

Lesbian Persistence

Input to the addendum to the report of the Special Rapporteur on violence against women and girls to the HRC on the concept of consent in relation to violence against women and girls

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A Scottish civil society organisation
Working to increase the profile of lesbians socially, politically and culturally
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Response to the call by the Special Rapporteur on violence against women and girls to the HRC for input on the concept of consent in relation to violence against women and girls.

1. Introduction

Lesbian Persistence is a Scottish civil society organisation which works to increase the profile of lesbians socially, politically and culturally. We understand women and girls to be females, men and boys to be males, and lesbians and gay men to be same-sex attracted. All uses of those words should be understood accordingly.

This submission on consent should be read in conjunction with our submission on violence against lesbians, as some of the issues discussed here relate to violence as well as to consent.

The question of consent should be straightforward to define - nobody willingly consents to be the victim of violence, whether it be physical, emotional, psychological, sexual or social. However, in this submission we draw attention to specific instances where various factors come together to create a perfect storm for lesbians, who are coerced into courses of action without freely given, fully informed consent.

As the UK guidance on consent relating to rape and sexual offences¹ states, “Sometimes consent is given, or appears to be given, that is ostensible consent, but it is not true consent in the particular context in which the offending has occurred, for example in cases where a young complainant has been groomed. It is important to make a distinction between consent and mere submission, acquiescence or compliance.”

2. Gender-identity ideology

In the last two decades, gender-identity ideology (GII) has become an increasingly potent social force, encouraging people to “transition” to “become” the opposite sex. Of course, no such thing is possible, but that has not prevented the ideology from gaining a great deal of traction. This has particular implications for lesbians, including the question of coercion vs consent, which we focus on in this paper.

a. Coercing lesbians into heterosex.

Lesbians are same-*sex*, not same-*gender*, attracted. Yet many previously lesbian or LGB organisations and service providers have embraced GI, and insist that lesbians welcome men who call themselves “lesbians” into their associations and dating pools. Many lesbians (including members of Lesbian Persistence) report the lesbian dating apps they use are now full of men. Those women have not consented to be confronted with males attempting to match with them, yet a member who states she is only interested in relationships with biological women is often removed from the site.

¹ <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent>

Asya Carrino,² discussing males' behaviour on lesbian dating sites, comments, "in any other setting, this would be described as predatory and dangerous... Sometimes 'safe space' is... used to lure young lesbians into a space operated by trans-identifying men."

Rejecting heterosexual male advances can be difficult for women in any situation, and far too often carries a risk of violence. Ironically, when a man says he's a "lesbian", women are put under even more pressure to have sex with him. Refusal all too often results in gross and continued insults and aggression, in particular being accused of transphobic bigotry, not only by the man in question but also by the wider social group. Many lesbians in that situation find themselves shunned, insulted and accused of "transphobia" by their so-called friends.

Research by Caroline Lowbridge³ for the BBC showed that many lesbians feel pressured to have sex and relationships with men calling themselves "lesbians". One woman reported having been called transphobic, a genital fetishist, a pervert and a terf. She said "I've had someone saying they would rather kill me than Hitler... That was so bizarrely violent, just because I won't have sex with transwomen." Another woman "said she felt so pressured she ended up having penetrative sex with a transwoman... after repeatedly explaining she was not interested".

Research by Angela C. Wild⁴ uncovered a similar picture, wherein lesbian women were routinely coerced into sexual relations with "transwomen". 50% also reported having been excluded from their LGBT groups for alleged "transphobia".

None of the lesbians in this position freely consented to sex or relationships with the men concerned. Acquiescence under duress does not equate to consent. Coercing a woman to have unwanted sex is rape.

b. Coercing lesbians to transition

There are many complex areas around medical interventions which relate to consent, safeguarding, access to lesbian-specific services, and the consequences of medical and social interventions.

Masculine-presenting lesbians are assumed to be men and therefore to need surgery or hormones to modify their bodies into a heteronormative understanding of heteronormative biological congruence. Such sex-role stereotyping is lesbophobic, and based on anachronistic (and meaningless) stereotypical concepts of "gender identity".

We submit that both feminine-presenting and masculine-presenting lesbians are simply same-sex attracted women, and that neither of these stereotypes require medicalisation, surgery or hormones to become the opposite sex. These interventions are a form of institutionalised violence against lesbians, which vitiates apparent consent..

There is evidence that adolescent and young lesbian women are being told they are, in fact, "trans", encouraged to think of themselves as "men", and being pushed to transition even when they have not expressed any previous desire to do so. This is especially, but not exclusively, a

² Carrino, Asya "No Women's 'Net", in "Women's Rights, Gender Wrongs" ed Aitken, Kath and Wainwright, Sally. WDI. 2023

³ Lowbridge, Caroline. "The lesbians who feel pressured to have sex and relationships with trans women"
<https://www.bbc.co.uk/news/uk-england-57853385>

⁴ <https://www.gettheloutuk.com/blog/category/research/lesbians-at-ground-zero.html>

problem for so-called gender non-conforming women who would previously have been described as “tomboys”. In some cases, their “transition” is purely social. However, many young lesbians find themselves in the situation of three women interviewed by Chantal Louis.⁵ All three were prescribed testosterone (one after only 30 minutes of “therapy”), one woman was given a mastectomy and another was given both a mastectomy and a hysterectomy. All three women subsequently developed health problems as a result, and all came to realise they were not men, but lesbian women.

None of them was given the correct information about the long-term effects of their treatment, nor presented with suitable alternatives. None, therefore, can be considered to have given informed consent to the mutilation of their bodies or the negative impacts on their long-term health.

In Scotland, 70% of children and young people referred to the Sandyford gender clinic are female. Rhoda Grant, head of service, told MSPs that more than half the young people referred to the clinic may be neurodiverse, and a third have a diagnosis of a mental health condition.⁶ Many of them are also lesbians, as Dr Cass also found.⁷

Surgical and hormonal interventions result in the mutilation of healthy young lesbian bodies. Keira Bell’s court case against the Tavistock Clinic⁸ exemplifies the fact that, without recourse to adequate, non-invasive therapeutic interventions, meaningful consent is impossible.

We consider prescribing cross-sex hormones and removing healthy body parts to be a form of violence against lesbians. Even adults subjected to such treatment may not be in a position to consent.

The judgement in Bell concluded that children given puberty-blockers are extremely likely to be unable to give informed consent to taking drugs that have devastating and life-long consequences, such as infertility and loss of sexual function. Allowing children to make life-changing decisions (sometimes against the wishes of their parents) when they are not yet mature or experienced enough to understand the consequences, also makes normal safeguarding impossible.

3. Sex by deception

Sex by deception may vitiate consent in UK law.⁹ The issue is particularly relevant for lesbians because of the increasing number of men claiming to be “lesbians”, and the likelihood of sex by deception occurring if a lesbian does not immediately identify her erstwhile sexual partner as a man.

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<https://www.feministcurrent.com/2020/08/07/interview-sam-nele-and-ellie-transitioned-as-young-women-living-as-men-before-realizing-theyd-made-a-mistake/>

⁶ As reported by The Herald newspaper

<https://www.heraldsotland.com/news/24590201.sandyford-gender-service-boss-patients-complex-group/>

⁷ Cass, Hilary. “Independent review of gender identity services for children and young people.”

<https://cass.independent-review.uk/>

⁸ The judgement is here: <https://www.judiciary.uk/wp-content/uploads/2020/12/Bell-v-Tavistock-Judgment.pdf> An account by Keira Bell is available here: <https://www.persuasion.community/p/keira-bell-my-story>

⁹ <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent>

The legal authority, *McNally*, is a case concerning a - presumably lesbian - teenage woman who *impersonated* a boy to deceive another young woman into having sex with her.¹⁰ No cases have yet been brought against men claiming to be women.

We are concerned by some of the language used in the UK guidance on consent. "It is arguable that *McNally* and the other authorities do not conclusively address the position in relation to trans and non-binary suspects. The question remains whether the sexual nature of the act is different where the complainant is deceived into believing that the defendant is not trans or non-binary; and, if so, whether different considerations apply." We submit that, for a lesbian who has been deceived into sex with a man, the nature (and assault) of the sexual act will not be different if she was deceived into thinking he was a woman, or if he was a "non-transwoman".

It is also concerning that the guidance appears to imply that, in some cases, a man claiming to be a woman may not be committing a deceit. Two points in particular stand out: "Many people who have transitioned may not regard themselves as trans, but simply as a man or a woman." The implication here is that if a man regards himself as a woman, it may not be considered a deception to fail to disclose his true sex. This is, factually, nonsensical. However he chooses to regard himself, he will always know that he is, actually, male. And the experience of the lesbian who finds herself in physical or sexual contact with him will be no less traumatic for his self-regard. Those prosecuting rape and sexual assault must focus on the act committed against the woman, not on the feelings of the men involved.

Secondly, the guidance states, "To acquire a Gender Recognition Certificate... a person is required to live in the acquired gender for 2 years. To meet this condition, some may think it necessary to conceal their sex." This seems to be tantamount to a potential defence for sex by deception (almost certainly with a lesbian). The fact that a man wishes to conceal his sex in no way justifies presenting himself as a woman in order to have sex with a lesbian. (Arguably it is also nonsensical, since his sex will inevitably become apparent during the sex act, if not before.) If he wishes not to disclose that he is a man, he is not compelled to approach women for sex.

By definition, a lesbian does not choose to have sex with men. It must therefore be made clear that there is no circumstance in which a lesbian who agrees to sex with a man who presented himself as a woman, can legally be considered to have given consent. Regardless of the man's image of himself, or his desire to be treated as a woman, every such case must be automatically recognised as sex by deception.

4. Consent is irrelevant in specific situations

There are some situations in which women's capacity, liberty or autonomy are so constrained that it is impossible for them to freely give consent. In particular, women in prison, in refugee camps, and in other situations where the balance of power is so strongly weighted against the women concerned..

Lesbian Persistence is in contact with lesbian refugees in Kakuma refugee camp. As they said in a recent tweet¹¹ "We Did Not Choose to Be Refugees by Choice. We didn't flee our homes because we wanted to. We are refugees because of fear, persecution, and threats to our very lives. We were forced to leave everything we knew and loved simply because of who we are because we chose to live." In the camp

¹⁰ *McNally v R* [2013] EWCA Crim 1051

¹¹ <https://x.com/SheriCarson438/status/1845936515089657928>

they are desperately short of all the basic necessities - food, water, medicines, sanitary products and clothing. They are housed together, but have virtually no protection and they are at considerable risk of male sexual violence. In circumstances such as these, nominal consent to sex, in particular with men in authority such as guards or NGO and government officials, is irrelevant.

Consent is irrelevant in other situations too, including women who have been trafficked into prostitution; girls who have been forced into child marriages; and women who are unable to leave violent partners because of financial or other dependency.

Coercive situations also negate consent. For example, women whose partners announce they are now “women” and who are pressured into accepting his new “identity” and being in a “lesbian relationship”. In workplaces, women may be forced to share toilets or changing rooms with men, and threatened with disciplinary measures if they object.

5. Conclusion and recommendations

There are many situations in which lesbians and other women may nominally consent to actions which do them harm - ranging from sharing bathrooms, to sex by deception, to medical transition. A model of consent is needed which considers all the circumstances in which the consent was given, and which takes account of all of the impacts of the act. Freely-given, informed consent is irrelevant, or impossible, in the case of any act which causes the consenter reasonably foreseeable harm (for example in so-called “rough sex”), and especially in cases where the consenter does not have equal power or agency as the wrongdoer.

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