Transsexualism – the current UK medical and legal standpoint

This is a truly tangled web, which requires a complex walk through of medical, legal and jurisprudential issues. The conclusions are perhaps quite unexpected, though, and perhaps not at all unwelcome.

The UK Government:

The UK government has stated what transsexualism is *not*:

It is *not* a mental illness. It is a condition considered *in itself* to be free of other pathology (though transsexual people can suffer depression or illnesses like anyone else).

http://www.dca.gov.uk/constitution/transsex/policy.htm

They *have* stated what the condition is:

What is gender dysphoria?

Gender dysphoria or transsexualism is a drive to live in the opposite gender to that in which a person has been registered at birth. It is a widely recognised medical condition. The Chief Medical Officer has confirmed that gender dysphoria is a medical condition that may need treatment and that treatment may be carried out by the National Health Service (NHS) as well as privately.

http://www.dca.gov.uk/constitution/transsex/faqs.htm

Legally, one of the most important comments were made in this case:

Extracts from the judgments of the European Court of Human Rights in Goodwin -v- UK and I -v- UK delivered on 11 July 2002

It remains the case that there are no conclusive findings as to the cause of transsexualism and, in particular, whether it is wholly psychological or associated with physical differentiation in the brain. The expert evidence in the domestic case of *Bellinger -v- Bellinger* was found to indicate a growing acceptance of findings of sexual differences in the brain that are determined pre-natally, though scientific proof for the theory was far from complete. The Court considers it more significant however that transsexualism has wide international recognition as a medical condition for which treatment is provided in order to afford relief (for example, the Diagnostic and Statistical Manual fourth edition (DSM-IV) replaced the diagnosis of transsexualism with "gender identity disorder"; see also the International Classification of Diseases, tenth edition (ICD-10)).

Of course, as Christine Burns notes: "if the condition WERE a mental illness then surgery, whilst perhaps mitigating the symptoms, would not be expected to effect a 'cure'. We would all still be, to put it bluntly, mentally ill . . . and potentially unfit to hold our jobs and roles in society as a result."

http://www.pfc.org.uk/pfclists/news-arc/2004q4/msg00073.htm

Medical Classification:

In the UK, ICD-10 is the accepted 'bible' for definition of medical conditions, rather than DSM-IV. ICD-10 is published by the World Health Organisation (WHO).

On 10th March 2005, a question was tabled and a written answer given in the House; this information seems critical to the analysis in this document:

Q: To ask the Secretary of State for Health whether transsexualism is classed as a mental disorder for the purposes of sections 1 and 3 of the National Health Service Act 1977.

A: Sections 1 and 3 of the NHS Act 1977 do not refer directly to "mental disorder", but do require the Secretary of State to provide a health service to secure improvement in physical and mental health and to prevent, diagnose and treat "illness". "Illness" is defined by section 128 of the Act as including "mental disorder within the meaning of the Mental Health Act 1983".

Transsexualism is defined in the International Classification of Diseases—tenth edition (ICD-10)—as a mental disorder and it is therefore likely that it would be regarded as a mental disorder for the purposes of the 1983 Act.

The ICD-10 classification reads as follows:

"F64.0 Transsexualism

A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex."

Guidance on gender dysphoria was included in the national definitions set for specialised services, which suggests that primary care trusts should commission such services collectively. Specialised services for mental health, including services for people with gender dysphoria, are being reviewed by the national director for mental health, Professor Louis Appleby, and a report is due in May.

http://www.theyworkforyou.com/wrans/?id=2005-03-10.218733.h&m=1063

Incidentally, there may be changes to this medical viewpoint in the offing. Dr Zoë-Jane Playdon made this comment in a speech to the Royal College of Psychiatrists on16 April 2002 :

"where the US relies on the DSM, Europe tends to prefer the ICD; WHO have indicated that they are open to reclassification of transsexualism as a physiological condition rather than a mental illness"

http://www.gires.org.uk/Text_Assets/RCPSYC_Zoe_speech.pdf

Mental Disorder, Mental Illness?

Section 1 of the Mental Health Act 1983 defined "mental disorder" as meaning "mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind”.

Clearly, mental illness has been ruled out. Clearly also, a psychopathic disorder has been ruled out, as these are all classed as mental illnesses.

So as far as the medical-legal situation in the UK is concerned, a person who fits the diagnostic criteria F64.0 for transsexualism is suffering from a mental disorder, and *not* a mental illness.

Interestingly, the treatment regime is also well defined. In the document “Guidelines For Health Organisations Commissioning Treatment Services For Individuals Experiencing Gender Dysphoria And Transsexualism” it is stated:

“All commissioning bodies and health care practitioners, whether in private practice or the NHS, should also be aware that unnecessary, non-clinical delay in administering hormones or moving to the surgical stage of treatment could result in legal challenges.”

http://www.gires.org.uk/Text_Assets/Guidelines%20FINAL.pdf

So there we have it:

As it currently stands in the UK, transsexualism is a mental disorder, a recognised medical condition, and with a specified physical treatment regime, including hormones and surgery.

It also has two exit clauses, something not mentioned in the Harry Benjamin International Gender Dysphoria Association’s Standards of Care.

The first exit clause is medical. A person cannot be suffering from transsexualism if one no longer fits the diagnostic criteria in ICD-10 F64.0.

The second exit clause is legal. A person who formerly suffered from transsexualism but has completed transition, and has lived for at least two years in the corrected role may apply to have their assigned-at-birth sex also corrected, under the provisions of the Gender Recognition Act 2004.

It would not be medically appropriate - nor indeed, even legal – to refer to such a fully transitioned person as anything else but the man or woman they actually are.

There is mounting (but not conclusive) evidence that transsexualism is the result of a neuro-developmental condition of the brain. It would not surprise the author at all, to see the WHO reclassification of profound gender dysphoria as a physiological condition, in the not too distant future.

http://www.gires.org.uk/Text_Assets/Etiology_Definition.pdf

Objection to the term, Mental Disorder – the author's opinion:

'True' transsexualism is not related to age. It is not a 'crazy man who believes he should be a woman'. Succinctly, it is a woman with a physical problem, not a man with a mental one. As far as I know, the only other kind of 'transsexualism' is 'false' and/or 'deluded'. (Same for trans men in reverse, of course)

There are some people who suffer from transsexualism and other mental disorders. How dare I define Gender Dysphoria (GD) as a mental disorder, when I have just said that it is a physical problem? Simple. When an issue weighs on you so heavily that you become dysfunctional in every day life (because of depression, say), then it is a mental disorder. Unlike every other known form of mental disorder however, the complete cure is social, endocrinological, and surgical.

If the depression is caused by the GD, then we have co-morbidity. However, perhaps the sufferer was not depressed because of GD, but had manic-depression as well. In that case, then we can say that co-existence is real (like the 'flu and a broken arm), but co-morbidity is not seen. A truly vital diagnostic differentiation.

Why? Because some psychotic delusions can mimic transsexualism. I know of one case where a pre-op woman reverted to male mode during florid manic psychotic episodes and was forever getting surgery delayed because of that. This was even though she had been taking hormones and living in role for many years. However, careful differentiation showed that the /male/ behaviour was actually the delusional one i.e. she was only suffering badly from transsexualism when ill with bipolar.

But this is really, truly rare stuff. A German study last year revealed ONE case. In private discussion recently, an expert in England told me that in decades of practice, he had seen ONE case like this. What tells me is that we are now shading decimal points off our false positives (and negatives).

About 50% of people who show up for consultation #1 never come back (assuming they were given a trial of hormones for diagnostic purposes at that consultation, which I believe should be the standard protocol). Gender Clinics (GICs) in general tend to waste time and funds - because of their incredibly poor 'seeing the patient as a person' record, and because their 'lowest common denominator' approach leads to huge backlogs and massive delays. I.e. totally unnecessary suffering over many years for tens of thousands of people. That is not to say there are no stars. Of course there are. But they have to be consulted as individuals, not as cogs in a machine.

Further, GICs /assume/ co-morbidity. They do not seem to have heard of co-existence - or, if they have - they do not seem to differentiate between the two. Careful differentiation is vital to establish no co-morbid psychopathology - but co-existent would be OK. And even if there was a co-morbid psychopathology - like depression say - then it should be verified that is being caused by the GD. Why? Again, simple. Fix the GD, and the co-morbid depression goes away!

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