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Discussion

Trans-formational? Why we need to do better for trans young people in the UK

DISCUSSION

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ABSTRACT

Gender diversity and issues facing transgender people are poorly covered in the medical curriculum, yet these patients will face higher rates of mental health issues, violence, stigma and discrimination than many others. Unfortunately, the continuing global pandemic has only served to further entrench the discrimination and inequalities faced by trans people in the UK, particularly trans people of colour, those with disabilities and young people. This paper seeks to provide an overview of who trans people are in the UK and to outline key issues facing this community. It will consider in further detail the context of transphobia in the UK, including the government's reluctance to meaningfully reform the Gender Recognition Act and the specific challenges facing trans young people accessing healthcare. It argues we need to take a human rights approach to trans issues and move away from a medical model which seeks to define gender diversity as pathology. Only if we better understand our trans patients can we better meet their health needs and help to challenge entrenched structures of discrimination.

INTRODUCTION

Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
Article 24, UN Convention on the Rights of the Child (1)

It is undeniable that the COVID-19 pandemic and associated lockdowns have been detrimental to the lives of children and young people in the UK. They have faced and continue to face huge upheavals in their daily lives, including increasing social isolation, loss of routine, disruption to education and examinations, not to mention the impact of seeing loved ones unwell and in hospital. The mental health charity Young Minds commissioned a survey of young people in the summer of 2020 which showed 80% felt their mental health was worse as a result of the pandemic, with 87% saying they had felt lonely and isolated. (2)

Unfortunately, we know that LGBTQ+ people are much more likely to have mental health issues than their peers; there is extensive evidence suggesting they are more likely to suffer from depression, engage in self-harm and to attempt suicide. (3) There is also evidence to suggest that trans youth especially suffer from significant mental health issues, facing stigma, discrimination, bullying, harassment, physical and sexual abuse and family rejection on a daily basis. (4) Stonewall's trans report found that 41% of those questioned had experienced a hate crime because of their gender identity, with a quarter facing domestic abuse from a partner and 12% having been physically attacked by a colleague in the last year. (5) We further know that trans people of colour (TPOC) and those with disabilities face additional structural prejudice and discrimination, including greater health disparities. (6) It does not seem unreasonable to conclude, therefore, that the pandemic is likely to have disproportionately affected trans people and young trans people especially, with an even greater impact for TPOC and those with disabilities.

Yet are we as doctors and future doctors sufficiently prepared to be able to help those patients who have been disproportionately affected by COVID-19? Unfortunately, the issues facing trans and gender diverse people are poorly covered in the medical curriculum, if at all. Given the huge range of challenges trans people face as set out above, it is incumbent on us to both better understand and advocate for these patients. This paper will seek to set out who trans people are, the context of transphobia in the UK and some of the specific issues facing trans young people, including current arrangements for the provision of gender identity related healthcare and a significant recent High Court judgment (Bell v Tavistock).

Who are trans and gender diverse people?

Trans and gender diverse people are those who do not identify with the gender assigned to them at birth, in contrast to cisgender or cis people who do identify with the gender assigned to them at birth. Trans people are an extremely diverse group, just like the rest of the LGBTQ+ community. For ease, the term trans will now be used as umbrella term to capture the wide range of trans and gender diverse identities. This not only includes binary transgender identities, such as someone assigned female at birth who is male, but a range of non-binary identities such as genderfluid, genderqueer or non-binary; in fact, a growing number of young people identify with non-binary identities. (7) There are no reliable figures on the prevalence of trans people and the reasons for this are multifaceted; non-binary identities are not formally recognised and many trans people are unwilling or frightened to identify as trans, which is understandable given the high risk of discrimination and even transphobic violence they may face. Again, this is compounded for many TPOC for a number of reasons, including the fact that their religious and ethnic communities are often one and the same. Trans visibility, while limited, is still overwhelmingly white, meaning many TPOC may be unwilling or unable to identify with this group. (8) However, one relatively recent meta-analytical study reported a prevalence of trans people of 4.6 in 100,000 and we know referrals to gender identity services are growing significantly year on year. (9) The decision to include gender identity in this year's Census may provide more accurate data but still of course relies on trans people feeling able to respond truthfully. Whilst trans identities are represented in the LGBTQ+ umbrella, it should be noted that gender identity is distinct from sexuality and trans people may be straight, gay, bisexual or have other sexualities.

Some, but not all, trans people will experience gender dysphoria defined in the DSM-5 as "a marked incongruence between one's experienced/expressed gender and their assigned gender". (10) There is a long history of pathologising the transgender experience; indeed, it is still listed as a psychiatric disorder in the aforementioned DSM-5 and was only depathologised as part of the ICD-11 in 2019. (11) The US Society for Adolescent Health and Medicine (SAHM) in its position paper on trans young people makes clear that gender diversity is a normal phenomenon, and that the DSM-5 is sometimes inappropriately used to categorise trans identities as a mental health disorder "rather than pathologising the state of distress that may be experienced" resulting from gender incongruence and societal stigma. (4)

Transphobia in the UK

It is not possible to write an article about trans experience in the UK without acknowledging the pervasive transphobia which permeates everyday life for trans people as well as media reporting and academia. A Parliamentary Select Committee report from 2016 acknowledged the concerning fact that "discrimination is a part of daily life for trans people", with witness evidence detailing "harrowing" accounts of violence. (12) The head of Ofcom, Dame Melanie Dawes, recently acknowledged that the BBC's practice of giving voice to transphobic views when reporting on trans issues was 'extremely inappropriate'. (13) Whilst attitudes towards trans people may be changing for the better, the most recent British Social Attitudes survey notes that whilst people are keen not to be

seen as transphobic, only a third of respondents agreed that prejudice against trans people is always wrong. (14) Those with intersecting identities face additional discrimination, such as structural racism and ableism. The 2015 US Trans Survey found trans people of colour experience "deeper and broader patterns of discrimination" than their white counterparts and were much more likely to be living in poverty. Similarly, those with disabilities faced higher rates of economic instability and mistreatment. (15) Crucially this also affects access to healthcare, with people of colour and trans people experiencing more discrimination than the general population. What little research exists on this topic suggests those who are both experience even higher rates of discrimination. (16)

Many rightly see this is a human rights issue; Suess Schwend discusses the various and extensive human rights violations faced by trans people as a result of the Western medical model which psychopathologises gender identities that differ from the gender assigned at birth and argues for the recognition of gender diversity as a human right. (14) Clearly, a society which pathologizes gender diversity and sees trans identities as 'abnormal' versus the 'norm' of cisgender expression (what we might describe as 'cis-normativity') is not going to make it easy for trans people to live as their authentic selves.

It might be argued that the latest casualty of transphobia in the UK is the proposed reform of the Gender Recognition Act 2004 (GRA) with the publication of the long-awaited government response to the consultation in September 2020. This was met with great disappointment from many, particularly around the decision to not proceed with reforms to some of the onerous medical requirements of the process. This is despite the government's own analysis showing that 64% of respondents to the consultation (of which there were over 100,000) said there should not be a requirement of a diagnosis of gender dysphoria to access healthcare. 80% of respondents supported the removal of the requirement for a medical report (18), a position also supported by the British Medical Association (BMA). (19) Human rights organisations released a joint statement expressing their "huge disappointment" that the government had failed to "de-medicalise the process to recognise gender and bring the law in line with human rights standards". (20) Notably this brings England and Wales out of step with other countries with successful systems supporting self-identification, including Ireland, Denmark and Norway. (21) As this is a devolved issue in Scotland, we may see a different approach to legal recognition of gender there when the Scottish Government takes forward its proposals later this year.

Trans children & young people

Developmentally speaking, most children begin to have some understanding of gender between 18 and 24 months of age, with recognition of gender constancy (that is understanding of gender as a "permanent characteristic") from between 3 and 5 years. (7) Diamond highlights, however, that the cognitive and neurological changes relating to perceptions of gender in children are fundamentally contextualised by a society which holds a rigidly binary perspective on gender. Therefore, children consequently develop heightened attention to gender and adopt society's view of its binary nature. (7) The strength with which binary genders are entrenched in society perhaps goes some way to explain the vitriol of some arguing against under 18s being able to access any type of gender-related healthcare, with many transphobic commentators denying the existence of trans children altogether.

If the issues around access to healthcare for trans adults is controversial and complex, it would be fair to say that this is even more hotly debated for trans young people. In England and Wales, specialist care for those up to age 18 is provided by the Gender Identity Development Service (GIDS) based at the Tavistock & Portman NHS Trust in London. This is a specialised service coordinated by NHS England as per the Service Specification which sets out the deliverables of the service. (22) While it is difficult to clearly define the numbers of trans young people, and indeed the incidence and prevalence of gender dysphoria within this group, it is clear that numbers are increasing; referrals to GIDS in 2018 totalled 2,519 from 97 in 2009. (23)

The GIDS, which has been operating for over 20 years, comprises a psychosocial assessment period usually lasting a minimum of 6 months, during which the young person's development, gender identification and related feelings, behavioural and emotional issues including mental health and sexuality, are explored. In some cases, patients may be referred to paediatric endocrinology for consideration of puberty suspension with gonadotrophin-releasing hormone analogues (GnRHa) i.e., 'puberty blockers' (PBs) (24). The purpose of this treatment is that the young person is better able to reflect on their gender identity without the traumatic experience of puberty in a gender they do not identify with. As highlighted by Butler et al, the use of PBs is "only considered when the risks of non-intervention are considered the worse option in the patient's best interest". (9) Giordano emphasises the importance of recognising that the consequences being weighed up should "include longer-term physical, psychological and relational/social results of treatment versus non-treatment … not just the potential risk and benefits of medications". (25) Some patients subsequently go on to take cross-sex hormones once over age of 16 as an appropriate and necessary treatment option; this is of great concern to critics and is a position very much reflected in the Bell v Tavistock judgment. (23)

Media reporting on this issue is often inaccurate and frequently conflates puberty blockers with cross-sex hormone treatment which is categorically not available on the NHS for those under 16 - the age at which people are considered to be competent to make autonomous medical decisions. Contrary to the often sensationalist headlines on the issue, healthcare for trans young people is highly regulated and extremely difficult to access in the UK, with patients facing huge waiting times from a minimum of 18 months up to 4 years for a first appointment, despite waiting list targets of 18 weeks. This leaves many feeling it necessary to access private sector

healthcare. Indeed, the public interest not-for-profit organisation Good Law Project recently announced their intention to take the Government to court on this issue arguing it is acting unlawfully in consistently failing to meet the 18 week waiting time targets whilst also neglecting to put in place any alternative provision. (26) In January 2021 the Care Quality Commission issued a damning report on the GIDS service calling on them to improve waiting lists – they found there were over 4,600 young people on the waiting list, with many waiting over two years for a first appointment. (27)

In January 2020, NHS England announced an independent review of puberty suppressants and cross sex hormones by an expert group chaired by Dr Hilary Cass, a former president of the Royal College of Paediatrics & Child Health, which is ongoing at the time of writing . (23) However, the review is likely to be influenced by the significant High Court ruling on 1 December 2020 in Bell v Tavistock. (23) The case involved a judicial review of the process used by the GIDS service when granting PB treatment to under 18s. The claimant's case was that all children and young people under the age of 18 are incapable of giving informed consent for PBs. The court concluded that it was "highly unlikely" a child under 13 and "doubtful" a child of 14 or 15 could meaningfully consent to PBs, while recognising the legal position that those 16 and over can consent to treatment. Whereas in other clinical situations where a child cannot consent to a treatment parental consent would be sought, this is not considered appropriate; a position underlined as part of the GIDS service specification. (22) In March 2021, however, the Good Law Project succeeded in another legal challenge to a High Court decision, confirming parents could consent in their child's stead. (28) Whilst there is an appeal against Bell v Tavistock commencing in June this year, the initial ruling represents a further curtailment of the ability of trans young people to access what is for many life-saving healthcare. Amnesty International and Liberty UK issued a joint statement on their "disappointment" with the ruling, describing it not only as a restriction of healthcare but also a move which fundamentally limits both bodily autonomy and a young person's right to self-determination. (29) As a direct result of the ruling, NHS England amended their service specification for GIDS effectively preventing access to puberty blockers for those under 16 without a court order. (30,31) Mermaids, a charity providing help and support to trans young people and their families, described already seeing "a hugely-distressed response from hundreds of trans young people". (32) The ruling is clearly taking a toll on the mental health and wellbeing of this community.

CONCLUSION

LGBTQ+ communities, especially young people, people of colour and those with disabilities, have been especially vulnerable to the effects of a pandemic which has worsened many pre-existing inequalities and structural discrimination. On a backdrop of widespread transphobia in the UK, where trans people are at daily risk of prejudice, stigma and violence, we have seen a further rolling back of their human rights as the Government fails to de-medicalise the process of legal gender recognition and neglects to provide appropriate access to life-saving medical treatments. But what can we do as current and future medical professionals? As a start, we can treat our trans patients with dignity and respect, with the fundamental recognition of trans rights as human rights. Simple steps like using someone's correct pronouns can make a big difference to our therapeutic relationships, as can listening to trans young people about their needs rather than making generalised assumptions about what is in their best interests. Trans people exist and have a right to do so; it is our duty as doctors to ensure that we do better for them all.

Figure 1: *Bell v Tavistock*

***Bell & Anor v The Tavistock And Portman NHS Foundation Trust* [2020] EWHC 3274 (Bell v Tavistock)**
Bell v Tavistock is a case brought against the Tavistock and Portman NHS Trust by a previous patient of the GIDS service who had received puberty-blockers, went on to take cross-sex hormones and had subsequently de-transitioned as an adult. The second claimant is a mother of a 15-year-old with a background of autism and mental health issues diagnosed with gender dysphoria; this patient has not been referred to GIDS but the mother is concerned that they might be.
The claimant's case was that all those under 18 are not competent to give informed consent to the administration of puberty-blockers on the basis that they cannot understand and weigh-up the potential long-term consequences of the treatment. Whilst the ruling did not fully accept the claimant's position, recognising those aged 16 and over as able to meaningfully consent to PBs, they did however find it 'highly unlikely' a child aged 13 or under and 'doubtful' those aged 14 or 15 could meaningfully consent. This means 14 and 15 year olds would likely have to seek a court order and this would also sometimes apply to those over 16 if deemed necessary by their clinicians. NHS England immediately updated their service specification to state "patients under 16 years must not be referred by … [GIDS] to paediatric endocrinology clinics for puberty blockers unless a 'best interests' order has been made by the Court for the individual in question". (1)
Another troubling aspect of the ruling is that the court found that informed consent for PBs should also consider the consequences of hormone therapy treatment which patients may or may not go on to access. Prof Meg Talbot notes this may represent a 'new legal principle' and is likely to be explored in the appeal. (2) The ruling further implies that provision of information alone may not be significant to enable a child to meaningfully consent to PBs, a conclusion that potentially has significant implications for *Gillick* competence in other areas.
It should be noted that one of the allowed interveners in the case was Transgender Trend, a transphobic pressure group that is described as providing "evidence-based resources for parents and schools" but who argue that transgender children do not exist. Organisations supportive of trans children and families were not permitted to intervene. Gendered Intelligence's blog noted "the judgment seems to come from a place where a transition of any kind is a last resort, something highly medicalised and highly stigmatised", making the important point that trans children are not inherently vulnerable but rather are continually damaged by a systemically transphobic society. (3)
In January 2021, Tavistock & Portman NHS Trust was granted permission to appeal against the ruling and the Good Law Project filed an intervention supporting the appeal, supported by a number of NGOs (Stonewall, Endocrine Society, Gendered Intelligence and Brook). The appeal will begin in June 2021.
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Figure 2: *Gender Recognition Act*

Gender Recognition Act (GRA) 2004 consultation
The GRA sets out the legal process for changing a person's gender and acquiring a Gender Recognition Certificate (GRC) in England & Wales (a devolved issue in Scotland). A GRC is required to access important documents like a Birth Certificate in the person's correct gender.
Correctly recognising the intrusive, costly, humiliating and administratively burdensome nature of the current system, the Government set out to reform the process launching a consultation in July 2018.
A comprehensive analysis of the consultation responses showed that:
▪ Nearly two-thirds of respondents (64.1%) supported the removal of the requirement for a diagnosis of gender dysphoria
▪ 80% supported the removal of the need for a medical report
▪ 78.6% were in favour of removing the requirement to provide evidence of living in their acquired gender for a period of time
In other words, most respondents supported moving to a system of 'self determination' that is successfully operating in other countries like Ireland. However, the Government ultimately bowed to pressure from transphobic groups and their response in September 2020, almost two years after the process began, confirmed applications for GRCs would continue to require :
▪ A medical diagnosis of gender dysphoria from an approved medical practitioner;
▪ A medical report from an approved medical professional providing details of any treatment they have had;
▪ Evidence they have lived in their new gender for at least two years;
▪ Agreement from their spouse/civil partner to the marriage/civil partnership;
▪ Make a statutory declaration that they intend to live in the acquired gender until death (making a false statement is a criminal offence)
Additionally the process still fails to legally recognise those who are non-binary.

Figure 3: *Actions you can take*

Actions you can take
▪ Speak to some trans people! Find out about some of the issues facing them and their experiences, particularly those with intersecting identities. Speak up against transphobia, racism and ableism
▪ Educate yourself on the issues facing trans people, especially in relation to access to healthcare, by reading the resources above and by following trans organisations and people on social media
▪ Read some books by trans writers such as Trans Power by Juno Roche and Unicorn by Amrou Al-Kadhi (aka Glamrou)
▪ Learn about non-binary people – the BBC Sounds podcast NB: my non-binary life is a good place to start
▪ Find out whether your medical school explicitly covers trans issues (including key pieces of legislation like the Gender Recognition Act) in the curriculum; if not, ask them why not!
▪ Consider displaying your pronouns on your social media accounts, work name badge and email signatures
▪ Donate to trans organisations and fundraisers such as We Exist's Trans Healthcare Fund https://www.weexist.co.uk/
▪ Consider supporting the Good Law Project's trans rights fund https://goodlawproject.org/case/nhs-duty-young-people/
▪ Join the Rainbow badge scheme through your own NHS Trust or via GLADD (The Association of LGBTQ+ Doctors and Dentists)

Figure 4: *Further reading*

Further reading:
▪ TransActualUK https://www.transactual.org.uk/ - organisation founded and run by British trans people
▪ Mermaids https://mermaidsuk.org.uk/ - charity supporting trans children
▪ All About Trans https://www.allabouttrans.org.uk/ - project positively changing how the media understands and portrays trans people
▪ Gendered Intelligence http://genderedintelligence.co.uk/ - charity that exists to increase understandings of gender diversity and improve trans people's quality of life
▪ Gender Identity Research & Education Society (GIRES) https://www.gires.org.uk/ - UK-wide organisation working to improve the lives of trans and gender diverse people of all ages
▪ Inclusivity – Supporting BAME Trans People https://www.gires.org.uk/inclusivity-supporting-bame-trans-people/ - guide on issues facing TPOC and how to best support them
▪ Non Binary wiki https://nonbinary.wiki/wiki/Main_Page - wiki dedicated to non-binary identities
▪ World Professional Association for Transgender Health https://www.wpath.org/

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