



We have excellent laws on free speech. These include the freedom to disagree on transgenderism.

Many in our society speak about gender ideology as if everyone must agree. Christians are being put on the spot, aware that anyone who objects is quickly labelled hateful or transphobic. It's no surprise that people are reluctant to say what they really think.

A key tactic of activists is to silence

debate by declaring it to be intolerant or even unlawful. So it's crucial to take note of the many times when the freedom to disagree is affirmed by the courts.

Recent cases prove there is space to disagree with transgender ideology – and also demonstrate the need for us to speak. This leaflet brings you up to date.

THE BELL CASE¹

This landmark case was about whether it is right to put young people on a 'sex change' conveyor belt using irreversible drugs and surgery. The existing approach was challenged. The Bell ruling underlines that children cannot consent to life-changing drugs until they can understand the full consequences.

Facts

Keira Bell is one of a growing number of 'detransitioners' who regret their attempts to change sex. She claimed that children cannot give legal consent to a course of 'puberty blockers' (drugs that halt usual adolescent changes). She had irreversible surgery in her late teens after being prescribed puberty blockers aged 16 by the NHS Gender Identity Development Service (GIDS).



GIDS insisted that proper consent was obtained before children were given puberty blockers. They also said the drugs were merely a pause – giving the child more time while further treatment options were worked out.

Decision

GIDS didn't get proper consent for puberty blockers.

The three senior judges were unanimous that puberty blockers are **not** just a "pause". They are part of a 'treatment' pathway, since almost all children who take them go on to cross-sex hormones with even more serious effects. So children must appreciate the implications of the broader 'treatment' pathway, including for fertility and sexual function. This "will be impossible for many children to comprehend".²

Key issue

CAN A CHILD CONSENT TO PUBERTY BLOCKERS?

The Court clearly ruled against GIDS's approach to obtaining consent and its view of puberty blockers. The judges said the drugs prevent the very "changes which would contribute to the understanding of a person's identity". The "use of puberty blockers is not itself a neutral process". They may "confirm" gender dysphoria.³

To consent to this medical 'treatment', the child must understand the information in broad terms, including that which "ought to be given weight in the future".⁴

The "experimental" nature of the 'treatment' impacts "whether a young person can have sufficient understanding of the risks and benefits".⁵ The Justices concluded that this is "**highly unlikely**" for a child aged 13 or under and "**very doubtful**" for children aged 14 and 15. For 16 and 17-year-olds, clinicians should involve the court where there is "**any doubt**".⁶

The NHS is appealing the case, which is expected to be heard on 23 and 24 June 2021.



DISSENTING VOICES

It's clear that we have the legal freedom to disagree with gender ideology, and that as Christians we should be doing so. Some of the clearest opposition to transgenderism comes from unexpected quarters, including gay, trans and feminist voices. While we would not agree with all their arguments, the fact that they are raising objections can encourage us to speak up too.

DOUGLAS MURRAY

Douglas Murray is an atheist and a gay man. In his bestselling book 'The Madness of Crowds', he describes how mass hysteria and political correctness terrify people into silence about the false claims of trans activists. He claims that pro-trans organisation Mermaids is "one of the most sinister charitable organisations in the UK".¹⁴



SIMON FANSHAW

Simon Fanshawe left the LGBT lobby group Stonewall, which he co-founded, over its approach to transgender issues. His arguments include that it "defies biology" and puts women and girls at risk. He called for a commitment "both to freedom of speech and to fact instead of fantasy" and accused Stonewall of seeking to shut down debate on gender ideology.¹⁵

J K ROWLING

Harry Potter author J K Rowling has highlighted the importance of biological sex, saying that "erasing the concept of sex removes the ability of many to meaningfully discuss their lives. It isn't hate to speak the truth". She added, "my life has been shaped by being female. I do not believe it's hateful to say so".¹⁶



SUZANNE MOORE

Suzanne Moore is one of many feminists arguing that transgenderism denies female identity, as well as dangerously allowing biological males access to women-only spaces. She says "we have gone through the looking-glass and are being told that sex is a construct... Sex is not a feeling. Female is a biological classification that applies to all living species."¹⁷



DEBBIE HAYTON

Debbie Hayton was born male, but 'transitioned' from male to female as an adult and now lives as if he is a woman. However, he does not believe that surgery has changed his biology. He acknowledges that he is "not female" and "cannot become female" because it is impossible to change "our biological sex".¹⁸

THE SCOTTOW CASE⁷

This important case underlines freedom of speech, including for speech that is felt to be offensive. We can welcome this, even though as Christians we would not have chosen some of the words Kate Scottow used.

Facts

In March 2019 Stephanie Hayden and Kate Scottow had a Twitter exchange in which they disagreed strongly on transgenderism. Hayden, a man who now lives as a woman, complained to the

police that Scottow used offensive language towards him online, repeatedly referring to him as a man.

As a result, Ms Scottow was convicted of 'improper use of a public

communications network', for "causing annoyance, inconvenience or needless anxiety to another" by "persistently" making use of a public electronic network. She appealed the conviction.



Decision

Conviction overturned

Lord Justice Bean and Mr Justice Warby ruled that Parliament did not intend to criminalise "annoying or inconvenient" expression. The aim was to catch persistence in such a course. UK law does not include "an offence of posting annoying tweets"⁸.

Key issue

TRUE FREEDOM OF EXPRESSION

Mr Justice Warby explained the scope of the right to freedom of expression:

“ free speech encompasses the right to offend, and indeed to abuse another. The Judge appears to have considered that a criminal conviction was merited for acts of unkindness, and calling others names”⁹

A properly 'structured approach' was needed, the High Court said, to justify limiting freedom of expression. The restriction must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society.

The Court ruled that Ms Scottow's conviction was not necessary. The "protection of individuals from annoyance or inconvenience is not in itself a strong public policy imperative".¹⁰



Important appeals being heard this year

Two legal cases were recently decided with important implications for the freedom to disagree. They are both being appealed.

THE MILLER CASE¹¹

In February 2020, a High Court ruling protected Harry Miller's freedom of expression. The judges said it was unlawful for the police to question Mr Miller for tweeting his opposition to transgenderism, and then suggesting that his comments could lead to criminal prosecution.

The Court said the police action had a "chilling effect" on freedom of expression, and there was "not a shred of evidence" that Mr Miller was at risk

of committing a crime. His right to speak on transgender issues "was extremely important".

However, the High Court considered the broader policy – of recording 'hate incidents' based on the perception of the person complaining – to be lawful.

Having won his case on how the police treated him, Mr Miller is appealing on the wider 'hate incidents' policy.

The policy must be

changed to respect the right to freedom of expression.

At the time of writing, the Court of Appeal is expected to hear the case in early March 2021.



Harry Miller

THE FORSTATER CASE¹²

In December 2019, the Employment Tribunal held that Maya Forstater's belief in "only two sexes" was incompatible with the fundamental rights of others. Therefore, it was not protected under the Equality Act 2010. The Tribunal said the

decision was a necessary interference with her right to freedom of expression.

The Employment Appeal Tribunal is due to hear the case on 27 and 28 April 2021.



Maya Forstater

The 2019 ruling has implications for the right to speak up on a controversial issue, similar to Scottow. It weakens the prohibition of religion and belief discrimination in the Equality Act 2010. The decision suggests that only inoffensive beliefs are protected. This would have serious implications for the balance of discrimination law.

The judgment was criticised by high profile lawyers, including a former Supreme Court judge.¹³

On appeal, it must be clarified that unpopular beliefs are also protected. The earlier decision muddies the water on the right to freedom of expression. The appeal needs to give free speech its proper weight.

ALTERNATIVE VIEWS NEED TO BE HEARD



The UK has been blessed with free speech in the public square for many years.

Christians especially value our God-given opportunity to influence the world around us. Society benefits when bad ideas and injustice are challenged.

But today, a rising 'cancel culture' threatens our historic freedoms. More than ever we must defend the space to disagree.

While Christians do not set out to offend, the freedom to speak only inoffensively is not worth having. True free speech includes the risk that offence may be taken. We need a robust public square that allows genuine debate. The law cannot be used to settle arguments.

CONFIDENCE AND COURAGE

In his first epistle the Apostle Peter reminds Christians that they are called to stand for Christ and "be prepared to give an answer" (1 Peter 3:15).

As those who have been "born again to a living hope", we are to honour Christ as Lord in our hearts and in the way we live (1 Peter 1:3; 3:15). Believers should be "eager to do good" (3:13).

How that works out in our speech will vary from person to person. It may be in simple

conversation with a friend, writing to our MP about an issue or wisely contributing on a public forum.

Peter encourages us not to fear or be troubled if we face opposition and difficulty – "even if you should suffer for what is right, you are blessed" (3:14). Later in the letter we see the reason for hopefulness – because you "participate in the sufferings of Christ" and "the Spirit of glory and of God rests on you" (4:13-14).



SPEAKING WISELY

Jesus taught his disciples to be as wise as serpents and as innocent as doves (Matthew 10:16).

We should therefore speak appropriately, mindful of the setting. An employee should be aware of workplace rules and expectations.

A Christian should not be a "meddler" (1 Peter 4:15) but take opportunities to speak for what is good and to expose

what is wrong.

The Apostle Paul gives us helpful instruction:

“Be wise in the way you act toward outsiders; make the most of every opportunity. Let your conversation be always full of grace, seasoned with salt, so that you may know how to answer everyone.”
(Colossians 4:5-6)

REFERENCES

christian.org.uk/transspeechupdate-ref