



## An Open Letter to the Equality and Human Rights Commission

EHRC Commissioners

Cc: Liz Truss, MP, Secretary of State for Women and Equalities

May 8 2021

Dear EHRC Commissioners

Thank you for intervening in the belief discrimination case: *Forstater v CGD Europe*. This is an important case for protecting freedom of belief and freedom of speech, and for women's rights and inclusion in the workplace.

Many employers have undermined these rights, adopting policies which conflate the material reality of sex with the idea of "gender identity", and which systematically punish anyone who questions or disagrees with them.

We know of dozens of people (mainly women) who have faced treatment similar to that experienced by Maya Forstater. There are cases that have reached the public domain but also many others,<sup>1</sup> for example women facing complaints and disciplinary measures for saying JK Rowling is not transphobic, for defending a book on sex-disaggregated data promoted on International Women's Day, for asking a question in an equality training session, for asking for female-only toilets to be maintained, and for writing an academic paper, as well as many more for posting on social media about opposition to "gender self ID". Women are losing access to social media for saying men are not lesbians, being expelled from political parties and voluntary associations for standing up for safeguarding, and losing access to single sex services when they are most vulnerable.

Thousands more are frightened of the consequences if they admit to having a straightforward factual conception of the two sexes.

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<sup>1</sup> Attached to this letter: *Gender Critical at Work* - a compilation of articles about cases that have reached the public domain.

As the next stage of the Forstater case in the Employment Tribunal will show Forstater lost her job for exercising her article 10 rights by tweeting and writing about sex and gender, not for harassing any trans colleague. This is not a case that is seeking to protect the right to harass.

The case is important because the framework of tolerance of different beliefs in a pluralistic society offers the potential for a way forward to solve the “toxic” issue of “trans rights vs women’s rights”.

Some people who subscribe to gender identity theory believe that someone with male anatomy who is a husband and father can be female, and that a teenage girl or a mother giving birth can be a man. They may also believe that sex (or, as they term it, “gender”) is a spectrum with some people occupying intermediate “non binary” states, or that sex/gender may be “fluid” from day to day.

Most people do not share in this belief system, but rather hold the scientifically and legally orthodox belief that sex is a biological reality, immutable, and important in many everyday situations. In other words, that sex matters. The Equality Act reflects that orthodoxy, identifying (binary) sex as a protected characteristic.

While people can be polite about other’s beliefs, it is disproportionate, and inconsistent with the Equality Act, to drive people who believe that sex matters from the workforce, simply on the basis of their belief, in order to protect transsexuals and gender non-conforming people from a theoretical risk of harassment.

People with different beliefs about the nature of sex and gender identity can work together, and employers need policies which protect everyone from hostility, humiliation and exclusion.

We are glad that the EHRC has finally added its voice to the argument that both “gender critical” belief and lack of belief in gender ideology meet the criteria for protection as philosophical beliefs under the Equality Act 2010. Karon Monaghan QC’s elegant submission helpfully clarified a key aspect of the law around the difference between belief and manifestation. And, as the judge in the original tribunal judgment recognised, the Claimant’s “approach ... is largely that currently adopted by the law.”

It is EHRC’s job to clarify, communicate and uphold this law. If something as simple as the definition of a protected characteristic is “highly controversial”, then something has gone very wrong in public discourse and understanding: arguably a failure for which the EHRC might properly be considered accountable.

The EHRC’s intervention in Maya Forstater’s case has already attracted criticism from those who do not support freedom of belief in this matter. For example Grey Collier, Advocacy Director of Liberty (and until July 2019 Director of Legal at EHRC), responded:

One day this will look to you - as it does to me - as abhorrent as racist, sexist and homophobic views are generally now considered to be.

Professor Stephen Whittle said:

EHRC which is now run by Government appointees who have zilch knowledge about

trans lives. Having read the EHRC submission to the court, they are correct in the strict legal sense, but provide no suggestion that EHRC supports trans folk.

EHRC's role is to "monitor human rights and protect equality across the 9 grounds - age, disability, sex, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment"<sup>2</sup>, not to serve any particular interest group.

We do not have confidence that the EHRC can fulfil this mandate when it has institutionally aligned itself with one side in this debate. The EHRC is a member of the "Stonewall Diversity Champions" scheme. This scheme denies that there should be protection to the right of freedom of belief or speech in this matter, contributing to a culture of fear and compliance for gender critical people in the workplace.

In October 2018, during the UK government's consultation on gender self ID, 10,000 people signed a petition asking Stonewall to:

- Acknowledge that there are a range of valid viewpoints around sex, gender and transgender politics;
- Acknowledge specifically the conflict that exists between transgenderism and sex-based women's rights;
- Commit to fostering an atmosphere of respectful debate, rather than demonising as transphobic those who wish to discuss or dissent from Stonewall's current policies.<sup>3</sup>

Stonewall refused. Its response was:

"We do not and will not acknowledge a conflict between trans rights and 'sex based women's rights'."<sup>4</sup>

Stonewall argues that everyone must accept that "Trans women are women, trans men are men and non-binary people are non-binary", or lose the security of their employment.<sup>5</sup> As the case of Allison Bailey v Stonewall and Others is already showing, it pressurises employers that are members of the scheme to discriminate against people who publicly disagree with self-ID.<sup>6</sup>

This workplace thought-policing is in conflict with the interpretation of the law that the EHRC put forward in the Forstater case. If Stonewall's application to intervene in the case had been accepted, the EHRC would have been in the awkward position of publicly opposing the organisation to which it has pledged allegiance.

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<sup>2</sup> <https://www.gov.uk/government/organisations/equality-and-human-rights-commission>

<sup>3</sup> <https://www.ipetitions.com/petition/dear-stonewall-please-reconsider-your-approach>

<sup>4</sup> <https://www.stonewall.org.uk/node/100426>

<sup>5</sup>

<https://quillette.com/2019/07/06/stonewalls-lgbt-guidance-is-limiting-the-free-speech-of-gender-critical-academics/>

<sup>6</sup> <https://allisonbailey.co.uk/updates/update-5-breaking-exclusive/>

<https://allisonbailey.co.uk/wp-content/uploads/2021/03/PH-Bundle-pp-331-2-Stonewall-Complaint.pdf>

[https://allisonbailey.co.uk/wp-content/uploads/2021/03/Bailey-v-Stonewall\\_PH-Bundle-331\\_2-TWEETS.pdf](https://allisonbailey.co.uk/wp-content/uploads/2021/03/Bailey-v-Stonewall_PH-Bundle-331_2-TWEETS.pdf)

The commitments undertaken to be a Stonewall “Diversity Champion” member are incompatible with upholding the Equality Act in relation to freedom of belief. We call for the EHRC to urgently review its membership of the scheme and its relationship with Stonewall. Stonewall appears to have had privileged access to the policy-making process. This is not compatible with the Nolan Principles.<sup>7</sup>

Beyond the EHRC, 25% of the UK’s workforce are employed by organisations who have signed up to the Stonewall scheme, including roughly 250 Government departments and public bodies such as police forces, local councils and NHS trusts, the Office for National Statistics, Ofsted and the Care Quality Commission. Organisations that allow Stonewall to dictate or heavily influence the drafting of its policies will end up with policies that better reflect Stonewall’s views about how the law ought to be than the reality of how the law is.<sup>8</sup>

The EHRC’s job should be to ensure organisations comply with the Equality Act. Instead, in signing up to the Stonewall Diversity Champion Scheme, we fear that the watchdog has muzzled itself.

**We call on the EHRC urgently to review and bring to an end the inappropriate relationship of obedience and submission between the Equality and Human Rights Commission and Stonewall, by ceasing EHRC’s membership of the Stonewall Diversity Champions scheme.**

**As the national equality watchdog, EHRC should be independent of any interest groups and able to listen carefully to the full diversity of perspectives on matters in its remit.**

**Additionally, we believe there needs to be a review of the role of Stonewall in public life and its influence and control over the organisational HR policies and wider business of public institutions. This is something the EHRC could have undertaken under its remit, but not while it is so closely allied to Stonewall. We are calling for the Committee on Standards in Public Life to oversee this urgent review.**<sup>9</sup>

**Yours sincerely,**

Maya Forstater, Sex Matters Director  
Naomi Cunningham, Barrister and Sex Matters Director  
Rebecca Bull, Solicitor and Sex Matters Director  
Dr Emma Hilton, Developmental Biologist and Sex Matters Director

Dr Nicola Williams, Director, Fair Play for Women  
Lise-Marie Taylor, CEO, FiLiA  
Stephanie Davies-Arai, Founder and Director, Transgender Trend  
Shelley Charlesworth, Transgender Trend Researcher  
Karen Ingala Smith, CEO, nia  
Trina Budge, Marion Calder and Susan Smith, Directors, For Women Scotland

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<sup>7</sup> <https://sex-matters.org/posts/updates/watching-the-watchdogs/>

<sup>8</sup> <https://legalfeminist.org.uk/2021/02/01/submission-and-compliance/>

<sup>9</sup> <https://sex-matters.org/take-action/sign-our-letter/>

Shonagh Dillon, CEO, Aurora New Dawn  
Julie Bindel, Journalist  
Joan Smith, Writer  
Beatrix Campbell OBE, Writer and broadcaster  
James Dreyfus, Actor  
Onjali Rauf, Author  
Malcolm Clark, Documentary filmmaker  
Simon Edge, Novelist  
Professor Alice Sullivan, University College London (UCL)  
Dr Michael Biggs, Associate Professor of Sociology and Fellow of St Cross College, University of Oxford  
Professor Kathleen Stock OBE, University of Sussex  
Professor Lesley Gourlay, University College London (UCL)  
Professor Michele Moore, London South Bank University  
Professor Judith Suissa, University College London (UCL)  
Dr Katie Alcock, Senior Lecturer, Lancaster University  
Professor Alan Sokal, University College London (UCL)  
Dr Holly Smith, University College London (UCL)  
Professor Sophie Scott CBE, University College London (UCL)  
Dr Jon Pike, Open University  
Maureen O'Hara, Senior Lecturer Coventry University  
Professor Alessandra Asteriti  
Jonny Best, University of Huddersfield  
Sarah Phillimore, Barrister  
Lucy Masoud, Barrister  
Emily Watson, Solicitor  
Raquel Rosario Sanchez, Dominican Writer, Researcher and Campaigner  
Jean Hatchett, Ride for Murdered Women  
Nicola Bengel, Campaigning on Brighton Rise  
Helen Steel, Social Justice Activist  
Gita Sahgal, Founder Centre for Secular Space.