

Summary

The Gender Recognition Bill raises many issues. Many people fear it will be used to sue churches. This briefing focuses on the need to protect religious liberty.

- The Bill now gives clear legal protection for sport. But the Government continues to deny this protection to churches and other religious bodies.
- At least two churches are already being threatened with legal action by a transsexual under the Bill.
- The Bill gives transsexuals a legal right to marry in their Parish Church – even if the vicar believes that this is morally wrong and objects to his church being used.
- A curate could be fined £5,000 for telling his vicar that a person in the congregation is a transsexual.

Churches and other religious organisations need clear legal protection in the Gender Recognition Bill – they should not be left in fear and uncertainty.

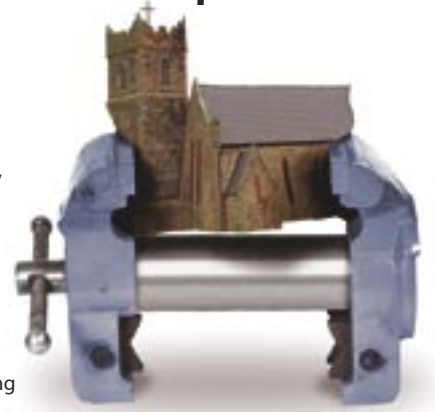
Religious liberty threatened by planned new ‘sex-swap’ laws

The Gender Recognition Bill provides many new legal rights for people known as ‘transsexuals’. It allows a man to obtain a new birth certificate stating he was born a woman. That person can then legally marry another man.

Under the Bill a man can become a woman “for all purposes” in law. However, Christians believe that a person’s sex is determined by God at conception and is unalterable. The Bill creates huge scope for legal actions against those who hold this view. At least two churches are already being threatened with legal action under the Bill.

Transsexuals are people who are biologically normal, but who believe themselves to be members of the opposite sex – they say they are ‘trapped in the wrong body’. And so a male-to-female transsexual will assume the identity of a woman. Often transsexuals undergo a ‘sex change’ operation. In the NHS year 2001/2002, 89 such operations were performed – all of them on men.¹

The Bill also makes it an offence to reveal a transsexual’s true sex. It will become a criminal offence for those in an official position to disclose that a certain person who purports to be a woman was actually



born a man. A curate could face a £5,000 fine for passing on the truth to his vicar.

In reality the Bill allows same-sex marriage, although the Government denies this. Under the Bill two biological men can be legally married to each other, though one will have assumed the identity of a woman and possess a new birth certificate.

In the end the Bill will encourage transsexual behaviour, rather than help people face their problem and overcome it.

¹ House of Commons, Hansard, 26 February 2003, col. 616 wa

Church leaders face £5,000 fine for disclosure

Under the Bill there will be a maximum £5,000 fine for revealing that someone is a transsexual. The Bill creates a new criminal offence prohibiting the disclosure of this “protected information”. The offence covers people in public or voluntary organisations who in an official capacity discover the birth sex of a transsexual. The Government is clear that the offence applies to churches and religious organisations.¹

Yet churches throughout the land teach that it is morally wrong for a man to assume the identity of a woman (or vice versa). Therefore if a transsexual begins to attend a church, the leaders of that church will obviously need to discuss between themselves the pastoral approach to be adopted. Just one pastoral discussion will be a criminal offence liable to a £5,000 fine.

The offence covers vicars, curates, church ministers, churchwardens, pastoral workers, elders, deacons and PCC members. If following a routine pastoral visit a curate discovers that a ‘woman’ attending the church is in fact a male-to-female transsexual and he mentions this to his vicar, he could be prosecuted and fined £5,000.

It appears the Government is content to see Christians prosecuted over this issue, even when the information was passed on

accidentally. A Government Minister in the Lords said: “...[in the case] of people who make a prohibited disclosure inadvertently, clearly that is a matter which the judge would be expected to take into account as part of the deliberations on sentence. Although the harm to the transsexual person would be no less it would be surprising if in those circumstances a judge was to impose a maximum penalty.”²

The Government argues, to use the example above, that the curate can ask the individual transsexual for permission to tell his vicar.³ Yet surely it is extremely unlikely that transsexuals would agree to this – they are the same people who argued for this new offence.

There are exemptions to the disclosure provisions for some purposes, e.g. for criminal proceedings, social security or pensions. The Bill allows the Secretary of State to make other exemptions by order. If exemptions can be granted for some purposes, why can they not be made to protect religious liberty?

¹ House of Lords, Hansard, 3 February 2004, col. 659

² *Loc cit*

³ *Loc cit*

Many regret ‘sex change’

Many transsexuals regret their decision to live in the opposite sex. A Home Office report on transsexualism says: “Many people revert to their biological sex after living for some time in the opposite sex...”¹

Doctors from the NHS Portman Clinic – an internationally acclaimed centre – have stated “...what many patients find is that they are left with a mutilated body, but the internal conflicts remain.”²

The UK’s leading psychiatrist for gender dysphoria, Dr Russell Reid, is being investigated by the GMC following complaints from twelve patients. The patients say that they were rushed into ‘sex change’ surgery without being adequately assessed.³

¹ *Report of the Interdepartmental Working Group on Transsexual People*, Home Office, April 2000, para. 5.1, page 25

² *The Daily Telegraph*, 15 July 2002

³ *The Guardian*, 18 February 2004

Legal rights: Transsexuals 3, Churches 1

The Gender Recognition Bill creates an entirely new legal position which pits the rights of transsexuals against the rights of churches. If the current Bill becomes law, transsexuals will be able to use three sets of legal rights against a church. A church will be able to defend itself with only one.

A transsexual would have rights under the Bill, transsexual rights under the Human Rights Act and rights under sex discrimination laws. A church would only have Article 9 rights under the Human Rights Act.

This Gender Recognition Bill tips the balance decidedly in the favour of transsexuals, which is why specific protections for churches are needed.

1. Rights under the Bill

Under clause 9 of the Bill a transsexual man could obtain a gender recognition certificate and claim rights to be treated “for all purposes” as a woman. The Bill, in effect, guarantees that legal cases will be far more complex and costly to defend.

2. Rights under the Human Rights Act (HRA) 1998

Under the HRA 1998 a public authority must comply with Convention Rights. Under Section 6 of the Act even a private body can be deemed to be a public authority when it carries out actions of a ‘public nature’.

The then Home Secretary openly admitted in 1998 that marriage services carried out in churches could be subject to human rights litigation.¹

Church of England clergy are under an obligation to marry those in their parish. For this reason a conscience clause was put in the original Bill to protect an Anglican minister who does not want to marry a transsexual man to another man. But this protection does not extend to the use of the church building (see article below).



Male-to-female transsexual Elizabeth Bellinger, left, gains sweeping new legal rights under the Bill.

The Government has so far failed to accept the case for protecting other Christian denominations and other faiths. We believe that they also should be protected as they will face litigation.

3. Rights under the Sex Discrimination Act (SDA) 1975

Under Section 29 of the SDA 1975 it is illegal to discriminate on the basis of sex in the provision of goods and services. This has never presented problems for churches, but the Bill completely changes the legal landscape.

Hostile litigants can use the sex discrimination laws to argue that male transsexuals should have access to religious activities organised solely for women. Attempts are even being made to define Holy Communion as a “good or service”.

Churches’ rights

A church has rights under Article 9 of the Human Rights Act. This gives the church the right to freedom of thought, conscience and religion.

But transsexuals also claim rights under the Human Rights Act. Whilst both churches and transsexuals have their human rights, transsexuals have *two additional sets of legal rights*, which have already been deployed in threats of litigation.

Costly litigation

Even if a church succeeds in defending a legal action the costs involved could be enormous. Church ministers have needy people to attend to. They can do without the considerable pressures of unnecessary legal threats arising from this Bill.

¹ House of Commons, Hansard, 20 May 1998, col. 1017

Government arguments

The Government argues that churches have nothing to worry about. But already two churches have been threatened with legal action under the Bill. And even before the legislation was presented to Parliament there had been a history of threats of litigation with at least one case actually going to court.

Lady O’Cathain moved an amendment in the House of Lords to give clear protection to churches. In response, Lord Filkin, the Government Minister, argued that everything sought by her amendment was already in the present law.¹ But this was precisely the point. Stating the existing law within the Bill would have made it clear beyond doubt that the law has not changed. It therefore would have deterred litigation against churches and other religious bodies and helped them in a court case.

The Government also argued that sporting bodies had nothing to worry about. Ministers later changed their minds and exempted competitive sport from the Bill.

If Government Ministers believe that litigation against churches will not be greatly increased by the Bill then they are either completely naïve or do not care about religious liberty.

¹ House of Lords, Hansard, 10 February 2004, cols. 1074-5

Transsexual ‘right’ to a church wedding

The Gender Recognition Bill allows a man to become a woman in law and then to marry another man. Similarly a woman can become a man and then marry another woman. In either case from an orthodox Christian perspective it is same-sex marriage.

The Bill only gives clergy in the Church of England and the Church in Wales the legal right to refuse to marry a transsexual. Government Ministers say that only these clergy need protection because only they are under a legal duty to marry their parishioners.

One thing is absolutely clear – there is no right in the Bill for a Church of England vicar to prevent a transsexual marriage taking place in his church. A transsexual parishioner will be able to sue such a church which does not allow him to marry in their building. This is a flagrant conflict with canon law.

But other churches could also be in difficulties because of the Human Rights Act 1998. According to a recent legal ruling marriage is a “governmental function”.¹ This obviously applies to the C of E but might well be held to

apply to other denominations. They could then be sued under human rights legislation for refusing to marry a transsexual. The Government accepts that this could happen, but they believe that churches would ultimately win in court. There is clearly a case to widen and strengthen the conscience clause.

¹ PCC of Aston Cantlow and Wilmore with Billesley v Wallbank [2003] UKHL 37, para. 13 (Lord Nicholls of Birkenhead)



Christian beliefs on transsexualism

Three fundamental premises lie behind the Gender Recognition Bill: *one*, human psychological states rather than human bodily nature can determine a person's gender; *two*, it is right for a surgeon to deform a healthy body in the interests of a psychological disorder; and, *three*, the State should validate psychosocial confusions having precedence over unambiguous biological sex. Christians say these premises are wrong from biblical teaching, and also church tradition and common sense reason.

First, the Bible teaches that a human person is a mind-body whole. So the body determines personhood, not just the mind. The first Christian heresy was to deny that "Jesus Christ has come in the flesh" (1 John 4.2). Genesis 1:27 records: "So God created man in his own image, in the image of God created he him; male and female created he them." Biblical Christians hold that 'sex change' surgery desecrates a body made in the image of God. And the Bible teaches that the State should validate what is right and not what is wrong (Romans 13.3).

Secondly, the Church of England's 2003 discussion document also equated transsexualism with the ancient heresy of Gnosticism.¹ Both see the body as unimportant and the mind as all important. Gnosticism was strongly condemned by early Christian theologians such as Irenaeus (c 130-200 AD) and Tertullian (c 155-220 AD).²

Thirdly, the philosopher, Sir Peter Strawson, also holds that a person must have "both states of consciousness and corporeal characteristics ... [so] the orthodox have wisely insisted on the resurrection of the body".³ It is therefore wrong to determine a person's gender because their mind cannot accept their body. As the Bishop of Winchester has stated: "When the bill passes into law, for me the words woman and man will no longer mean what they have always meant and the government will have introduced marriage between two people of the same sex".⁴

Churches try to care for transsexuals and to speak to them about the Gospel. There will, of course, be differences in the pastoral approaches that are taken. However, when it comes to deciding who should join ladies' prayer meetings or be leaders, who should use the ladies' lavatories or take Holy Communion, surely individual churches should have the freedom to decide this themselves? Surely the law should not leave churches wide-open to legal actions in secular courts over such matters?

The theologian Oliver O'Donovan (Regius Professor of Moral and Pastoral Theology at the University of Oxford) has argued: "If I claim to have a 'real sex', which may be at war with the sex of my body and is at least in a rather uncertain relationship to it, I am shrinking from the glad acceptance of myself as a physical as well as a spiritual being, and seeking self-knowledge in a kind of Gnostic withdrawal from material creation."⁵

¹ *Some Issues in Human Sexuality – A Guide to the Debate*, discussion document from the House of Bishops' Group on Issues in Human Sexuality, Church House, 2003, page 249

² Berkhof, L, *The History of Christian Doctrines*, The Banner of Truth Trust, latest edition 2002, pages 45-51 and 62-63; Elwell, W A (Ed.), *Evangelical Dictionary of Theology*, Paternoster Press, 1999, pages 444-447, 569 and 1078-1079

³ Strawson, Sir Peter, *Individuals*, Methuen, 1959, pages 104, 116

⁴ *The Sunday Times*, 29 February 2004

⁵ O'Donovan, O, *Transsexualism and Christian Marriage*, Grove Booklet on Ethics, 1982, page 11

How this Bill affects me



David Holloway
(Vicar of Jesmond in Newcastle upon Tyne)

"Not so long ago, my curate told me that a visitor to the church was a transsexual. Under this Bill, my curate would be committing a criminal offence and could be fined up to £5,000."



Alex Ashton (Church Minister, Maesteg, South Wales)

"In November 2001, my church and myself were sued by a transsexual after we asked him not to attend ladies' meetings or use the ladies' toilets. We were told that defending ourselves could cost as much as £100,000. Thankfully, the legal action was thrown out of court. But if this Bill had been in place, it would have been much harder and much more expensive to defend ourselves."



An independent evangelical church in England

"We are currently being threatened with legal action because we will not let a transsexual teach in our Sunday School, take communion, or use the ladies' toilets. A solicitor's letter threatening legal action said our actions may be contrary to the Gender Recognition Bill, currently being considered by Parliament."



Colin Hart (Director of The Christian Institute)

"The Christian Institute has received two threats of legal action following our campaign against the Gender Recognition Bill. This, together with threats to some churches, convinces me that hostile litigation by transsexuals against churches and Christian organisations is likely to increase as a result of this Bill."

Churches have already been threatened by transsexuals

Churches are already being threatened with legal action under the Gender Recognition Bill. Even before it has become an Act of Parliament, the Bill is already being used to argue that transsexuals have a legal right to teach in a Sunday School and take Holy Communion. At least two churches have been threatened with legal action under the Bill.

The Christian Institute is aware of several cases of individual transsexuals pressurising a local church with legal threats. Often the transsexual is advised by a transsexual-rights group. Some transsexuals are even advised by the Equal Opportunities Commission - an agency with statutory powers.

The most prominent case actually went to court. The pastor and membership of Vine Christian Centre in Maesteg, South Wales, were sued after a man who had a 'sex change' was told he could not attend the ladies' prayer meeting or use the ladies' toilets. The church had shown considerable patience and compassion towards the man (he had been attending for



A church in South Wales was sued by a transsexual because it would not let him join the ladies' meeting.

two years) but refused to treat him as a woman.

The members were advised by their lawyer that defending the case through the courts could cost £100,000. They discussed the possibility of having to sell the church building to pay the fees.

The church's lawyers argued - under the existing law - that the case should be thrown out. They succeeded, although the judge criticised the church and made them pay some of their own legal costs. But the Gender Recognition Bill changes the legal landscape against which

such a case would be fought in the future. It could be much more costly for the church to win again.

The Government previously told sports bodies that their rights would not be affected by the Bill. But under pressure it conceded the need to amend the Bill to protect them. So far, it has steadfastly refused to allow churches similar reassurance. This will doubtless lead to more hostile litigation against churches. Even if churches ultimately win, church leaders on the receiving end will face enormous pressure.

The Bill goes much further than the European ruling

It is claimed that the Bill is necessary because of rulings from Europe. But the Bill goes way beyond any ruling from the European Court of Human Rights. There is no obligation for the Government to introduce the extra provisions that it has introduced (such as the £5,000 fine).

In particular, there is no requirement from Europe to compel religious bodies to conduct transsexual marriages. Yet the Bill does compel parish churches in the Church of England to marry transsexuals in the parish. Although the Bill does give Anglican clergy a right to refuse to conduct the ceremony, they have no right under the Bill to prevent their church being used.

The Bill also throws open the door for legal action against non-conformist church ministers who refuse to marry a transsexual. The Christian Institute has a legal opinion from a barrister confirming this is the case.

None of this is required by Europe. The Government itself has admitted that the Bill goes beyond what was demanded by the European court.¹ Churches and religious groups need specific protections in the Bill.



¹ Response to the Joint Committee on Human Rights' 19th Report of Session 2002-03 – Draft Gender Recognition Bill, Department for Constitutional Affairs, December 2003, para. 4

Examples showing how this Bill creates problems for religious freedom

Example 1:

A curate discovers that his vicar is about to unwittingly conduct a marriage service for a transsexual. If he tells his vicar he could receive a £5,000 fine. If he remains silent he will allow his vicar to break Christian teaching.

Example 2:

Stephen is in fact a transsexual who was born a woman. She wants to marry Rachel in All Saints, her local parish church. The vicar believes that transsexual marriage is wrong and refuses to allow the church building to be used. The pair sue the church using the Human Rights Act.

Example 3:

Mavis is in fact a transsexual who was born a man. He starts to attend an evangelical church and demands that it treat him as a woman for all purposes. When the minister asks him not to attend the ladies' prayer meeting he sues the church. The court case lasts several months and costs the church £100,000.

Example 4:

The minister of Newcastle Street Baptist Church refuses to allow a practising transsexual, Belinda (previously Barry), to be baptised and so he cannot become a member. He sues the church because under the Gender Recognition Act the law states that he is a woman.

Transsexuals threaten to sue under sex discrimination laws

Section 29 of the Sex Discrimination Act (SDA) 1975 makes it unlawful to discriminate against a person in the provision of goods and services on the basis of their sex. There are common sense exceptions. The law allows shops specialising for women such as a ladies' hairdressers. But a supermarket cannot turn a man away at the checkout just because he is a man.

Those denominations which refuse to ordain women can continue to do so. The law permits monasteries not to have facilities for women, but a church must have lavatories for men and women.

The SDA has not presented difficulties for churches. But this will change under the Gender Recognition Bill. When a male transsexual obtains a gender recognition

certificate he will then be able to claim the same rights as a woman under the SDA. There has already been a court case where a male transsexual sued a church for the right to attend a ladies' prayer meeting and use the ladies' lavatory. The transsexual lost this case because he was not a woman in law. Now under the Bill he can be.

The Government argues that a Church which stops a male transsexual from using the ladies' lavatories could say that it was discriminating on the grounds of transsexualism and not sex. Whilst this is true in theory, in practice churches will have to defend themselves in the courts to maintain their legal rights. Could failure to provide Holy Communion be deemed to be unlawfully withholding a "good" or "service" under the SDA? The Government should close the door to hostile litigation in these areas.



'Inter-sex' conditions

Some people have raised the issue of inter-sex conditions. Such conditions are not dealt with by the Gender Recognition Bill. This Bill deals only with transsexualism – which is completely different from inter-sex conditions.

Individuals with an inter-sex condition are born with ambiguous reproductive organs. There are a range of inter-sex conditions, all of which are rare. Even then, in most inter-sex cases the chromosomes would reveal the actual biological sex. True hermaphroditism is extremely rare (less than 5 cases a year are reported worldwide).¹

Transsexuals, on the other hand, are biologically normal but psychologically feel themselves to be 'trapped in the wrong body'. It is a psychological problem not a physical problem. The Gender Recognition Bill deals only with transsexuals. Discussion of inter-sex conditions has nothing to do with this Bill.

¹ van Niekirk, W A, 'True Hermaphroditism', *Am. J. Obstet. Gynecol.*, 126(7), 1976, pages 890-907