pcc-trans-women-female-toilets-b1917382.html> - Wilkinson subsequently denied being transphobic (<https://www.wiltshire-pcc.gov.uk/my-office/opcc-news/2021/september-2021/statement-from-pcc-philip-wilkinson/>) but said that he *“will not support those who promote a narrow ideology, and political agenda, that is exclusive or divisive and promotes intolerance.”*

[17] <https://www.leicestermercury.co.uk/news/leicester-news/leicestershire-pcc-divides-internet-controversial-5832423>

[18] <https://www.thetimes.co.uk/article/majority-say-female-spaces-are-not-for-trans-women-f88kzsl2q>

[19] <https://www.economist.com/open-future/2018/07/06/changing-the-concept-of-woman-will-cause-unintended-harms>

[20] https://twitter.com/jk_rowling/status/1513419509851467777?lang=en

[21] <https://www.telegraph.co.uk/women/life/kathleen-stock-lesbian-project-young-women-would-rather-change/>.

Note that the ONS found in their 2022 update that the number of people identifying as lesbian had increased - <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality>.

[22] <https://www.parliament.scot/bills-and-laws/bills/gender-recognition-reform-scotland-bill/stage-3>

[23] Scotland Act 1998, section 35 - <https://www.legislation.gov.uk/ukpga/1998/46/section/35>

[24] <https://researchbriefings.files.parliament.uk/documents/CBP-9705/CBP-9705.pdf>

[25] <https://hansard.parliament.uk/commons/2023-01-17/debates/48377387-3F2A-4C73-BF7F-A02065A03FF9/ScotlandAct1998Section35Power>

[26] <https://www.gov.uk/government/publications/statement-of-reasons-related-to-the-use-of-section-35-of-the-scotland-act-1998>

[27] [https://hansard.parliament.uk/commons/2023-01-17/debates/C38A813A-B5E9-41E5-97AC-FAF39F161706/GenderRecognitionReform\(Scotland\)BillSection35Power](https://hansard.parliament.uk/commons/2023-01-17/debates/C38A813A-B5E9-41E5-97AC-FAF39F161706/GenderRecognitionReform(Scotland)BillSection35Power)

We believe that the statement of reasons promotes the illusion that allowing trans people access to single-sex spaces is a new thing and is dependent upon legal gender recognition. It also makes some alarming claims, including that the Scottish Bill would have an adverse impact on UK-wide equalities law in part because “it is likely to significantly increase the number of people able to do so” and would “[substantively] change to what a ‘man’ or ‘woman’ is for the purposes of the 2010 [Equality] Act”^[28]. To which the question has to be asked, what does the UK government think the “correct” number of trans people in the UK is? Trans people find this kind of question absolutely chilling, and it mirrors public comments made by some opposed to trans inclusion, who call for “transgenderism” to be eradicated^[29], or that society needs to “deal with the problem” posed by trans people^[30].

Further, the statement of reasons has taken the highly questionable view that the protected characteristic of “sex” is or should really be restricted to “sex assigned at birth” or “chromosomal sex”, either of which are assumed to be immutable. This is not a view upheld by courts in either Scotland^[31] or England^[32]. It also ignores that the Equality Act protects people if they are perceived to have a protected characteristic^[33]. This means a trans woman could claim discrimination if (a) it was targeted at her as a woman or (b) it was targeted at her because she was trans and her sex would be assumed to be male.

Indeed, Hilary Benn MP’s question^[34] of Alister Jack MP, the Scottish Secretary, indicated that the underlying reason for the section 35 order was that the Conservative government simply didn’t want to accommodate two different systems, despite many Scottish systems differing from English ones.

Conservative Party

In the Conservative Party leadership contest of the summer of 2023, all of the final four candidates stated that trans women were not women^[35] ^[36], and implied that trans women were a danger to other women.

Rishi Sunak MP, the current Prime Minister, has repeated such phrases on a number of occasions^[37] ^[38] ^[39].

Lee Anderson MP, recently appointed Vice Chairman of the Conservative Party, has said that divisive debates on trans people^[40] should form the core of the party’s upcoming General Election campaign.

^[28] Statement of Reasons, Part 3, paras 4 and 5

^[29] https://www.womensdeclaration.com/documents/78/DECLARATION_-_FINAL_VERSION_AMENDED.pdf

^[30] <https://www.thenational.scot/news/23299549.posie-parker-anti-trans-founder-standing-women/>

^[31] https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2022csoh90.pdf?sfvrsn=8eee302c_1 – the Lady Haldane judgement

^[32] <https://oldsquare.co.uk/wp-content/uploads/2021/11/R-on-application-of-AEA-v-EHRC-2021-EWHC-1623-Admin.pdf>

^[33] Equality Act 2010, section 24 - <https://www.legislation.gov.uk/ukpga/2010/15/section/24>

^[34] <https://hansard.parliament.uk/commons/2023-01-17/debates/48377387-3F2A-4C73-BF7F-A02065A03FF9/ScotlandAct1998Section35Power#contribution-E757E8A3-2F03-4061-AD60-AAB27918A946> – Hilary Benn asked “In evoking section 35, the Secretary of State argues that this would have serious adverse impacts on the operation of the Equality Act. Can he explain why the same certificate issued under the Equality Act 2004 does not have those adverse impacts?” to which Alister Jack replied “What we are trying to do is avoid having two conflicting regimes either side of the border.”

^[35] <https://www.opendemocracy.net/en/5050/conservative-party-leadership-rishi-sunak-penny-mordaunt-trans-rights/>

^[36] <https://www.theguardian.com/commentisfree/2022/aug/01/the-tory-leadership-candidates-have-been-cynically-posturing-on-trans-issues-but-who-are-they-impressing-with-their-spice>

^[37] <https://www.telegraph.co.uk/politics/2022/07/29/rishi-sunak-protect-words-man-woman-mother/>

^[38] <https://www.outlookindia.com/international/rishi-sunak-courts-controversy-after-statement-on-transwomen-here-s-what-he-said-news-232673>

^[39] <https://www.express.co.uk/news/politics/1729985/rishi-sunak-piers-morgan-adult-human-femal-talktv>

^[40] <https://www.independent.co.uk/news/uk/politics/lee-anderson-tories-election-trans-b2282185.html>

SNP Leadership

The surprise resignation of Nicola Sturgeon MSP as leader of the SNP (and First Minister of Scotland) on 15 February 2023 led to the section 35 notice and “trans controversies” being discussed across the media almost immediately as the reason for her departure^[41] ^[42], despite Sturgeon saying it had nothing to do with her decision. Trans inclusion then almost immediately became a major dividing line between the candidates^[43], as did the morality around state recognition of same sex marriages^[44].

UK Media

We understand that Trans Media Watch^[45] (a UK charity which works to improve the media representation of trans, non-binary and intersex people) will be submitting evidence, so will restrict ourselves to making summary observations:

- The number of articles published in the UK’s mainstream media has increased enormously, from 60 in the whole of 2012, to 38 a day throughout January 2023^[46].
- Almost all of the mainstream press coverage since 2018 has talked about trans people as a group, and almost all of them focussed on trans women. Almost all were hostile to trans people’s existing rights, presenting them as something novel and threatening. There is a concerted attempt to label campaigners “trans rights activists” who are pushing an unreasonable agenda, when the reality is that trans groups, such as TransActual, are almost entirely run by volunteers who are just ordinary members of society.
- Trans women who are convicted of violent crime become headline news^[47] ^[48], while trans people who are the victim of such crimes are largely ignored. When 16-year old trans girl Brianna Ghey was murdered in January 2023, this did become headline news but some of the press used her male name and misgendered her before correcting the pieces^[49].
- The presence of trans women is regularly shoehorned into debates about the safety of women and girls^[50] ^[51].
- Comments made by those campaigning against trans people’s inclusion are rarely scrutinised by mainstream media. UK trans people are grateful that parts of US mainstream media are doing such scrutiny^[52] albeit under different libel laws. We have noticed that anti-trans campaigners have a history of silencing critics by threatening expensive legal action^[53].
- Relentless years-long campaigns in the media have shattered the reputations of leading LGBT organisations Stonewall and Mermaids, at least in parliamentary and media terms.

^[41] <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-64661974>

^[42] <https://www.theguardian.com/politics/2023/feb/15/nicola-sturgeon-resignation-why-now-and-what-happens-next-on-key-issues>

^[43] <https://news.stv.tv/politics/kate-forbes-wouldnt-have-voted-for-gender-reform-bill-and-wouldnt-challenge-uk-governments-section-35-block>

^[44] <https://www.bbc.co.uk/news/uk-scotland-64715944>

^[45] <https://transmediawatch.org/>

^[46] <https://twitter.com/Dysphorum/status/1631612815793348609>

^[47] <https://news.stv.tv/west-central/transgender-woman-arla-bryson-guilty-of-raping-two-women-in-clydebank-while-a-man>

^[48] <https://news.sky.com/story/fresh-trans-prisoner-row-as-girls-stalker-approved-for-move-to-womens-jail-12797405>

^[49] <https://www.thepinknews.com/2023/02/13/brianna-ghey-trans-girl-killed-the-times/>

^[50] <https://transmediawatch.org/wp-content/uploads/2023/02/Analysis-of-Today-Programme-November-2022.pdf>

^[51] <https://www.bbc.co.uk/news/uk-52748117>

^[52] <https://www.vox.com/culture/23622610/jk-rowling-transphobic-statements-timeline-history-controversy>

^[53] <https://www.thepinknews.com/2023/02/14/jj-welles-jk-rowling-apology-nazi/>

It also seems that most of those opposed to trans inclusion object to being described as transphobic^[54] ^[55]. TransActual crowd-sourced a definition of transphobia in 2021^[56], and Scottish law explicitly criminalises transphobic hate^[57]. However, these are ignored by those who do transphobic things such as stirring up unwarranted fear of trans people.

UK Legal Situation

In contrast with the bleak situation experienced across mainstream media and in politics, the courts tend to uphold historic and existing understanding of equalities law.

While this is currently good news, when cases are misrepresented (as we saw with the Forstater case^[58]) or ignored (like the Mackereth^[59] and Randall^[60] cases) by mainstream media, it is difficult for trans and non-binary people to stay positive or combat the misleading narrative.

Additionally, trans and non-binary people fear statements made by the current Prime Minister on defining women (as touched on above), as it is strongly suspected any such definition will exclude trans women; by the current Deputy Prime Minister on reforming human rights law^[61]; and by the current Home Secretary on compliance with European human rights legislation^[62].

The net impact is observable from overseas, with the UK slipping from 1st in ILGA Europe's Rainbow rankings in 2017, to 14th in 2022^[63], with every sign this will slip further in 2023.

The Council of Europe has noted that the situation in the UK is now comparable to the situation in Poland, Hungary, Turkey and Russia^[64], something that some of the UK parliamentarians objected to^[65].

[54] See, for example <https://www.thetimes.co.uk/article/be-trans-be-proud-but-dont-call-yourself-a-real-woman-frtld7q5c>, one of the very first pieces in the recent campaign calling into question the authenticity of trans women. **Note** that Jenni Murray takes care to state "*I am not transphobic or anti-trans*" despite the basis of the entire article being transphobic.

[55] <https://www.telegraph.co.uk/news/2023/03/11/protecting-women-spaces-not-transphobic-ministry-of-defence/>

[56] <https://www.transactual.org.uk/transphobia>

[57] <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/stage-3/bill-as-amended-at-stage-3.pdf>

[58] <https://www.judiciary.uk/judgments/maya-forstater-v-cgd-europe-center-for-global-development-masood-ahmed/>

[59] https://assets.publishing.service.gov.uk/media/62bc3bb1e90e075f1d426fb4/Dr_David_Mackereth_v_The_Department_of_Work_and_Pensions__1__Advanced_Personnel_Management_Group_UK__Limited__2__2022__EAT_99.pdf

[60] https://assets.publishing.service.gov.uk/media/63fc8d90e90e0740d3cd6eb8/Mr_B_Randall_v_Trent_College_Limited__others__2600288_2020_Judgment.pdf

[61] <https://commonslibrary.parliament.uk/research-briefings/cbp-9581/>

[62] <https://bills.parliament.uk/bills/3429>

[63] <https://www.rainbow-europe.org/#8666/0/0>

[64] <https://pace.coe.int/en/files/29418/html> - see particularly paras 3 and 52

[65] <https://pace.coe.int/en/files/29418/compendium> - see amendment 7. Also note that the same UK parliamentarians tried to delete criticism of "*the highly prejudicial anti-gender, gender-critical and anti-trans narratives*" – thereby, possibly unintentionally, proving the point made in the report.

Conclusion

Many trans and non-binary people in the UK feel bleak about the future, feeling their existing rights are under threat from a Conservative government which was making very different proposals just 4 years ago, and with little confidence that a Labour Party government would be much different.

The media narrative feels relentlessly opposed to the ability of trans people to live as we have always done. Instead trans women are repeatedly conflated in particular with predatory and violent sexual crime. The miniscule risk that is posed by the current arrangements are blown out of all proportion meaning that trans people are routinely forced into answering questions designed to reinforce a narrative that we are innately dangerous. Denying trans and non-binary people any recognition or respect of their gender identity is now routine.

Recommendations for Meetings

1. We would strongly suggest that, for a view from trans and non-binary organisations, the Independent Expert meets with the Trans Organisations Network, administered by LGBT Consortium.
2. We would, as a respected, leading UK-wide organisation led by trans and non-binary people, be happy to meet the Independent Expert ourselves or alongside Trans Media Watch.
3. We would strongly suggest a meeting with GALOP to discuss their work around hate crime.
4. We would also strongly suggest that, for a parliamentary view, the Independent Expert meets with (a) the current officers of the All Party Parliamentary Group on Global LGBT+ Rights and (b) the current chair of the House of Commons Women and Equalities Select Committee. The current chair of the UK Parliament's Joint Committee of Human Rights is known to be a leading advocate against trans people's inclusion – which further fuels trans people's fear about the threat to their existing rights.

Helen Belcher OBE, Managing Director, TransActual – March 2023