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Title	He or She: Reporting court cases of trans-identified defendants in the UK
Type	Article
URL	https://clock.uclan.ac.uk/id/eprint/49818/
DOI	
Date	2023
Citation	Binns, Amy and Arnold, Sophie (2023) He or She: Reporting court cases of trans-identified defendants in the UK. Journalism Education, 12 (1). pp. 6-23. ISSN 2050-3903
Creators	Binns, Amy and Arnold, Sophie

It is advisable to refer to the publisher's version if you intend to cite from the work.

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He or She: Reporting court cases of trans-identified defendants in the UK

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November 2023

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Abstract

Reporting of court cases with trans-identified defendants has become both more common and more difficult due to changing guidance to court officials, and a lack of regulatory guidance to media organisations. This has resulted in confusing articles and abuse of journalists. This research examined 138 media reports of 39 UK court cases concerning defendants who claimed to be transgender. The results showed great variation in journalistic practice regarding pronouns, use of names and terminology. Journalists were asked for the reasoning behind editorial decisions. Stakeholders were also invited to give their opinions on current and ideal reporting practice. Current legal and regulatory guidelines in the UK were reviewed. Guidance is given to enable journalists to report these cases safely and accurately.

Keywords:

Transgender, court, journalism, journalist, trans, report, defendant

Introduction

Journalists are struggling to comply with the law requiring accurate court reporting in the face of increasing confusion and political arguments about how gender identity is or should be treated by the police and courts. This reflects a more general confusion and concern about “misgendering” and “deadnaming” (referring to someone by their pre-transition name). It also reflects the lack of an agreed definition of transgender (Centre for HIV and Sexual Health and TransBareAll, n.d.) (Hakeem, 2021).

Court reporting brings new, specific, legal and ethical challenges to journalists, which are not covered in current regulatory guidance by the UK’s Independent Press Standards Organisation on trans (Independent Press Standards Organisation, 2016). The IPSO guidance assumes good faith on the part of the person who says they are transgender. The Gender Recognition Act also assumes good faith – that a person would not seek to transition without a sincere commitment to live in the chosen gender. Journalists have therefore also been asked to take such transitions on trust, without requiring proof or evidence, and have generally done so (Mediatique, 2020).

However, this question of good faith comes into sharp focus in a court room, where it is self-evident that defendants may lie. In some cases, male offenders claim to be transgender following arrest, possibly as a cynical attempt to generate sympathy, reduced sentences, or to serve a sentence in a women’s prison; or possibly out of sadistic or attention seeking desires, or to create a new identity (Barrett, 2015).

Journalists are legally obliged to report court cases accurately (UK Government, 1996) and ethically obliged to report accurately to serve the public’s right to know (Independent Press Standards Organisation, 2021). But this needs to be balanced with privacy rights of defendants whose gender identity is unrelated to their offending.

Journalists have to make decisions quickly in order to comply with legal requirements for contemporaneous reporting (Hanna, et al., 2020). This gives rise to anomalous reports and frequently expose journalists to abuse on social media (see research question results 1a and 1b below).

This research aims to establish the current picture, summarise current law and policy, highlight best practice and create guidelines for journalists for reporting on court cases with trans-identified defendants, relating to identity and use of pronouns.

Research Questions:

- 1a. How are court cases with transgender defendants reported by the UK media, in terms of pronouns, birth and trans names, and terminology?
- 1b. What is the editorial decision-making process behind media reports?
- 1c. Concerning terminology, how is “trans” defined? What is understood by transgender or transwoman by a general readership? Is it accurate to call a defendant trans?
2. What are the legal, regulatory and ethical requirements of court reporting in the UK? How should they be interpreted in the case of a transgender defendant where biological sex may be an issue, or in the case of a defendant who claims to be transgender after arrest?
3. What are stakeholders’ views on current and ideal practice in media reporting of these court cases?

Methodology

Media reports of 39 UK court cases involving trans-identified defendants were coded as described below in order to answer RQ1a. In total 138 reports from established media organisations were used, from 2020, 2021 and the first two months of 2022.

Cases were only included where males claimed to identify as the opposite gender or had taken a female name. Cases where men cross-dressed but did not claim to identify as women were not included. All cases relate to sexual or violent offences. This may reflect the behaviour of males likely to identify as transwomen in court, or to reflect news values, or both. We did not seek to exclude transmen (females identifying as men), but found no reports of court cases relating to them. In most cases, the defendant pleaded guilty or was found guilty. In a few cases, the reports referred to an early stage of proceedings which were unresolved at the end of the study. However, the verdicts did not have a bearing on the study, which relates to media representation.

Each report was coded as giving the defendant’s birth name, chosen name, or both; and for pronouns used. The headline was coded for the words woman, transwoman or transgender woman. The body copy was coded for woman, transwoman, transgender woman or identifies as a woman. The phrase “identifies as a woman” was not used in headlines, probably because it is too cumbersome. A notes section was included for unusual features. The spreadsheet is available on the UCLan Data repository.

In addition, journalists reporting on 14 of these cases were invited to discuss the editorial decisions made when choosing how to refer to defendants in order to answer RQ1b. These were chosen as having been most likely to have actually attended the cases in question, as opposed to adding their

own byline to stories provided by an agency service, and according to the availability of contact details. They were provided with a participant information sheet (available on UCLan Clok). Transcriptions are on UCLan Clok. Only two journalists consented to be interviewed. A wider range of interviewees would have been preferable but this forms only a small part of the study which is using multiple research methods.

A range of stakeholder groups were invited to take part by submitting written comments and provided with an information sheet to answer RQ3. We sought a diverse range of opinions to provide full and competing perspectives on the issue. Trans rights groups were invited to comment as this is directly related to trans people, and in particular to provide a perspective on the impact on public perception of attributing of crimes to transpeople without caveat, compared to the impact of not accepting transgender status at face value. Women's rights groups were invited to comment as they have expressed concerns about male crimes being attributed to women, and the impact on victims of male criminals being referred to as women (Fair Play for Women, 2020). Free speech groups were invited to comment due to concerns about "compelled speech", in which people are obliged to refer to people by their chosen pronouns or descriptions, against their own beliefs (Stock, 2022). Invitations were sent to:

Trans rights groups: Stonewall, Gendered Intelligence, Trans Legal Project, Trans Media Watch, Press for Change, All About Trans, Trans Actual.

Lesbian, gay and women's rights groups: Lesbian and Gay Alliance, Gay Men's Network, Transgender Trend, Fair Play for Women, Fair Cop, Women's Rights Network, For Women Scotland, Legal Feminist, Sex Matters.

Free speech and journalism groups: Ethical Journalism Network, Index on Censorship, Free Speech Champions, Free Speech Union.

Research questions 1c and 2 were answered through a literature review.

Only three stakeholder groups provided responses: For Women Scotland, Women's Rights Network, Fair Play for Women. Their full responses are on UCLan Clok. The trans groups all refused to contribute or did not respond. This is a limitation of the research, we have sought to mitigate this by researching trans perspectives via literature review, using trans rights sites such as Stonewall. Though these provide general guidance for journalists, they lack specific comments on this issue. The concept of "no debate" has been a feature of trans rights activism, and this refusal to engage is consistent with that approach (Sullivan & Suissa, 2021) (Hanvey, 2022). In addition, this research is not only about transgender people, but also about defendants who claim to be transgender following arrest, as the section "Is it accurate to call them transgender" explains.

The free speech groups also refused to comment, which again means these issues can only be addressed via literature review. Only two journalists agreed to interview. Although these were useful, the varied nature of the court cases means more interviews would have provided more specific details about the different challenges journalists face.

Although the refusal of some groups to take part has resulted in the research having a narrower focus, the importance of issues faced by journalists and victims of crime remains. The refusal to take part cannot be used as a veto on research into issues affecting a wider group of people.

Results

Research Question 1a: Media Report Analysis

Chaos was the defining feature of the media reports, when considered as a body. The same defendant could be referred to as male or female in different reports of the same court case (Brock, 2022) (PA News Agency, 2022), or even change pronouns half way through a report (Christodoulou, 2022). Defendants could be referred to as male by some people involved in a case and female by others (Connell, 2021). In one case, a defendant was referred to as a man in an early stage of a court case (Murphy, 2021a) and as a woman three months later by the same reporter in the same publication (Murphy, 2021b). In another case, a reporter referring to an earlier hearing, prior to the defendant transitioning, “corrected” a witness’s quotes in order to make the pronouns agree with the latest hearing (Novak, 2022).

Of the 138 reports, the birth name was given in 65 reports and the trans name in 117 reports. Both birth and trans names were given in 58 reports. Of 39 defendants, in only two cases were the trans name not given in any report. In 15 cases, the birth name was not given at all.

In headlines, woman was used 22 times, transwoman six times and transgender or similar 23 times. In most cases, the issue was avoided by using gender-neutral terms such as paedophile, sex offender, former teacher etc.

In body copy, transwoman was used in eight reports, transgender woman or similar in 40 and “identifies as” in 25. This leaves 65 reports in which the person’s trans status was not clearly stated. Woman was used in 30 reports. In two reports (both relating to Harry Styles’ stalker) the person was entirely referred to as male and their new trans identity was not mentioned. In about 40 reports, there was no mention of the person’s birth sex, or it was obfuscated. These numbers do not add up to 138 because many reports were difficult to classify. For example, some journalists presented male defendants as unambiguously female (Elvin, 2021), but some did so while simultaneously providing a careful reader with “clues”, such as that a defendant was being held in a male prison (Huntley, 2021). Some journalists mentioned a male middle name (Currie, 2021) or alias without comment, or mentioned “male anatomy” or similar.

All the above implies that further cases involving trans identifying defendants may have been missed from searches because media reports are incomplete.

Ratios cannot be provided due to the difficulties in classifying some stories, as mentioned above. However, overall, Scottish media organisations appeared more likely to obfuscate defendants’ sex than other UK organisations. Although geography was not coded for in the methodology, this may relate to the differences in the way the Scottish government has treated transgender policies generally, for example, by moving towards self-identification in law, against UK government policy (House of Commons Library, 2022). There was little consistency even within a organisation. For example, the BBC covered six of the 39 cases, as follows:

Zoe/Kyle Watts, multiple weapons offences, presented in report entirely as female. (BBC News, 2021)

Julie/John Marshall, possession of 80,000 child abuse images, presented in report entirely as female. (BBC News, 2020)

Paris Bregazzi, many violent offences over many years, described as transgender woman, female pronouns used. (BBC News, 2018)

Jessica/Allan Brennan, multiple child sex offences, both birth and trans names given, female pronouns used. (BBC News, 2021)

Jessica Smith, attempted child abuse, described as transwoman, female pronouns used. (BBC News, 2021)

Laura/Patrick McCann, multiple child rape, presented in report entirely as male. Trans name not given and quotes heavily redacted to remove female pronouns. Male pronouns used throughout. (BBC News, 2021)

A few notable cases are given below. These are not highlighted to embarrass the journalists or publications involved. They are examples of the current confusion.

John/Claire Goodier

The first report describes the defendant as a man, John, who pleaded guilty at magistrates court to drugs offences and having sex with a dog. The report said Goodier “now goes by the name of Claire” but the journalist used male pronouns (Murphy, Northwich man admits sex with a dog, 2021). Three months later, at sentencing, the same journalist used female pronouns and only the name Claire, who was described as a woman in the headline. The same picture was used in both stories (Murphy, Northwich woman jailed for cocaine-fuelled sex with a dog, 2021).

Susan Cuthbert

The court report was extremely confusing, but appears to describe sexual relationships between two transwomen and one man. In a jealous, drunken fight, Cuthbert stabbed both the others. Cuthbert is not described as a transwoman but is mentioned as being “held in a male prison”, while the lover is described as “a person who goes by the name of ‘Gemma’”(Huntley, 2021).

Janiel Verainer

Verainer, who has a history of sex offences against children, identifies as a five-year-old girl. Verainer arrived in court dressed as an elf and carrying a doll. The judge said this was unacceptable and insisted the doll be removed. Verainer’s claim to be five was clearly not believed by the judicial system, as shown by the case being tried in an adult court and the judge’s remarks about the childlike behaviour. However the judge did use female pronouns, implying that the claim to be transgender was accepted. The Kent Messenger avoided pronouns and did not describe Verainer as trans, but stated that Verainer was referred to with female pronouns during the hearing (Hooper, 2021). However, the Daily Mail used female pronouns and described Verainer as transgender (Phillips, 2021).

Pablo/Diana Tarazaga-Orero

Tarazaga-Orero has a history of stalking Harry Styles, with a first court appearance in 2019. In February 2022, the defendant was again in court charged with breaking into the singer’s home and assaulting a woman. In court, Tarazaga-Orero was referred to as “identifying as a woman” for the first time.

The Sun and Daily Mail referred to Tarazaga-Orero as a “transgender woman” and used female pronouns. Both used the name Diana in body copy but Pablo in picture captions (Christodoulou, 2022) (Dean, 2022). The Independent didn’t mention the defendant’s change of gender, used the name Pablo and male pronouns (Vaughan, 2022).

The Metro described the defendant as a woman, used female pronouns and only the name Diana. The report quoted Harry Styles from a previous court case (when Pablo/Diana had not claimed to be transgender) and “corrected” those earlier quotes:

Styles told Hendon Magistrates’ Court from behind a screen: ‘I thought it was sad I felt sorry for [her]. That evening I pulled up in my car next to the bus stop and I offered [her] some money so that [she] could get a hotel or some food.’ (Novak, 2022)

Chloe Thompson

Thompson had 17 convictions for sex offences under the name Andrew McNab and was on the sex offenders register. McNab changed name by deed poll to Chloe Thompson and set up a new social media account under the new name, without informing police, in breach of the terms of a notification order (Hetherington, 2021). A few months later, MThompson was arrested for multiple indecent exposures. In court, Thompson was referred to by female pronouns by officials but by male pronouns by witnesses. Reports made confusing references to “her penis”. A tweet by the Daily Record linked to the case was deleted after many complaints, mocking the reporter and publication and saying that McNab should be called a man and that the term “her penis” was ridiculous (Corrigan, 2022).

RQ1a: How are court cases with transgender defendants reported by the UK media, in terms of pronouns, birth and trans names, and terminology?

Conclusion: There is no consistency regarding the use of pronouns, terms and names used in reports of trans-identified defendants. Editorial decisions vary wildly from case to case, journalist to journalist and publication to publication. Some journalists appear to be finding ways of providing accurate information through convoluted means. Due to the confusing nature of the reports concerned, accurate data cannot be provided. Reports of trans-identified defendants are not rare, as this data shows. Trans identified people within the judicial system also appear to be becoming more common (Gair, 2021) (Gilligan, 2017), though this is hard to establish due to historical variation in data collection methods (Metropolitan Police, 2022) (West Yorkshire Police, 2021). It is likely the issue is more widespread than appears here, as cases will not appear in searches due to obfuscation of defendants’ sex, and its replacement with gender.

Research Question 1b: Editorial Decision Process

Only two journalists agreed to be interviewed: Reporter A at the Bolton News, who reported on a case in January 2021, with headline ‘Woman paedophile distributed indecent images of children’; and Reporter B from the Northwich Guardian, who wrote the two conflicting reports about John/Claire Goodier mentioned above.

Reporter A’s report referred to the defendant throughout as a woman and used female pronouns. Reporter A said this reflected how the defendant was referred to in court. She said no mention was made of the defendant being transgender, though the judge said he had read a report from The Tavistock Centre, which runs a service to help people with their gender identity, and the defendant did not look “all that feminine”.

Reporter A said: “I discussed it with a number of colleagues, but we took the decision that the court had referred to her in the feminine, she referred to herself in the feminine and we are there to not make judgements so we decided we would report it straight as we would do any other case...

“There were some repercussions as there were some people in the community who knew she was transgender, and we did get a lot of flak for doing it.

“We are there as the eyes and ears of the public, what the public would see or hear is what we report, and it is not our place to make judgements about it. The court wasn’t going to, so we are not going to either. If there are people out in society who are prejudiced then that is up to them, we are not going to join in that.”

Reporter B said his initial report, which referred to Goodier as male throughout, was written from a magistrates’ court register which gave the name as John Goodier aka Claire – no journalist was in court. Reporter B then attended the crown court for the sentencing.

He said: “That is when it completely changed and there was no mention of John Goodier at all at Crown Court, so it was a bit confusing.”

Reporter B explained that he had hoped that some reference would have been made in the court by either barrister, but it was not mentioned. He then discussed it with his editor

Reporter B said: “We felt we had no alternative but to play it safe and straight because ultimately, we don’t really know what the transitional stage of Claire Goodier is, we just didn’t know. And, actually, is it relevant to the story and it probably isn’t.”

The article also received a lot of complaints.

He said: “We got absolutely slaughtered, we got so many complaints about the fact that we referred to Claire.

“If you have a mugshot with a story, especially the mugshot we had for this one, it created such kind of extreme viewpoints, and we got so many complaints about it.

“The only thing in hindsight we maybe could have done is within the story refer to the fact she used to be known as John but at the time, it wasn’t kind of something we deliberately left out.”

He added that they also received complaints about the first story as well.

He said: “I think we got at least one or two complaints by people saying we should be respecting how people want to be referred to, but we got that from a register, so we weren’t in court to have any more substantial info. These kinds of stories are always going to generate complaints, regardless of how you report on them.”

He felt it would be useful for courts to offer guidance on cases.

He said: “They are difficult cases, but it probably would be nice if the court could maybe explain a bit more, especially the ones that are going to generate a lot of complaints and personal abuse directed at journalists for simply reporting on how something has been done.

“We haven’t done it deliberately to offend people or wind people up, we are just reporting on the facts as they were presented in court. So, it might be nice to get a bit of direction from either a judge or a barrister on these types of cases.”

RQ1b: What is the editorial decision-making process behind this?

Conclusion: Due to the limitation of the sample size, conclusions can only be drawn cautiously, though the reluctance of journalists to talk may in itself imply unease. However, the journalists spoken to made clear decisions are not made lightly. Journalists know they may receive strong

criticism or abuse. They appear reluctant to use male pronouns or refer to someone as male when they have been referred to as solely female in court, even when court records have stated their sex previously. Their reports reflect the remarks made in court.

Research Question 1c: Terminology

Definitions and public understanding of “transgender”

A major reason for confusion is the lack of a clear legal definition of the terms “trans” or “transgender”; or a generally agreed public understanding of the term. A selection are summarised below but they are contradictory. This problem was noted in the Equality and Human Rights Commission response to the debate on conversion therapy:

“The consultation document contains no clear definition of ... the meaning of “transgender” – a term which has no clear legal meaning, is potentially wider than the concept of gender reassignment in current UK law, and is understood by different people in different ways.” (Equality and Human Rights Commission, 2022).

Part of the problem stems from the move away from the term transsexual to the term transgender, as described by consultant psychiatrist and gender specialist Dr Az Hakeem:

“While the term transsexual has a specific definition and had previously been used for diagnostic purposes, the term transgender is less defined and more encompassing. The term is perhaps more useful than transsexual in that it at least includes reference to gender which is at the core of the condition and the person’s relationship to it.

“Both these terms contain the prefix trans, which implies a switching between two binary poles... While this has been mainly the case with transsexualism, it is increasingly common for persons identifying as transgender to have gender identities outside of the binary repertoire of male/female. (Hence the term non-binary).

“Transgender persons may adhere to stereotyped male/female roles or they may subvert these Such individuals may identify as non-gendered, inter-gendered, or as transgender without attempting to assimilate (or pass) as either conventionally male or female.” (Hakeem, 2021)

In other words, to be transgender does not require a person to look different to their biological sex, or have hormone treatment or surgery. It is about the way a person feels.

Official bodies have attempted to define it more objectively. The three legal requirements of a Gender Recognition Certificate (GRC) are a medical diagnosis of gender dysphoria; and that the person has “lived in” their chosen gender for a minimum of two years; and have made a sincere commitment to live permanently in that gender. It does not require the applicant to have had hormonal treatment or surgery (Government Equalities Office, 2018). No definition of “lived in” is given, but accepted proof includes bank statements or payslips, implying a name change. About 6,000 GRCs have been issued since 2008 (Ministry of Justice, 2021) – far fewer than the estimated 200,000 to 500,000 trans people in Britain (Government Equalities Office, 2018).

In contrast, the World Athletics organisation, whose definitions are followed by some sporting bodies, makes no mention of a permanent commitment. However, it does require a transgender male-to-female competitor to have had hormonal treatment resulting in a measurable alteration to testosterone levels for at least a year (World Athletics, 2019)

NHS bodies define “trans” much more widely, as an umbrella term which may include a temporary transition, or “living part-time with a different gender identity”, or even just “occasionally wearing clothes usually associated with the ‘opposite’ gender” (Centre for HIV and Sexual Health and TransBareAll, n.d.).

Stonewall also describes “trans” as an umbrella term covering many possible gender identities, but defines “transgender woman” more specifically as “someone who is assigned male at birth but identifies and lives as a woman” (Stonewall, 2017). Again, no definition of “lives as a woman” is provided.

In contrast, the public understanding of the term transgender is much more restrictive than any of the above definitions. A revealing 2020 YouGov poll on transgender rights showed that a majority of the UK public agreed that “a transgender woman is a woman” and “a transgender man is a man”, and that transgender people should be allowed to use the toilets and changing rooms of their chosen gender. However, when it was specified that the transgender person had NOT had gender reassignment surgery, this majority reversed, with most people stating they should not be allowed to use the facilities of their chosen gender. From this we can infer that most of the British public assume that “transgender” refers to people who have had surgery (Smith, 2020).

This is significant, as very few trans people choose to have genital surgery. It is impossible to obtain accurate numbers, partly due to the very broad definitions above, but a 2015 GIREs report suggested 1 per cent of the UK population was nonconforming to some degree. Of these, three per cent (0.03 per cent of the total population) had already had any medical treatment, which may include hormonal or surgical treatment, with a further 0.4 per cent expecting to receive medical treatment during the next year (0.004 per cent of the entire population). This means 96 per cent had not had medical treatment nor had any immediate plans to seek it. Half of one per cent had a GRC (0.005 per cent of the entire population) (Gender Identity Research and Education Society, 2015). For the overwhelming majority of transgender people, “transitioning” appears to involve social and cosmetic change, or personal understanding of the self. However, perspectives on trans identity are extremely varied (Stonewall, 2019) (Stonewall, n.d.).

The NHS guidance quoted above (Centre for HIV and Sexual Health and TransBareAll, n.d.) acknowledges the public’s lack of understanding, stating: “Many people assume that [trans] means someone who has either had or who is currently in the process of physically (and probably surgically) ‘changing’ from a man to a woman or from a woman to a man...but it’s not that simple.”

For a journalist writing for a general audience, this is crucial. Reports of sexual offences will be incomprehensible to a large chunk of the audience if clarity is not given to the defendant’s biological reality, including their pre- or post-operative status. This is because sex crimes are likely to involve the defendant’s genitals. Stock has described how, while this may seem gratuitous, this becomes necessary in some situation as the ordinary, polite words (X is a man) are no longer considered acceptable (Stock, 2022). Such descriptions would be unnecessary and demeaning in reporting of most news stories (“lottery winner celebrates jackpot” obviously requires no description of the winner’s body) but becomes necessary in the specific instances of court stories involving sexual offences.

Trans-identified Defendants: Is it accurate to call them transgender?

The lack of a clear definition of “trans” means it is possible for anyone to identify as transgender. Advocates of self-ID (a policy that would give this legal status) would state that people are the gender they identify as. But in court, identifying as trans carries incentives which make the situation

less clear. There are long-standing concerns amongst psychiatrists and others working in the criminal justice system that criminals cynically and falsely claim to be trans (Barrett, 2015) (Richards, 2015) (KPSS, 2022).

In written evidence to the Government's Transgender Equality Inquiry, the President of the British Association of Gender Specialists outlined some of the reasons why a prisoner might pretend to be transgender (Barrett, 2015), reasons which also apply to a defendant:

The.... ever-increasing tide of referrals of patients in prison serving long or indeterminate sentences for serious sexual offences.... vastly outnumber the number of prisoners incarcerated for more ordinary, non-sexual, offences. It has been rather naïvely suggested that nobody would seek to pretend transsexual status in prison if this were not actually the case. There are, to those of us who actually interview the prisoners, in fact very many reasons why people might pretend this.

These vary from the opportunity to have trips out of prison through to a desire for a transfer to the female estate ... through to the idea that a parole board will perceive somebody who is female as being less dangerous through to a [false] belief that hormone treatment will actually render one less dangerous through to wanting a special or protected status within the prison system and even (in one very well evidenced case that a highly concerned Prison Governor brought particularly to my attention) a plethora of prison intelligence information suggesting that the driving force was a desire to make subsequent sexual offending very much easier, females being generally perceived as low risk in this regard.

Written evidence from the British Psychological Society outlined similar concerns, adding further incentives for seeking a trans identity: "As a means of explaining their sex offending aside from sexual gratification (e.g. wanting to 'examine' young females); or as a means of separating their sex offending self (male) from their future self (female)." (Richards, 2015)

A further incentive for defendants is the possibility of escaping prison altogether on the grounds of being transgender, as has happened in a number of cases (Fahey, 2010) (Simpson, 2022) (Brazell, 2020) (ITV News, 2018) (Karim, 2020).

There is evidence from Ministry of Justice and Scottish Prison Service reports that defendants and prisoners are falsely claiming to be trans in the rising numbers of trans-identified prisoners since the introduction of the care and management of transsexual prisoners policy of 2011, which has been perceived by some as giving special privileges such as private washing and laundry facilities (Leake, 2014) (Gilligan, 2017) (Gair, 2021). There are also reports of male prisoners transitioning to join women's prisons and detransitioning following release (Mega & Boothman, 2022) (Maycock, 2021). More recently, there has been a significant increase in police forces recording rape, a crime specifically committed with a penis under UK law, as being committed by females or people without a gender (KPSS, 2022).

RQ 1c. Concerning terminology, how is "trans" defined? What is understood by transgender or transwoman by a general readership? Is it accurate to call a defendant trans?

Conclusion: The term trans has no exact definition and is understood by different people in different ways. There is little research regarding general public understanding of the term, but what exists implies the public incorrectly assumes most trans people have had genital surgery (Smith, 2020). Expert evidence to government committees states that defendants are incentivised by the justice

system to claim to be trans (Richards, 2015) (Barrett, 2015), and may do so without any intention of permanently changing gender (Mega & Boothman, 2022).

If a journalist uncritically states a person is transgender, without giving any details about when they transitioned, or whether they have taken serious steps such as medical treatment (where these are mentioned within court proceedings), then the public may again be left with a false impression.

If defendants are falsely claiming to be trans in order to take advantage of such incentives, then public perception of trans people will be affected. Cumulatively, the reports may be incorrectly suggesting to the public that transgender people are unusually likely to commit crime, particularly violent or sexual crime as these are the crimes most likely to result in media reports.

Research Question 2: Legal and Ethical Duties of Journalists in Court Reporting

Courts serve the purposes of justice. The publication of court hearings forms part of the process of justice. The principle of open justice is widely recognised by both the public and the judiciary. In *R v Felixstowe Justices, ex p Leigh* [1987], Lord Justice Watkins said: “No-one nowadays surely can doubt that [the journalist’s] presence in court for the purpose of reporting proceedings conducted therein is indispensable. Without him, how is the public to be informed of how justice is being administered in our courts?” (Hanna, Dodd, & McNae, 2020, p. 184)

The societal benefits of open justice include promoting public confidence and respect for the administration of justice, allowing the public to scrutinise the process, and putting pressure on witnesses to tell the truth. More importantly in cases where identity is an issue, fair and accurate reporting of court proceedings can result in evidence becoming available and act as a deterrent to the public which could be hindered if proceedings aren’t reported, or identities are concealed (Hanna, Dodd, & McNae, 2020).

This principle of open justice is the reason behind both the legal responsibilities placed upon the court reporter and the legal freedoms given to the court reporter: the principle of privilege. Court proceedings are in themselves, defamatory. To report that someone has been accused, convicted or sentenced for a crime will cause their reputation serious harm. However, reporters rely on the protection of the absolute privilege defence, set out in the Defamation Act 2013. But to maintain this defence, a report must be fair, accurate and published contemporaneously. The defence does not require the journalists to report the ‘truth’ or to make enquiries outside the courtroom, but to accurately report what was said in it. They must report only on court proceedings, which may include more than simply the words that are spoken by court officials, witnesses and defendants. For example, journalists may report on defendants’ and witnesses’ appearance and demeanour

Journalists also have an ethical responsibility to the public to report accurately. This means more than just reporting quotes accurately. It also means not mis-representing the facts by partial reporting, or by failing to mention something that is relevant to an event. Accuracy is the basis of Clause One of the Editor’s Code of Practice: “The press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.” (Editors’ Code of Practice Committee, 2021)

There is no public interest defence to Clause One. A journalist cannot claim that they reported inaccurately for a good reason, for example, an attempt to combat transphobia. Accuracy is at the heart of journalistic ethics. This ethical responsibility also means using language in a way that will be

commonly understood by their readers. Facts should be clearly represented using words that are familiar to the vast majority of the audience.

As trans issues has become a more visible and contested part of public life, so there is a wider ethical responsibility beyond individual court cases. It is widely accepted that men and women show different patterns of criminal behaviour (Ministry of Justice, 2020). Many aspects of life, such as safeguarding, are predicated on this long-understood fact. Research on criminal behaviour post transition is still limited, but some research shows that male-to-female transgender people retain male patterns of criminality (Dhejn, et al., 2011) while more recent Ministry of Justice figures suggest not only that male pattern behaviour remains, but that there may be an increased likelihood of sexual offending amongst this group (Freedman, et al., 2021). As this is still a contentious area, journalists have a duty to society to accurately reflect the facts around offences.

In court, judges and magistrates are required to behave according to the guidelines in the Bench Handbook, which specifies that transgender people should be addressed by their chosen name and pronouns (Judicial College, 2021). Journalists reporting a judge's remarks should quote them accurately.

However, journalists, witnesses, lawyers and members of the public are not under any legal obligation to use a transgender person's chosen pronouns, although they may choose to do so. The Bench Handbook says: "There may be situations where the rights of a witness to refer to a trans person by pronouns matching their gender assigned at birth, or to otherwise reveal a person's trans status, clash with the trans person's right to privacy. It is important to identify such potential difficulties in advance, preferably at a case management stage." (Judicial College, 2021)

In fact, if using a person's chosen pronouns may misrepresent the facts of a case, or confuse the audience, the journalist runs the risk of breaking both their legal responsibility of accuracy in court reporting and their ethical responsibilities of accuracy and clarity. For example, confusion could be caused where the alleged crime was committed by an offender who the victim perceived to be male, or which refers to a trans-identifying woman having male genitals.

In most reporting involving transgender people, their gender may be irrelevant to the story and chosen pronouns or names can be used without further explanation. Stories such as "Business wins award" or "Three injured in car crash" are covered by the Editor's Code, Clause 12, Discrimination: "Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story" (Editors' Code of Practice Committee, 2021).

But in court cases, particularly those with high news value, biological sex is often an issue; or deception or fraudulent identity is "genuinely relevant to the story". Giving further details here is not in conflict with the Editors' Code guidance. If the person requests to be referred to in court by their chosen gender, as they are entitled to do (Judicial College, 2021), then their gender identity becomes relevant as it is at odds with the biological sex which is also relevant to the case. Misrepresenting the biological sex of the person concerned, even if well-intentioned, may risk the journalists' failing in their legal and ethical duties.

It is rare for a defendant to have a Gender Recognition Certificate. Statistics are not available for defendants due to problems of data collection mentioned above, but only about 6,000 GRCs have been issued (Government Equalities Office, 2022). However, even if defendants do have a GRC, the situation for court proceedings, and thus court reporting, does not necessarily change. It is an offence to disclose protected information, such as someone's previous identity, once they have a

GRC, unless the disclosure is for the purposes of the proceedings of a court or tribunal (section 22 of the Gender Recognition Act, paragraph 4e), or for the purpose of preventing or investigating crime (paragraph 4f) (UK Government, 2004). Court reports, which serve the principle of open justice, could be said to be part of this process, as described above, although this has not yet been tested in law.

RQ3. What are the legal, regulatory and ethical requirements of court reporting in the UK? How should they be interpreted in the case of a transgender defendant where biological sex may be an issue, or in the case of a defendant who claims to be transgender after arrest?

Conclusion: Court officials are likely to use a defendant's chosen pronouns in line with the Equal Treatment Bench Handbook. Witnesses may or may not do so. Journalists should report all quotes accurately. However, journalists are not legally required to use chosen pronouns in body copy or headlines. They have further legal and ethical duties to accuracy which may require clarity of the defendant's biological sex. The existence of a GRC is not necessarily a barrier to full court reporting, including both sex and gender and any previous names, due to section 22 of the GRA (UK Government, 2004), although this has not been tested through precedent.

Research Question 2: Stakeholders' Views

The researchers regret that no trans representative groups or free speech groups contributed comments. We have sought to mitigate this through literature including Stonewall's definitions and other trans groups' websites but would still be happy to hear from trans or free speech groups regarding their views.

All three women's rights groups stated strongly that biological sex was relevant in the case of court reporting, particularly of violent and sexual crime, and should be reported accurately regardless of the defendant's gender identity or the language used in court.

Susan Smith, co-director of For Women Scotland, said: "The obfuscation of the sex of an offender in crime reporting leads to confusion for the public, the potential to skew analysis and cause distress for victims."

Ms Smith said current guidelines had resulted in absurdities, some dangerous, and allowed the ideological stance of reporters and publishers to determine how much information was conveyed, and how, leaving it to the ingenuity of readers to track down accurate information.

She said: "When women's names are given to those charged with crimes of a violent and sexual nature, there is increasing scepticism that they are genuinely female. In seeking to understand these crimes, no one, whether crime reporters, members of the public or researchers, should have to second-guess or distrust the narrative presented."

She said this confusion could lead to: "fundamental misunderstandings of the dichotomy between the sexes with regard to certain crimes and the rise of "women do it too" arguments which are often employed to remove safeguards."

Ms Smith was particularly concerned that the situation may be exacerbated in Scotland by the SNP's determination to make acquisition of GRCs easier. She said: "As more perpetrators seek to acquire GRCs, the possibility of more confusion or restrictions and censorship needs to be countered by a commitment from IPSO to put truth and justice first."

Fair Play for Women has taken an active role in challenging reporting of crime by trans-identified defendants. They said that over 18 months, they had made ten complaints to IPSO about the use of “woman” or “female” to describe such defendants as a breach of Clause 1 of the Editors’ Code (Accuracy). All were initially rejected and FPFW escalated them all to the IPSO Complaints Committee for final review, where they were again rejected without investigation. Rulings are normally published on IPSO’s website but because these were rejected without investigation, none of the context or investigation made the public domain. FPFW has now published the correspondence on their own website (Fair Play for Women, 2022).

Claims were rejected for at least one of two reasons: that the report was not inaccurate if a newspaper accurately reported what was said; and that in the case of a third party complaint, IPSO could not decide what was accurate without the consent of the individual involved.

FPFW said the first reason, that a report was not inaccurate if it accurately reported what was said, overlooked the false assumptions newspapers were making about an individual’s sex when they are described in court or by police using feminine pronouns and name. Newspapers were conflating sex and gender identity, resulting in misleading and inaccurate headlines, such as ““Teesside **woman** accused of using sex toy and masturbating in public”. In their response, Fair Play for Women said:

And what a great headline it is too – a woman caught masturbating in public – this is no run of the mill, everyday story of male sexual offending. This is unusual and shocking – the perfect click-bait headline to drive interest in the story....

What’s happening here is clearly wrong, but inevitable, unless the Editor gives clear direction to staff that pronouns and names must never be used to guess at someone’s sex. If someone’s sex is relevant to the story – which it must be if it ends up in the headline – staff must take extra care to make sure it’s right and clearly distinguish between sex and gender identity when necessary.

By failing to even accept our complaints, IPSO is not presenting these examples to newspaper editors. Editors continue to remain oblivious to the obvious flaws, or can simply ignore it knowing there will never be a case to answer to the regulator.

FPFW said that the second reason, that investigating a person’s biological sex would be highly intrusive, without the consent of the person involved, even extended to when that person’s sex was obvious and indisputable from court records. FPFW said:

This approach of requiring input and consent of the first party normally makes sense.... However, this approach falls down when the individual desires the inaccuracy and/or conflation [of sex with gender] and wouldn’t want it corrected. In this instance, the first party consent rule is not fit for purpose and ensures that individual privacy will always override public interest to know the truth.

FPFW also stated they had many meetings with IPSO and submitted written evidence to the Editors’ Code Committee (Fair Play for Women, 2020), without result. FPFW said that the Trans Guidance, written in 2016, was focussed exclusively on the needs of the trans person, and written to stop trans people being unnecessarily “outed” or mocked, but IPSO’s own recent research (Mediatique, 2020) showed this was no longer an issue.

FPFW felt that IPSO was failing to act fairly, by consulting with transgender advocacy groups but refusing to consider issues raised by other stakeholders. FPFW said:

Transgender advocacy groups do not wish gender identity, sex or transgender status to be reported where it is not relevant to a story. Likewise, women's sex-based advocacy groups, such as ours, do not wish the male sex to be misreported or misinterpreted as if it were the female sex, where sex is relevant to the story.

The needs of both stakeholder groups should be considered and fairly balanced by IPSO and this is not currently happening and needs to change.

By not even accepting our complaints, IPSO has avoided having to consider where the fair balance lies. What matters more? The privacy of a sex offender to hide his sex or the wellbeing of the victim to read her truth? Should the privacy of an individual always trump the public interest not to be misled? Or are there occasions when sex matters and readers must not be misled?

Getting this balance right matters. Public support for female-only spaces depends on the public's understanding of which sex commits most sexual and violent crimes. Misleading articles about "female" sex offenders distorts public perception, and along with it societal debate and public policy-making.

IPSO has a responsibility to help the press get this right.

The Women's Rights Network held similar views, and in addition was concerned about the presenting of opinion as fact. Referring to the Claire/John Goodier case described above, WRN said that the various media outlets, all registered with IPSO, described Goodier variously as a woman, transwoman and "transgender paedophile who identifies as a woman". WRN stated:

While it is true that some trans activists assert that 'trans women are women' this is an opinion, not a fact. It is also a highly contentious opinion.

The eminent biologist and scientist Lord Robert Winston has stated, 'I will say this categorically — that you cannot change your sex...' Yet, as the Goodier coverage shows, some members of IPSO are ignoring the facts of biological sex in favour of an ill-defined opinion on gender identity.

The Women's Rights Network said that the current inconsistent reporting around offenders exposed court reporters to abuse and harassment, but the solution lay within the current Code of Practice, which states that references to gender identity should be avoided unless genuinely relevant to the story. WRN said: "If gender identity is not relevant to the crime or criminal proceedings, it should not be mentioned. Instead, reports should accurately record the defendant's legal sex."

The WRN said that they were also concerned that the conflation of sex and gender, and the gradual creep of policies and practices which allow men to say they are women raises important wider issues. These included the practice of police recording crimes by gender not sex and the loss of single sex spaces in hospitals, prisons and even rape crisis centres.

WRN said: "We welcome the opportunity to comment on these issues and sincerely hope that IPSO offers clear guidance to journalists and editors which reflects its own Code and Codebook. Accuracy is the bedrock of all journalism. Anything which ignores or distorts the facts is comment or conjecture."

RQ4: What are stakeholders' views on current and ideal practice in media reporting of these court cases?

Conclusion: Trans rights groups and freedom of speech groups chose not to contribute to this research, which may limit the findings due to the lack of a trans perspective on this specific issue. Women's rights groups felt that their views were being ignored by regulators, who were failing to balance conflicting needs. They were concerned about the misrepresenting of violent and sexual crimes by males as being by females and the distress this caused to victims. They were also concerned about the wider implications for women resulting from the conflation of sex with gender; and the tacit acceptance by journalists of opinions regarding gender as fact. In addition, as gender is manifested, understood and defined in widely different ways between both individuals and groups, such opinions vary widely (Hakeem, 2021) (Centre for HIV and Sexual Health and TransBareAll, n.d.).

Discussion and Guidance

Reporting on trans issues has become one of the most contentious parts of journalists' work. Many have suffered major abuse on social media, complaints to their editors and even threats. These issues show no sign of going away. Jo Adetunji, editor at The Conversation, wrote:

Many editors and journalists admit to wanting to steer clear... Attacks have damaged the mental health of young journalists and left them treading on eggshells. Reporters and editors often feel they can't defend themselves properly – they are there to report others' views, not their own, and can fear making the situation worse or fear making missteps at the myriad obstacles of changing language and meaning. (Adetunji, 2021)

Nonetheless, Adetunji is definite that journalists and publishers must not avoid an important and complex group of issues. Recently, IPSO has attempted to provide further assistance for journalists through an updated set of guidance. However, although this acknowledges that court reporting is a contentious issue, it only lists factors for journalists to consider, and stops short of suggesting to journalists what they should actually do once they have considered these various factors. It acknowledges the complexity and variation of the situations journalists may face, but gives no assistance in helping journalists find an appropriate balance.

The purpose of this research was to review journalists' legal and ethical duties, the current situation and the views of stakeholders in order to provide robust guidance, which we offer here.

Proposed guidelines for journalists

This guidance is offered as suggestions for publishers, based on the journalist's duty to communicate facts as clearly as possible to the audience. This guidance is provided to allow journalists to report neutrally and accurately without making any judgements but providing enough information to allow readers to understand the court case and make up their own minds. These guidelines are based on a principle that a minor increase in word count is better than a major inaccuracy.

On rare occasions where the journalist has no way of knowing or suspecting that the defendant is trans, for example, when reporting only from court documents which conceal the defendant's birth sex, then obviously these guidelines cannot apply.

As noted above, this is a new area of law which has created tensions between privacy of defendants, victims' rights, and the requirements for accurate reporting. It is an area that has not been tested

through precedent. As all cases are different, where publishers are unsure, they should seek their own legal advice.

1. Avoid using definitive words without caveat especially in headlines and introductions.

Headlines which use the word “woman” to describe a transwoman implies that the writer, and publication, agrees with the proposition “Transwomen are women”. This is an opinion, not a fact, and so should not be used in the headline of a news report. Similarly, describing a person as a “transwoman” implies to the general reader that the person has made a sincere, permanent commitment to a gender change, probably with medical treatment. This may not be the case.

In headlines, the words woman or transwoman are better avoided. In body copy, phrases can be used such as “The prosecuting lawyer said Smith now identifies as a woman” or “Smith claimed to be transgender and asked court officials to use female pronouns”.

2. Report all quotes accurately even if this results in different pronouns being used by different speakers.

In court reporting, as elsewhere, quotes should never be changed. If necessary, a brief explanation is best: “Although Smith was referred to as a woman by court officials, the witness referred to Smith as a man”. This is covered by absolute privilege (UK Government, 1996).

3. Seek to provide your reader with the most accurate information, where possible, regarding the person’s status such as an official name change, medical treatment, time of transition or GRC, insofar as it is provided as part of court proceedings or in court documents, or as part of an official police statement.

Public understanding of trans terms is low, and even official definitions are so vague and all-encompassing as to be almost meaningless. As opinions and manifestations of gender vary so widely, it is impossible to journalists to communicate with a broad readership without using more specific terms. In the majority of news reports, details of a person’s transition will be irrelevant, but is relevant where biological sex is a factor if the reader is to understand the facts, particularly where a defendant has claimed to transition after arrest.

However, journalists should remember that only information which is part of court proceedings is covered by absolute privilege (UK Government, 1996). Information provided by police press release or official statement is covered by qualified privilege (UK Government, 1996 b).

4. Refrain from using pronouns, except in quotes, even if this results in awkward sentence construction or repetition of a name (see case precis on pages six and seven, which are written without pronouns).

To refer to a biological male with female pronouns is to tacitly agree with their claim that they are a woman or transwoman. Owing to the incentives of the justice system, this may not be the case. Using their chosen pronouns is to collude in their possible deception.

5. Make clear the biological sex of the defendant high up in the story.

Types of crime strongly correlate with biological sex (Ministry of Justice, 2020). These differences remain even after transition (Cecilia Dhejne, 2011). Public understanding of crime, particularly

violent and sexual offences, will be corroded if a defendant's sex is cloaked in euphemisms, or buried in a final paragraph, or if gender is conflated with sex.

6. Use both birth and trans names where available, particularly for sex offences.

Journalists have a duty to the public, as well as obligations to the subjects of stories. This can create a conflict when a person has changed their name. Many trans people greatly dislike being referred to by their original name, known as "deadnaming", and in most news stories there is no need. However, there is a public interest case for reporting a defendant's original name as well as their new name. Reports of sex offences are one of the most valuable methods of encouraging victims of earlier crimes to come forward. Complying with an offender's demands to only use their new name in public reports may allow them to escape justice for other crimes. The existence of a GRC does not prohibit the publication of a previous name when used to investigate or prevent crime, as described in the societal benefits of court reporting above.

Conclusion

Courts do not exist to serve as stages on which the players perform an affirmation of a person's chosen identity. Court reports are not a public record of such a performance, or a form of validation.

Court reports serve the public's right to know (Independent Press Standards Organisation, 2021). They also uphold the purposes of justice, both by serving the principle of open justice and by providing information that may lead to further prosecutions (Hanna, et al., 2020). For all these reasons, accuracy is of overwhelming importance.

The court room is, by design, a place of confrontation and opposing interests. The rights of the public (as represented by officials), defendants, witnesses and victims are in tension. These tensions and conflicts are inevitably transferred to the journalist attempting to make a fair and accurate report.

Some male offenders, motivated by recent incentives within the judicial system, appear to be falsely claiming to be transgender (Leake, 2014) (Mega & Boothman, 2022). There is no way for a journalist to establish whether someone making that claim is genuinely transgender or not. This is partly due to varying definitions of transgender, and partly due to the practicalities of establishing the reality behind the claim. In most circumstances, journalists may choose to take such a statement on trust, but in a court room, the other conflicting interests mean it is important the journalist makes clear this is a claim, not an established fact.

Representing defendants claiming to be transgender as biological women, or as transwomen without any caveat, is to give an inaccurate report of both an individual crime and a more general picture of offending patterns. This may have long-term effects on safeguarding and women's rights. It may distress victims. Lack of clarity about the identity of defendants may enable them to commit further crimes in the future and prevent further witnesses to past crimes coming forward. It erodes trust in the media generally and exposes journalists to abuse and ridicule.

Journalists and editors have been left to struggle with these issues due to a lack of clear guidance. We would strongly recommend that IPSO, and other regulatory bodies, work with women's and trans groups on an updated version of guidance regarding transgender reporting to include trans-identified defendants.

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