

# Defending Lesbian Rights

## A statement from the Lesbian Rights Alliance

*This briefing represents the position of a number of lesbian groups and lesbian individuals concerned about the impact of current political and legislative developments on lesbian rights, freedoms and visibility. This includes in particular the government proposals to reform the Gender Recognition Act (2004)*

### **1. Introduction**

#### **1.1 What is a Lesbian?**

A lesbian is a woman who is sexually attracted to and has sexual relationships with other women. Recent years have seen an increasing pressure on lesbians to use more ‘inclusive’, generic terms such as ‘queer’ or ‘gay.’ However, these terms *are not specific to women* and therefore render invisible the specific experience of lesbians and the specific discrimination faced by lesbians, who of course share experiences of sex discrimination with heterosexual women as well as discrimination based on sexuality.

#### **1.2 Lesbian Rights, ‘Sex’ and ‘Gender Identity’**

The normalisation of the concept of ‘gender identity’ has particularly serious implications for lesbians. It has meant that the rights of any male who claims he ‘feels like a woman’ are given precedence over those who are actually biologically female. For example, the use of the term ‘self-defined woman’ means that lesbians are under pressure to accept male-bodied individuals within their communities and indeed as sexual partners. Given that 80% of men who transition retain their male genitals<sup>1</sup>, the once absurd notion of a ‘lesbian with a penis’ is being promoted and normalised within LGBT communities, with the attendant pressure on lesbians to accept this notion without question. As part of this coercive context, lesbian groups have over a number of years been pressurised to accept male-bodied ‘lesbians’ and those that resist are subjected to threats of disruption and even rape and physical violence from biologically male transgender activists. These threats have meant that lesbian groups have had to increasingly operate ‘under the radar’ and meet in secret. Thus lesbian organisations have become largely invisible and forced to act as if we lived in the 1950s, rather than the 21<sup>st</sup> Century.

It is significant that there is no parallel to this within gay men’s communities. While lesbians and gay men experience homophobia and discrimination because of our sexuality, gay men are not being targeted by transgender activists in the way that lesbians are. Clearly lesbians are being targeted because they are women.

It is worth clarifying at this point that sex is not the same as ‘gender’ or ‘gender identity’. The World Health Organisation defines sex as referring to ‘the biological and physical characteristics that define men and women.’ Gender refers to ‘the socially constructed attributes, behaviours and roles that a given society considers appropriate for men and women.’ Women, including lesbians, are discriminated against on the grounds of their sex, not their ‘gender’.

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<sup>1</sup> T Reed. Written Evidence submitted by GIRES to the Transgender Equality Enquiry. 2015.

‘Gender identity’ is a term used to refer to a subjective feeling or belief that one might have an innate sense of ‘gender’ which conflicts with one’s biological sex. However, there is no scientific basis for such feelings or beliefs,<sup>2</sup> which are therefore medically recognised as a condition known as ‘gender dysphoria.’

## **2. Current Protections under Equality Legislation**

### **2.1 Protection against discrimination**

Lesbians are currently protected from discrimination under two ‘protected characteristics’ of the Equality Act (2010): ‘sex’ and ‘sexual orientation’. Discrimination against lesbians is therefore unlawful on the grounds of our sex as biological females as well as the grounds of our sexual orientation. However, there is a tension and potential clash of rights between protections on these grounds and those based on the characteristic of ‘gender reassignment.’

### **2.2 Single-sex exceptions**

The 2010 Equality Act includes certain exceptions, to allow for flexibility where there may be a potential clash of rights between different protected characteristics. For example, the law allows for single-sex service provision in certain circumstances – i.e. those who have undergone gender reassignment can be excluded where this exclusion constitutes ‘a proportionate means of achieving a legitimate aim.’ However, notions of ‘proportionate’ and ‘legitimate’ are clearly open to different interpretations and as yet remain untested in law. Accusations of transphobia, pro-transgender policy guidelines and fears around loss of funding means that services or facilities established specifically for women and girls – prisons and hospital wards, as well as refuges and rape crisis services – are reluctant to make use of the exceptions. This is particularly serious given evidence that men who transition commit violent crime at the same rate as other men<sup>3</sup> and indeed have a higher level of convictions for sexual violence than other men in the same prison populations<sup>4</sup>

### **2.3 Hate Crime**

Both sexual orientation and ‘gender identity’ are protected characteristics under UK hate crime legislation. However, ‘sex’ is not protected under hate crime law, meaning that women are not protected against crimes such as harassment and incitement to hatred. This is of particular relevance to lesbians, who are often the victims of online harassment and threats perpetuated by transgender activists, as documented on websites such as <https://terfisaslur.com/>

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<sup>2</sup> Delusions of Gender – the real science behind sex differences.’ Cordelia Fine, Icon Press, 2010. <http://www.telegraph.co.uk/news/science/science-news/10684179/Men-and-women-do-not-have-different-brains-claims-neuroscientist.html>

<sup>3</sup> Long Term Follow Up of transsexual persons undergoing reassignment surgery. Cohort Study in Sweden. Cecilia Dhejne et al, 2011. <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885>

<sup>4</sup> Sexton, Jenness and Summer, (2009) ‘From Where Margins Meet; A Demographic Assessment of Transgender Inmates in Men’s Prisons.’ University of California.

### **3. Ensuring Protection of Lesbian Rights**

#### **3.1 The right to same sex relationships**

Our right as lesbians to have same sex relationships under current equalities and human rights law is already being undermined by biologically male transgender activists who self-identify as women.

A number of heterosexual men who transition now define themselves ‘lesbians’ or ‘transdykes’ and demand sexual access to lesbians. This involves re-categorising their male sexual organs as female, through terms such as ‘*lady sticks*.’ Lesbians who refuse to accept such individuals as sexual partners are now being labelled ‘*transphobic*’ and are subjected to threats of sexual violence as outlined above.

The government’s proposed review of the Gender Recognition Act (2004) will potentially aggravate this situation, through allowing any man to self-define as a woman and legally obtain a change of ‘gender’ through a simple administrative procedure of self-declaration. Under the current law, gender can only be ‘reassigned’ with medical approval and through application to a Gender Recognition Panel.

*Protections must be put in place to ensure the rights of lesbians to:*

- **have relationships only with other women who are the same sex i.e. biologically female**
- **have any threats or attacks on us by biological males – irrespective of their ‘gender identity’ - recognised and prosecuted as hate crimes**

#### **3.2 The right to single sex facilities and services**

Whilst the exceptions allowing for single sex facilities and service provision are already open to being contested, it is worrying that there is pressure on the government to dispense with them entirely, meaning that any man who identifies as a woman will be permitted to enter these spaces at will. Issues of obvious concern include safety, the right to privacy, and freedom from indecent exposure, sexual harassment and voyeurism.

*Protections must be put in place to ensure that these exceptions are strengthened to:*

- **enable the provision of and access to single-sex spaces which can exclude male-bodied individuals**
- **ensure that lesbians have the right to autonomous groups and freedom of assembly**

#### **3.3 Ensuring the well-being of young lesbians**

The number of young women presenting at Gender Identity Clinics has increased dramatically over a very short period of time, with over twice as many young women seeking to transition as young men.<sup>5</sup> Contextual factors such as worrying levels of mental distress among teenage girls, the extent of sexual harassment in schools and negative messages about female bodies should be understood as contributing to this increase, as should the

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<sup>5</sup> NHS GID referral figures for 2016/17

phenomenon of ‘social contagion’: the normalisation of transgender narratives through media stories as well as training and guidance provided to schools by transgender organisations.<sup>6</sup>

Where in past decades young women who did not fit stereotypes of femininity were allowed a ‘tomboy’ identity, such young women are now increasingly understood by professionals and persuaded through peer group pressure to regard themselves as male.

This trend is taking a particular toll on the wellbeing of young lesbians, since the overwhelming majority of young women who transition are attracted to their own sex.<sup>7</sup> Young women who seek gender reassignment frequently have other mental health conditions or circumstances which need to be addressed as possible causes of their desire to transition.

*Protections must be put in place to ensure that:*

- **Girls and young women can enjoy the freedom to reject conventional gender stereotypes, without experiencing pressure to redefine themselves as male**
- **Personal and social education encourages pupils to challenge stereotypes rather than reinforcing incorrect notions that gender is somehow innate**
- **The distinction between sex as a biological category and gender as socially-constructed is clearly explained, with unscientific myths such as ‘male’ and ‘female’ brains subjected to critical scrutiny as appropriate**
- **Mental health practitioners assess the wider causes of gender dysphoria for young people, including the possibility of being lesbian or gay.**

### **3.4. Review of the Gender Recognition Act (2004)**

The proposed review of the 2004 Gender Recognition Act is driven and informed by the recommendations in the 2016 *Transgender Equality Report*, produced by the Women & Equalities Committee. The inquiry leading to the report privileged the perspectives of the transgender lobby groups and individuals, with ten such representatives being called to give oral evidence to the committee. No women’s or lesbian organisations were called to give oral evidence, and their many written submissions were ignored.

A review informed by the Report’s recommendations would have very serious consequences for lesbians. Disturbing proposals include: dispensing with the requirement of a diagnosis of gender dysphoria and allowing males to self-identify as women; dispensing with exceptions in relation to single-sex facilities and services; and lowering the age at which a young person can transition to 16.

Overarching all of these is the general drive to replace the term ‘sex’ with ‘gender identity’. Such a move would make current sex-based equalities legislation meaningless. It would at one stroke remove any possibility of addressing the discrimination that girls and women continue to experience because they are biologically female. Such a shift is already in evidence, with proposals to make answers to the national census question asking what sex

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<sup>6</sup> <https://www.transgendertrend.com/why-do-teenage-girls-not-want-to-become-women>

<sup>7</sup> Verite M (2016) *The Surgical Suite: Modern- Day Closet for Today’s Teen Lesbian* in Barrett, R (ed) *Female Erasure*. Tidal Tide Publishing LLC

individuals are, voluntary rather than compulsory. <sup>8</sup> Similarly, most state and public sector organisations now collect data on the basis of ‘gender’ rather than ‘sex’, and there is a push to introduce categories such as ‘non-binary’, with similarly problematic consequences.

*Any review of the 2004 Gender Recognition Act must involve a full impact assessment of its implications in relation to the equality rights of women and girls. This should include:*

- **Thorough and critical scrutiny of problematic concepts such as ‘gender identity’.**
- **Ensuring that appropriately stringent medical and legal measures remain in place where a legal recognition of a change in ‘sex’ is sought, including a medical diagnosis of gender dysphoria.**
- **Ensuring that young people are protected and a minimum age of 18 is maintained in relation to legal recognition of a change of ‘sex’**
- **Ensuring that there is no compromise to sex-based protections in equality legislation.**

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<sup>8</sup> Sunday Times Oct 8<sup>th</sup> 2017