



Rebecca Salter, President, Royal Academy
Axel Rüger, Secretary and Chief Executive, Royal Academy

16 June 2021

Dear Ms Salter and Mr Rüger,

We are writing to you to point out that the Royal Academy is undertaking egregious and blatant belief discrimination against textile artist Jess de Wahls.

This both breaches the Equality Act 2010 and European Convention on Human Rights, and goes against your own commitment to be inclusive and representative of diverse cultural and personal experience, and your values as a forum for artistic expression.

Following a handful of coordinated complaints, the Royal Academy announced today on Instagram that it would no longer be stocking the work of an artist because it said she “expressed transphobic views”.

This was Ms de Wahls. She wrote about her beliefs about sex and gender in August 2019¹ and continues to tweet about the issue.

In 2019 blog post she wrote:

A woman is an adult human female. (Not an identity or feeling.

Female is the sex of an organism that produces non-mobile ova (egg cells).

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<https://www.jessdewahls.com/blog/2019/8/5/somewhere-over-the-rainbow-something-went-terribly-wrong>

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Sex is either of the two categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions.

It is not 'assigned', but rather observed at birth or often already in utero, based on external sex characteristics. Sex (not gender identity) is a protected characteristic under the law.

Humans can not change sex. If we ignore sex, we ignore sexism. This is important, particularly for women, living in sexist societies.

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I have no issue with somebody who feels more comfortable expressing themselves as if they are the other sex (or in whatever way they please for that matter). However, I can not accept people's unsubstantiated assertions that they are in fact the opposite sex to when they were born and deserve to be extended the same rights as if they were born as such. And I do not believe that these beliefs should override existing protections that are in place as a result of the biological realities of women, since their purpose is to relieve oppression based on women's physicalities and reproductive functions (not identity or feelings).

This is a basic statement of "**gender critical**" belief, which was recently found to be a protected characteristic under the Equality Act 2010.

Both as a service provider and as a charity, the Royal Academy must not treat a person worse than someone else because of a protected characteristic in relation to the services or benefits they provide or the way it provides them.

The protection for gender-critical beliefs was confirmed last week when the Employment Appeal Tribunal ruled in the case of *Forstater v CGD Europe and Others* that "gender-critical" beliefs are covered by the characteristic of "religion or belief".²

This means that no one should be discriminated against or harassed at work, or as a service user, for holding and expressing these views.

The case was supported by the Equality and Human Rights Commission and Index on Censorship.

Mr Justice Choudhury noted that gender-critical beliefs were widely shared, and "did not seek to destroy the rights of trans persons".

The protection provided by the Equality Act is underpinned by the European Convention on Human Rights, Article 9: Freedom of thought, conscience and religion:

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<https://www.gov.uk/employment-appeal-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-ukeat-slash-0105-slash-20-slash-joj>

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Removing Ms De Wahls' work from the market on the basis of her beliefs is a clear infringement of her human rights to freedom of belief and freedom of speech.

Mr Justice Choudhury gave consideration to the rights of transgender people and noted that under Article 17 of the ECHR the right to freedom of expression cannot be used to espouse hatred, violence or a totalitarian ideology. However, the bar for denying a belief protection should be very high:

“To maintain the plurality that is the hallmark of a functioning democracy, the range of beliefs and convictions that must be tolerated is very broad. It is not enough that a belief or a statement has the potential to “offend, shock or disturb”

He found that the gender-critical beliefs such as Ms De Wahls' did not fall into the category of extreme beliefs which would not be protected. Not only this: they are widely held and consistent with the law defining sex.

The precedent established by the Forstater case means that it will be much quicker and easier for a claimant such as Ms de Wahls to bring a discrimination case.

We strongly recommend that the Royal Academy investigate the process that led to this statement on social media, reverse the decision, reinstate Ms de Wahls' work in its store and issue a public apology.

You should also revisit your policies and training so that staff understand that there are nine protected characteristics, including sex and religion or belief, and that the organisation has responsibilities and values in regard to freedom of belief and freedom of expression.

Sex Matters would be happy to meet with you to discuss this.

Michael Biggs, Rebecca Bull, Naomi Cunningham, Maya Forstater and Emma Hilton
Sex Matters

Sex Matters Board of Directors

Cc:

Simon Thurley, Chair Heritage Fund
Tina Stowell, Charity Commission