SUBMISSION TO THE GOVERNMENT CONSULTATION ON "BANNING CONVERSION THERAPY"

Evidence submitted by: Professor Alan Sokal, University College London
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I am writing to express my **strong opposition** to the proposal to ban *so-called* "conversion therapy".

Other people, more qualified than myself, will surely address the great harm that can and will be done to gender-questioning children and teenagers were this proposed legislation to be adopted. Here I would like to address, instead, the **serious conceptual error** that underlies this whole proposal: namely, the unwarranted and tendentious elision between conversion therapy with regard to *sexual orientation* (straight, gay or bisexual) and the so-called (and grossly *misnamed*) "conversion therapy" with regard to **gender identity**. The two issues are **completely different** and need to be addressed separately.

Sexual orientation. The concept of sexual orientation is reasonably clear: namely, a stable sexual attraction to members of a particular sex or sexes (i.e. to men, to women, or to both).[1] A person's overall sexual orientation can therefore be heterosexual (stably attracted to members of the opposite sex), homosexual (stably attracted to members of the same sex), or bisexual (stably attracted to members of both sexes).

In the past — a half-century ago — conversion therapy was widely practiced: trying to convert homosexuals to heterosexuality. That practice has now long been discredited, due to the accumulation of evidence that a person's sexual orientation is largely fixed (by some unknown combination of genetics, *in utero* environment, and subsequent environment) and that attempts to change it are both fruitless and counterproductive.

It is not clear whether conversion therapy with respect to sexual orientation is practiced today to any significant extent. Some empirical evidence concerning this would, I think, be useful before legislators undertake to create a new criminal offence that could potentially have unforeseen consequences. But such legislation is not *ipso facto* unreasonable or conceptually flawed. Indeed, it seems to me that banning conversion therapy with respect to sexual orientation for subjects under 18 years of age would be a useful addition to the legal armoury protecting the human rights of children and teenagers.

However, the situation is completely different with regard to gender identity.

Gender identity. The concept of "gender identity" — by contrast to that of sexual orientation — is notoriously ill-defined and ambiguous. The philosopher Kathleen Stock has given, in her lucidly written book *Material Girls*[2], a detailed analysis and conceptual critique of several different (and mutually incompatible) interpretations of "gender

[1] For further discussion and clarification, see Kathleen Stock, "Lesbians aren't attracted to a female 'gender identity'. We're attracted to women", *Quillette*, 18 May 2021, `https://quillette.com/2021/05/18/lesbians-arent-attracted-to-a-female-gender-identity-were-attracted-to-women/`

[2] Kathleen Stock, *Material Girls: Why Reality Matters for Feminism* (Fleet, London, 2021).

identity". The notion of "transgender" employed in the proposed legislation is equally ill-defined: it clearly means "someone whose gender identity is different from their biological sex" — a "definition" that has no precise meaning until the underlying concept of "gender identity" is given a precise meaning. It is difficult to see how these ill-defined concepts could become the predicates, under our system of law, for a criminal offence: under both the common law and Article 7 of the European Convention on Human Rights, a criminal law must define the offence in clear terms, so that citizens can know unambiguously which actions or omissions are punishable and which are not.[3]

The notion of "conversion therapy" with respect to gender identity is thus likewise ill-defined; but it is also *grossly misnamed*. The Oxford English Dictionary defines the verb "convert" as "to turn or change into something of different form or properties; to transform". This term makes sense with respect to sexual orientation: each person has a well-defined, and largely stable, sexual orientation, and "conversion therapy" refers to attempts (almost always unsuccessful) to convert a person from one sexual orientation to another. The notion of "conversion therapy" with respect to gender identity, by contrast, *presumes* that each person has a well-defined, and largely stable, gender identity (however that ambiguous concept may be defined). But this *presumption* represents nothing more than *one specific view* — namely, that of Stonewall and other trans-activist lobby groups — on an extraordinarily controversial and highly contested issue. According to this "gender-identity ideology", each person has an innate gender identity that may or may not correspond to his/her/their biological sex: a kind of gendered soul that may have been "born in the wrong body". The proposed legislation would, in effect, enshrine this particular ideology into the *definitions* underlying the criminal law.

But gender-identity ideology is far from the only way of looking at the phenomenon of gender dysphoria. An alternate interpretation, based on extensive empirical evidence, sees gender dysphoria as a complex and multifaceted situation, which can reflect, in each person, some combination of the following issues:

1) *Dissatisfaction with the traditional gender roles associated to the person's biological sex.* Many teenagers who experience gender dysphoria are simply incipient homosexuals, and could become well-adjusted gay or lesbian adults were they allowed to follow their natural tendencies. Others may be heterosexual but simply have interests or attitudes or behaviours that are atypical for their sex. The message of the feminist and gay-rights movements is that all people should be free to follow their natural tendencies in all private matters, without being constrained by traditional sex roles or stereotypes. A young girl who likes to play with mechanical toys, or a teenage girl who prefers to cut her hair very short, is simply a girl who has interests and preferences atypical for her sex — interests and preferences that ought to be respected. She is not "a boy in a girl's body". Likewise for a young boy who likes to play with dolls, or a teenage boy who likes to paint his nails.

[3]In the common law this is such a long-established principle that it hardly needs further explanation. With respect to the ECHR, see e.g. European Court of Human Rights, Research Division, "Article 7: The 'quality of law' requirements and the principle of (non-)retrospectiveness of the criminal law under Article 7 of the Convention", December 2019, `https://www.echr.coe.int/Documents/Research_report_quality_law_requirements_criminal_law_Art_7_ENG.PDF`

The gender-identity ideology is a *regression* from the feminist and gay-rights movements of the 1970s and 1980s.

2) *Other mental-health issues.* Among teenagers suffering from gender dysphoria, there is a high comorbidity of eating disorders (anorexia and bulimia), depression, anxiety disorders, self-harm, and autism spectrum disorder.[4] For teenage girls especially, it is common to feel unease at the changes in one's body: an unease that in some cases can lead to eating disorders, to gender dysphoria, or both. Gender-identity ideology ignores this complexity, and simply tells the suffering teenager that they were "born in the wrong body".

The debate between these two views of gender dysphoria leads to two distinct approaches to theraupeutic intervention:

- *Gender-affirming therapy.* This approach takes a person's gender self-declaration — even that of a teenager or a younger child — at face value, affirms it, and devises therapies to support it: puberty-blocking drugs, often followed after the age of 16 by cross-sex hormones and surgery. This approach is advocated by activist groups such as Stonewall and Mermaids, and is also supported by some medical organisations.

- *Open-minded exploratory psychotherapy.*[5] In this approach, the therapist helps the young person to explore the causes of his/her/their gender dysphoria, as well as any other mental-health issues that he/she/they may be experiencing, *without* making any presupposition as to the outcome of this exploration. Sometimes family therapy will also be included. At the end, the young person may decide on drugs and/or surgery; or he/she/they may instead become comfortable with being a gender-nonconforming member of his/her/their biological sex.

The upshot of the proposed legislation would be to ban this second approach, by criminalising it. And it accomplishes this goal by **misleadingly labeling** it as "conversion therapy": an appellation that makes sense *only if one accepts the gender-identity ideology*. Indeed, on a common-sense view, the precise opposite is the truth: it is the gender-affirming approach that ought to be called "conversion therapy", as it seeks to "convert" the young person's body into one more closely resembling the other sex.

It is shocking that, in the 48-page consultation paper devoted to criminalising "conversion therapy", this key concept is nowhere defined or even elucidated. The term is simply repeated on every page of the document as if (a) its meaning were self-evident,

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[4]Riittakerttu Kaltiala-Heino *et al.*, "Gender dysphoria in adolescence: Current perspectives", *Adolescent Health, Medicine and Therapeutics* **9**, 31–41 (2018), `https://www.dovepress.com/gender-dysphoria-in-adolescence-current-perspectives-peer-reviewed-fulltext-article-AHMT` or `https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5841333/`

[5]See e.g. Roberto D'Angelo *at al.*, "One size does not fit all: In support of psychotherapy for gender dysphoria", *Archives of Sexual Behavior* **50**, 7–16 (2021), `https://link.springer.com/article/10.1007/s10508-020-01844-2`; David Schwartz, "Clinical and ethical considerations in the treatment of gender dysphoric children and adolescents: When doing less is helping more", *Journal of Infant, Child, and Adolescent Psychotherapy* (November 2021), `https://www.tandfonline.com/doi/full/10.1080/15289168.2021.1997344`

and (b) its meaning with respect to gender identity were completely analogous to its meaning with respect to sexual orientation. Furthermore, the alleged factual basis (paragraph 14) simply takes the existing evidence concerning conversion therapy to change a person's sexual orientation, and applies it to "gender identity" as if (a) the latter term were well-defined, and (b) whatever holds in one case must necessarily hold in the other. This is not evidence-based legislation; it is ideology masquerading as evidence.

The consultation paper makes clear that the proposal intends to criminalise not only "physical acts conducted in the name of conversion therapy" but also "talking conversion therapy". But it never defines precisely what kind of "talking conversion therapy" it intends to criminalise. The paper says (paragraph 35) that

> Banning conversion therapy must not result in interference for professional psychologists, psychiatrists, psychotherapists, counsellors and other clinicians and health care staff providing legitimate support for those who may be questioning if they are LGBT.

But how could the proposed legislation *not* result in such interference, if the criminal offence is never clearly defined? Psychotherapists will, on pain of imprisonment, avoid anything that could conceivably be labelled as "talking conversion therapy". In practice, in order to avoid even being *accused* of criminal conduct — something that could have profoundly negative professional consequences even if they are ultimately vindicated — they will avoid open-minded exploratory psychotherapy.

The paper goes on to say (paragraph 37) that

> Legitimate talking therapies that support a person who is questioning if they are LGBT do not start from the basis that being LGBT is a defect or deficiency. Instead the therapies are open and explorative discussions focused on helping a person to decide on their options in a supportive manner. Professional bodies and regulators are best placed to set out professional obligations and identify practices that are harmful for the individual involved.

That description of "legitimate talking therapies" sounds a lot like open-minded exploratory psychotherapy as I have described it. But if "professional bodies and regulators are best placed" to draw the line between legitimate and illegitimate talking therapies, why is the Government proposing to draw that line for them by creating a criminal offence? And what, precisely, will be the definition of the conduct that constitutes this criminal offence? The consultation paper offers no clarity on this key issue.