Transsexuals in Sport: Inclusiveness and the Level Playing Field

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Introduction
The integrity of the level playing field of sport has been tested in recent times. In July 2008, the High Court upheld the British Olympic Association ruling to ban British sprinter Dwain Chambers from the Olympics after testing positive to steroids in 2003.¹ This seminal decision highlights the importance of maintaining a level playing field and installing discipline in those who threaten that field.

In May 2008, South African double amputee runner Oscar Pistorius, who runs on carbon fibre blades, attempted to stretch the boundaries of sport further.² The Court of Arbitration for Sport (CAS) overturned the IAAF (International Association of Athletics Federations) decision to ban him from participation with able-bodied runners. The IAAF claim that his prosthetic limbs give him a competitive advantage over other competitors. However, this was inconclusive and no advantage could be proved.³

These decisions serve to illustrate the significance of ensuring that inclusion and exclusion in sport is legitimately balanced. The essence and integrity of sport need to be weighed against the rights of the individual to participate.

Inclusion can foster the recognition of universal aspects of being human, and “override divisions of class, gender, race, status, religion and associated distinctions of class.”⁴ The complexity of balancing this against the essence of sport is manifest through consideration of participation of transsexual individuals in sport. Such individuals challenge the typical notions of sex and gender and threaten the traditional cultural values associated with sport.

² Swartz, L & Watermeyer, B., 2008. Cyborg anxiety: Oscar Pistorius and the boundaries of what it means to be human. Disability and Society. 23(2) p. 187-190

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This paper seeks to consider the approach of the law and sports governing bodies to the participation of transsexual individuals in sport. This paper will investigate the extent to which the legal regime governing this area is consistent and justifiable.

**Sex and Gender**

The concepts of sex and gender have often been used incorrectly and interchangeably. For the purposes of this paper, their distinctions demand clarification from the outset. The term “sex” refers to a biological characteristic that is determined at birth. “Genotypic sex” or “chromosomal sex” relates to the female XX and the male XY cells that distinguish the two sexes. “Phenotypic sex” or “morphologic sex” refers to the difference of anatomical features that are inherently different in a male and female.

Conversely, “gender” describes the “social consequences for the individual of that assessment.” Whereas “sex” considers what is biologically male and female, “gender” considers what is masculine and what is feminine.

Transgendered individuals are those who exhibit incongruence between their birth sex and their gender identity. They are recognised as suffering from a condition known as “Gender Dysphoria.” In Britain, it is estimated that one man in every 12,000 feels that he is a woman and a smaller proportion of women identify with men. This disparity is so profound for some that they seek surgery to permanently associate the psychological and anatomical aspects of their sex and gender. Having undergone this treatment they are subsequently referred to as “transsexual” individuals.

Under their new identity, transsexual individuals have faced personal and social challenges to their integration within society. The fields of science and medicine have introduced procedures for individuals to change sex. However, it appears that societal structures have been reluctant to provide recognition of this change.

**Legal recognition of transsexuals in society**

Whilst there is no legal impediment to receiving surgery, English law has never traditionally been prepared to recognise it as changing a persons’ legal status and have reportedly prevented 5000 transsexuals from marrying in their adopted sex. Previously, transsexual individuals have been denied the right

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8 See generally The World Professional Association for Transgender Health. [online] Available at: [http://www.wpath.org/about_wpath.cfm](http://www.wpath.org/about_wpath.cfm) [accessed 10 July 2008]
11 Corbett v Corbett (otherwise Ashley) (No.1) [1970] 2 W.L.R. 1306.
to change their birth certificates to reflect their new sex,\textsuperscript{12} or to be legally recognised as father or mother of a child,\textsuperscript{13} and they have experienced discrimination in social\textsuperscript{14} and employment\textsuperscript{15} aspects of their lives.

Inconsistencies between the medical field offering reassignment treatment, and the restriction of their civil liberties, led to criticism and pressure from The European Court of Human Rights in various seminal cases.\textsuperscript{16} This prompted the Government to introduce legislation allowing legal recognition of a gender change.\textsuperscript{17}

During its exploratory stages, the legislation produced a great deal of “pre legislative scrutiny” by the House of Lords and House of Commons Joint Committee on Human Rights (JCHR).\textsuperscript{18} However, following detailed consultation, the JCHR concluded that there is a “legitimate state interest in regulating change of gender.”\textsuperscript{19} This led to the passing of the Gender Recognition Act 2004 (GRA) which gives transsexual individuals the right to marry in their new gender, apply for substitute birth certificates and be legally recognised for parenthood by artificial insemination through the process of an application for a certificate, which is ultimately determined by a Gender Recognition Panel.\textsuperscript{20}

The media images of a pregnant American female-to-male transsexual individual, who recently gave birth, represent a significant medical and cultural development in modern society.\textsuperscript{21} However, it is in the sporting context where the inclusion of transsexual individuals remains uncertain.

Sport has traditionally enjoyed the reputation of being “pure” and since the arrival of events such as the Olympic Games, males, usually naked, dominated. Today, not only do athletes wear clothes but women are also successful competitors. Yet this image of purity remains and, due to traditional perceptions of gender differences between man and woman, sport has been

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\item\textsuperscript{12} R v Registrar General of Births Deaths and Marriages for England and Wales ex parte P and G [1996] 2 FLR 90
\item\textsuperscript{13} X. Y and Z v United Kingdom. Times 23\textsuperscript{rd} April 1997
\item\textsuperscript{14} Anon., 2003. Transsexuals lose equality case. [online] 14 August, BBCi Website. Available at: http://news.bbc.co.uk/1/hi/england/northamptonshire/3150335.stm [accessed 2 June 2004]
\item\textsuperscript{16} Sheffield and Horsham v The United Kingdom [1998] 2 FLR 928; Goodwin v UK [2002] 2 FLR 487.
\item\textsuperscript{17} Bessant, C., 2003. Transsexuals and Marriage after Goodwin v United Kingdom. Family Law 33, 111.
\item\textsuperscript{20} Section 1(3) and Schedule 1, Gender Recognition Act 2004
\item\textsuperscript{21} Anon., 2008. US pregnant man has baby girl. [online] 3 July. Available at: http://news.bbc.co.uk/1/hi/world/americas/7488894.stm [accessed 5 July 2008]
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largely segregated in order to ensure fair play and protect the essence of sport.

Upon this knowledge it is not surprising that a new challenge of “how to integrate persons born into one sex who transform themselves into the opposite sex” is introduced. During the preliminary stages of its passage through Parliament, the GRA originally required both domestic and international sporting events to allow transsexuals to compete in their re-assigned genders. This caused great debate as to whether or not gender can genuinely be reassigned. Opponents of the GRA argue that “neither law nor science can transform the physical substance of a woman into a man, or vice versa.” Some British governing bodies contend an athlete’s potential is not dictated by legal status, but by physical strength and build, and that, genetically, transsexuals remain the sex that they were born with.

Following discussions between the Government and sports governing bodies, the GRA was amended to exempt sport from its objective and to consider the participation of transsexuals on a case by case basis. This has been confirmed by virtue of section 19(2) GRA which contends that a “body responsible for regulating participation of persons as competitors in an event or events involving a gender-affected sport” can prevent a person whose gender has become acquired under the GRA from participation.

The justification for this is found under section 19(4) GRA, where a sport is held to be gender affected if “the physical strength, stamina and physique of average persons of one gender would put them at a disadvantage to average persons of the other gender.”

Lord Filkin, opined that this regulation ensures “safe and fair competition” and “in the same way as a sporting body [can prohibit] a person taking performance enhancing drugs, for reasons of competitive parity, they would be entitled to exclude a male-to-female transsexual person if competitive


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parity or the safety of other competitors’ was at stake.”27 Whilst the recent Olympic ban against Chambers was upheld in favour of this comment, it seems that “competitive parity” is subject to interpretation given the Pistorius decision.28

The rationale behind the exclusion of transsexual individuals must be evaluated to ascertain whether such exclusion is legitimate and whether the courts are behaving consistently with the way that they treat other level playing field related sports issues.29 Could this be an issue of public policy in the same way as sadomasochistic activities were deemed not to be in the public interest yet boxing remained immune from the law?30

**Background**

Historically, the participation of transsexual individuals in sport arose out of the desire to uphold separation of men and women in sport. Sports bodies such as the International Olympics Committee (IOC) were keen to prevent the re-occurrence of men such as German athlete Hermann Ratjen in 1936, masquerading as women in order to triumph in women’s competitions.31

Prior to the dismantling of the Iron Curtain, the nationalisation of sport in the Soviet Bloc not only led to the use of drugs but also the entry into women’s events of persons whose womanhood was doubtful.32 The view was therefore expressed that measures should be implemented to save competitive games for “normal” feminine girls and not “monstrosities.”

Sprinter Stella Walsh in 1932 and Irina and Tamara Press from the former Soviet Union, were all uncertainly women.33 Their ambiguity prompted the requirement in 1966, of female athletes to parade naked in front of a panel of gynaecologists to confirm their identity.34 Women themselves felt it important to prove their true identity on the grounds that a successful female athlete “challenges society’s notion of femininity”35 and athleticism.

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29 *Nagle v Fielden* [1966] 2 QB 633

30 *R v Brown* [1996] 1 ALL ER 545 HL


Genetic and hormonal checks replaced this “peek and poke” examination as technology advanced. The “Body Barr test” in 1968 and the “technically preferable” SRY gene test in the 1980s identified ambiguous female athletes upon discovery of a Y male chromosome. It was believed that this accurately distinguished men and women and anomalies were not considered.

Such testing forced many top athletes quietly out of competition. In 1985 Spanish hurdler Maria Martínez Patiño possessed a Y chromosome but she ignored all advice to fake an injury and quietly retire. Instead she won the competition, despite losing her sports scholarship as a consequence. Her legacy opened a “Pandora’s box” about the idea of who is male or female for the purposes of sport and whether the chromosome tests were an appropriate arbiter of the difference as they were inadequate.

In 1992 the International Amateur Athletic Federation (IAAF), along with the IOC and the Asian Games, abolished mandatory chromosomal and genetic testing on the grounds that it contravened human rights and was “antiquated.” To persist with testing would simply continue the present discrimination against women athletes.

A recent positive example of practice can be seen in women’s golf in Australia. No members can discriminate against a transgender person and members should presume that a person is of the sex that they assert they are. Such a liberal view permitted male-to-female transsexual Mianne Bagger to initially enter the Australian Women’s Open in Sydney. Bagger appears to have “pioneered a change” in sport for transsexual individuals. Golf associations in America however, require all entrants to have been “female at birth.” It was only in August 2004 that the European Tour abandoned its clause that required all participants to be “female at birth” in order to allow individuals like Bagger to compete.

Legal Position

One of the first legal challenges to sports governing bodies’ rules was made by Renee Richards.44 As a male “Richard H Raskind” was ranked 13th nationally in the men’s 35-years and over tennis competition and underwent surgery to “become female, psychologically, socially and physically.”45

In 1977 she won a ruling from the New York State Court allowing her to play in the US Women’s Open, having been excluded discriminatorily from that division by the United States Tennis Association.46 The Supreme Court held that it was grossly unfair, discriminatory and inequitable to make the plaintiff pass a sex chromatin test in order to participate. This was on the grounds that the USTA had contravened section 290 (3) of the New York Human Rights Law which declares that the State is responsible to ensure that every individual within the State is afforded an equal opportunity to enjoy a full and productive life. Failure to provide this “not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state…”47

In New Zealand, this case was rejected on the grounds that transsexual individuals are disadvantaging all “players by depriving them of potential earnings and prize money.”48 Under British law, section 19(4) GRA implies that Richards may not have found relief. Britain’s approach to issues of sex and gender appear to proceed on “untested assumptions about biological determinism.”49 Instead of establishing a clear definition of “when a man is a man, and when a woman is a woman”50 for the purpose of allowing transsexuals civil liberties, the answer seems to be “context dependant.”51

Protection from discrimination is classified as sex based under the Sex Discrimination Act 1975 (SDA).52 Yet the ambit of this protection is unclear.53 In relation to sport, section 44 of the SDA restricts participation of women where the physical strength, stamina and physique of the average woman puts her at a disadvantage to the average man and vice versa.

The Women’s Sport Foundation (WSF) expressed that section 44 should no longer be a defence as it is under such criticism and debate54 that it should not be used as a model for further legislation.55 Despite being considered

44 Dr Renee Richards v United States Tennis Association (1977) 400 NYS 2d 267
45 Ibid at p. 267
46 Ibid at p. 268
47 Ibid per Alfred Ascione, J at p. 273
50 Greenberg, J., 2000. When is a man a man and when is a woman a woman? Florida Law Review 52 p. 745
52 Section 2A (1) Sex Discrimination Act 1975 (SDA) ; read with s. 82 (1) SDA
dead law, the wording of section 44 has been lifted into the GRA to offer an explanation of when a sport is “gender-affected” and therefore prohibition of transsexuals would be allowed. Transsexual individuals may therefore come under the same scrutiny as other “average” women in sport have.

**Men v women**
The problem with Section 44 is that it presumes all average males make better athletes than all average females and legislation based on this difference restricts women from competing in men’s sports. The case of *Bennett v FA*[^1] , where a young girl was debarred the chance to compete in a boys football team on grounds of her sex, reflects the impracticality of inserting the word “average” into a statute provision related to sport. Whilst this case referred to section 44 SDA, its implications for the GRA are similar.

Realistically, the “average” male or female is the spectator and certainly not the competitor who is far fitter, healthier and elite than the average person in terms of strength, speed and stamina whatever gender they may be.

It is true that men and women’s sport performance differ, mostly due to women’s smaller size and greater body fat. However, medical advances in the last 30 years have shown that women are slowly catching up with men in terms of achievements and success. This parallels the growth in the participation of women in sport. Previously, female participation in sport was frowned upon, which has therefore affected opportunity, coaching, facilities, training and techniques between the sexes. Criticisms of women seem to have been founded on stereotypical assumptions from the ancient logic of intolerance.

It is important to recognise that physical abilities are not only determinant of a successful athlete. Male-to-female transsexual golfer Mianne Bagger claims that “being taller, with longer arms, is an advantage with hitting the ball longer in golf … but length is not everything.”[^2] It is of course necessary to ensure that sports essence and is protected and upheld. However, the arguments against the participation of transsexuals in sport appear to be contentious in places and shift the balance between inclusion and exclusion too far. Focus tends to remains on the physical differences.

**Unfair advantage**
It is viewed that in the interests of fair play, male-to-female transsexual individuals should not be permitted to compete in female sports as they will

[^1]: *Bennett v Football Association* [1978] unreported, 28th July
retain athleticism advantageous and unfair male physical characteristics due to their early exposure to testosterone.\textsuperscript{62}

This is the source of female athletes’ objections to competing against male-to-female transsexuals. However, if the view itself is little more than a myth then these objections amount to women treating transsexual individuals in the same arbitrary way as they themselves object to being treated by society.\textsuperscript{63}

Literature is marked for its lack of proof of whether a transsexual individual does in fact retain advantageous male traits and thus gain a competitive advantage, and at what point in the process of gender reassignment this may occur. The affect of puberty on the reassignment surgery is also ambiguous. Medical opinion is inconclusive on all of these points. Although it can be proved that male testosterone levels decrease, it is uncertain how far it decreases and in addition what it decreases to; the average woman? Essentially this comes down to tolerance and what exactly sport is willing to accept.

Smaller studies have shown that physiological advantages do not necessarily exist.\textsuperscript{64} If the transsexual individual has undergone sex reassignment surgery before puberty then strength is argued to be irrelevant as they experience none of the masculinising effects of testosterone. If the surgery was performed after puberty then it is argued that each individual should be evaluated case by case. International Olympic Committee (IOC) guidelines for participation are structured on pre and post pubescent reassignment which create inconsistencies with the GRA.\textsuperscript{65}

Cultural considerations must be made as a post female transsexual may have received better training as a male. However, female to male transsexuals undergo treatment to increase testosterone levels in order to increase skeletal mass and power to weight ratio. Male-to-female transsexuals are placed on oestrogen therapy which increases stored fat, decreases power to weight ratio, no longer produces testosterone and slows athletic performance, thus making prior training arguably, irrelevant.

It is accepted that men tend to possess an inherent performance advantage over women due to their greater average height, muscle mass and power, as a result of ‘correspondingly different exposures to androgens.’\textsuperscript{66} The question in relation to transsexual individuals competing in sport is “how far the


\textsuperscript{63} Pannick, D., 1983. \textit{Sex Discrimination in Sport}. Equal Opportunities Commission Pamphlet


\textsuperscript{65} Coggon, J \textit{et al.}, 2008. Transsexuals in Sport- fairness, freedom, regulation and law. \textit{Sport, Ethics and Philosophy}. 2(1)

previous effects of testosterone in male-to-female transsexuals are reversible upon androgen deprivation so that they have no advantage over women.”

A seminal study conducted in Amsterdam investigated the physical effects of reassignment surgery on transsexual individuals. The results were limited and could not ‘provide insight into all pertinent aspects’ as, in competitive sports, small differences are critical to the outcome of an event. The data did reveal that female-to-male transsexuals would be able to compete fairly as long as the testosterone does not create a surplus of muscle mass over exercise alone. In relation to the focal concern of male-to-female transsexuals, there proved to remain ‘an element of arbitrariness.’

The conclusion was that some born females had better qualifications for sports than reassigned male-to-females but the statistical mean still tends to favour male-to-female transsexuals. However, there is a large spectrum of males with a very uneven distribution of attributes suitable for sports and furthermore, every sport requires expertise in different qualities. This also applies to born females and reassigned male-to-females. Yet the study suggests that the average reassigned male-to-female has a slight advantage over the average born female but certainly not over all born females.

As mentioned, testosterone related physical properties are not relevant in all sporting activities but for those that are, it will depend upon the level of arbitrariness that sport wants to accept that will determine the participation of male-to-female transsexuals with other women. As long as it does remain inconclusive, then it is justifiable to discriminate against transsexuals for the assurance of competitive parity. However, on a case by case basis, if the level of competitive advantage can be ascertained and measured against the sport in question then this method should be adopted so as to prevent blanket exemptions resulting in unnecessary discrimination.

Genetic anomalies
If physical advantages are a reason for discriminating against participants and transsexuals, then this must extend to those born with genetic anomalies. Spectators fear that if we allow women who naturally possess the XY pattern, then transsexual individuals will dominate and make “those shot putters from the Eastern Bloc look like prom queens.”

However, the assumption that a Y chromosome produces athletic advantages is inconclusive. The natural world is not distinctly “male” or “female” and

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67 For more detail see Elbers, J.M et al., 1997. Long term testosterone administration increases visceral fat in female to male transsexuals. Journal of Clinical Endocrinology and Metabolism. 82 p. 2044-2047
70 Ibid
instead we “exist on a continuum.”  

The fact is that there are genetic anomalies that will create a woman with a Y chromosome who nevertheless has no physical advantage over a normal XX woman. Marina Patino was chromosomally male but without the ability to process testosterone and so she decided to develop into, and identify herself as a woman.  

There is no reason to deny transsexual individuals such treatment if the condition that they suffer from is medical and genuine.

Women claiming to be “natural women” have a naïve view,” as elite sports are thought to be filled with women who have genetic or congenital conditions.

Anomalies also exist amongst men who may possess X chromosomes. Should they be confined to compete against women and why was such sex testing not imposed upon them? In addition are those “super men” who carry the YY pattern. Should these chromosomally superior men not be allowed to compete against the regular XY male? Upon this, it is inconsistent to discriminate against transsexual individuals on the basis of physical advantage when there are no current regulations to give the same treatment to competitors who may have been “female at birth” but nevertheless possess advantageous natural characteristics.

It has been argued very strongly that genetic predispositions can give advantages to athletes from particular racial groups, but it would be regarded as absurd to exclude them from sport on these grounds.  

Yet the same sentiment is not felt in relation to transsexuals in sport where their condition is not viewed as a “natural inheritance”.

Instead this is a question of public perception and attitudes. Successful Sri Lankan cricket bowler Muttiah Muralitharan suffers from a congenital deformity in his elbow that prevents him from fully extending his right arm giving the impression that he is in fact throwing the cricket ball. Despite controversy, his action has been deemed legal by the International Cricket Council (ICC). Similarly, Pakistan paceman Shoaib Akhtar possesses hyper mobility in both his shoulder and elbow joints that leads to the hyper extension of his arm, thus generating extra pace. His action was also deemed ‘within the laws of the game.’ Unlike the previous example, Akhtar arguably does possess an advantage but was still permitted to compete. This is inconsistent with the treatment of transsexual individuals who have been condemned for their potential advantage.

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72 Greenberg, J., 2000. When is a man a man and when is a woman a woman? Florida Law Review 52 p. 745
73 Androgen Insensitivity Syndrome (AIS)

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Advantages resulting from technology

Sports equipment continually presses the boundaries of sport performance.\(^\text{77}\) The controversial high-tech “Speedo LZR Racer” swimsuit, which is approved by FINA, has lead to some believing that a technological doping age is now taking place.\(^\text{78}\)

The ramifications for transsexual individuals is that if sports equipment that may provide an advantage for the competitor are in fact permitted in sport, then why is this approach not taken to transsexual individuals? Both are man-made alterations or additions to the human form which are both potentially performance enhancing. The only difference is that equipment is available to everyone where as a sex change only occurs for certain people who suffer from the condition.

Non conforming golf clubs have forever been the centre of controversy in the game, particularly in the new age. Different materials and different sizes have led to a huge diversity in the golf market with players using different clubs and arguably gaining a crucial advantage over the other as a result.\(^\text{79}\) Yet sport continues to allow this equipment to be used, albeit controversially, even though their conformity with fair play and a level playing field is inconclusive. A completely opposite approach is taken to transsexual individuals who do not undergo reassignment treatment to gain an advantage, but instead this is residual.

It appears that those with artificial advantages or natural born external advantages appear to be under more scrutiny. However, the legal response to the use of technology for individuals with disabilities in sport, appear to raise the threshold for proving an “unfair advantage.” In 2008 CAS allowed Oscar Pistorius to compete alongside able-bodies competitors despite the IAAF contending that his “cheetah prosthetics” constitute a “technical device” that offers him a clear mechanical advantage.\(^\text{80}\)

In the US case of *PGA Tour Inc v Casey Martin*\(^\text{81}\) the US Supreme Court held that the PGA was required to allow a competitor with a circulatory disorder to use a golf cart on its tours. The PGA argued that this would alter the essence of the game where competitors have to walk but in fact, Martin was more fatigued than others by getting in and out of the cart. This case also fell within


\(^{81}\) *PGA Tour Inc v Casey Martin* [2001] US Supreme Court
rules where the PGA must not discriminate against individuals in an enjoyment of goods, services and facilities of golf carts.

Overall, this is a question of the boundaries of sport. Reservations of transsexuals competing in sport would be eradicated if, as many opponents contend, they were certain that a male-to-female transsexual no longer retain any of her previously male characteristics or traits. However, if this were ascertainable, the requirement of certainty would constitute indirect discrimination of an unjustifiable nature. The argument for defending the level playing field is objectively reasonable yet it seems that this is pushing the test of reasonableness beyond the constraints of fairness.82

For example, in the early stages of the emergence of the phenomenon of steroids, there was not enough medical evidence on their effects. Even today their exact effect on the body remains a matter of scientific debate.83 In spite of this, an assertion is still made upon this uncertain basis and the integrity of sport is prioritised over the right of the individual. The balance between inclusion and exclusion is influenced by external social and political attitudes and cultures that often determine the outcome of participation for an individual.

The value of participation
At a human, basic level, we seek attachment and recognition through the formation of relationships and networks with other people or groups. Belonging to, and being with other people is essentially a “fundamental human need.”84 We attempt to obtain membership and access to groups and clubs in order to reap desired benefits and this can create a “sense of belonging” on both a personal85 and a social level.86

One of the areas that individuals seek integration on both these levels is within sport. However, transsexual individuals are subject to media exposure, which makes “a public controversy out of a private matter, using terminology clearly intended to label the person as a freak, and justifying it all in the name of biology.”87 This public scrutiny and loss of dignity and privacy, forces them out of competition. It is even suggested that males may change gender in order to reap rewards that they are unable to attain against men, in women’s sport due to this underlying assumption that all males are better than women at sport. This concern is amplified by problems that are bound to exist in assessing whether “Gender Dysphoria” is present and, if so, to what degree, in any particular case. The normative scientific view is that psychology and

psychiatry have advanced greatly over the last century. However, it can still 
be argued that the evaluation of non-physical "conditions" remains highly 
subjective.

Nonetheless, sex reassignment is an extremely complex and life changing 
process that is highly unlikely to be commenced simply as a means to enter 
women’s sport. When transsexuals resort to it they do so out of a passionate 
and usually near lifelong conviction that they were born in the wrong body. Accordingly it should be largely if not wholly discounted as a factor in 
determining whether male-to-female transsexuals should have the opportunity 
to participate in women only competitive sports.

Conclusion
The inclusion of transsexual individuals raises the complex issue of what 
constitutes a competitive advantage in sport. Whilst it cannot be proved 
outright whether transsexual individuals possess an advantage, attitudes 
towards them certainly appears inconsistent to those with natural born 
advantages or artificial advantages. Even when no advantage is proved, a 
further problem of integration as a result of the drugs in their body will emerge. The recent decision against Dwaine Chambers serves to remind athletes of 
the significance of maintaining integrity in sport.

Integration essentially relies on whether “birth sex” is viewed as the 
determinative sex of that person or conversely, whether it is gender and not 
sex that “is a reflection of the person’s outward manifestation of his/her identity.” It is a question of whether society or biology determines the 
meaning attached to woman or man. Gender is socially constructed and the 
law is part of that process. In order to dismantle the harmful stereotypes and 
barriers between people, the law in Britain must cease on its insistence on 
classifying people according to sex. Divisions of men and women in Far 
Eastern civilisations are not so distinct or important. This is a strong 
testimony for the proposition that western sex and gender categories are 
certainly not universal and more tolerance is required in society as, after all, 
we are all human.

Whilst it is necessary to protect the essence of sport and the image of fair play 
for all participants, to pursue that to the end of the degree results in the

91 The ‘She males’ in Singapore; Goddess Venus Castina of Ancient Greece; A number of North America tribal Indian groups from Mexico to Alaska (the ‘Bedarche’ Tribe); The Islamic ‘Xanith’ community and the ‘Kushra’ in Pakistan; The gender non conformist ‘acaulus’ in Burma; The Ancient Hijras of India; The Chuckchi of Siberia from 1890-1908 identified seven categories of gender.
exclusion of an entire class of people. This in effect, defeats all social objectives of inclusiveness in society. However, whether it is better to exclude a small group for the good of many others all in the name of sport is a constant tension and topic of debate.

Sport should certainly re evaluate its values in line with the new diversities that exist in society today. The solution to the integration of transsexual individuals in sport involves cooperation between medicine and science, sports governing bodies and ultimately the law in each country, in order to ensure that the correct balance between inclusion and exclusion is struck.

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93 Coggon, J et al., 2008. Transsexuals in Sport- fairness, freedom, regulation and law. Sport, Ethics and Philosophy. 2(1)