

Joint Committee on Human Rights

8th February 2022

Dear members of the Joint Committee on Human Rights

We have been pleased to see the Equality and Human Rights Commission's recent positive engagement with concerns over how to protect everyone's human rights in respect of sex and gender. We are sorry to see it attacked for recognising that sex-based protection of human rights is affected by radical gender identity politics, and we urge you to write to the UN to confirm your parliamentary role in overseeing our National Human Rights Institution and your continuing confidence in it.

The EHRC's engagement in the debate on sex and gender is welcome because of the organisation's mandate to protect everyone's human rights.

Several fundamental rights, as set out in the *European Convention on Human Rights* and the UK *Human Rights Act*, are engaged by contemporary debates about sex and gender identity in society. Relevant rights are: Article 3 (freedom from degrading and humiliating treatment); Article 8 (respect for private life); Articles 9 and 10 (freedom of belief and expression); Article 11 (freedom of association); and the supporting Article 14 (protection against discrimination). These rights are universal, but until recently the direction of travel was to undermine the rights of women and girls, and of people who are same-sex-attracted, by conflating sex with the idea of "gender identity".

The *Equality Act 2010* protects everyone against discrimination on the basis of sex (being male or female), sexual orientation (being gay, straight or bisexual) and belief (including belief or lack of belief in gender ideology). It also protects people who are at any stage of a personal journey of transition or detransition.

The *Gender Recognition Act 2004* in practice provides protection for the limited Article 8 right of people who have transitioned not to have to reveal their sex, nor to have information shared about it in the course of daily life. There has been debate about reforming the Gender Recognition Act to a system of "gender self-identification", and this remains a live policy and legislative proposal in Scotland.

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Sex Matters is a not-for-profit company registered by guarantee. Company number: 12974690.

Registered office: 63/66 Hatton Garden, Fifth Floor Suite 23, London, EC1N 8LE

Directors: Emma Hilton, Maya Forstater, Michael Biggs, Naomi Cunningham, Rebecca Bull

Consideration of human rights must go beyond the mantra “trans rights are human rights”.

In practice, the interaction between these laws and the underlying human rights of all people is complex. There is a need, as the EHRC has said in its letter to the Scottish Government, for “careful and respectful discussion of potential changes to the law.”¹

That letter highlights concerns about the “potential consequences for individuals and society of extending the ability to change legal sex from a small defined group, who have demonstrated their commitment and ability to live in their acquired gender, to a wider group who identify as the opposite gender at a given point.”

The EHRC has also promised to bring out guidance on single-sex and separate-sex exceptions in the Equality Act, which allow both everyday and specialist single-sex services; from school changing rooms to women’s refuges. This is long awaited, and much needed to give clarity for all.

As the recent case of *Forstater v CGD* (in which the EHRC intervened) confirmed: “The effect of a GRC, whilst broad as a matter of law, does not mean that a person who...continues to believe that a trans woman with a GRC is still a man, is necessarily in breach of the GRA by doing so; the GRA does not compel a person to believe something that they do not.”²

It is also remains essential, for the protection of everyone, including transgender people, that digital identity information systems used by the state and by private bodies (in particular, but not limited to, the healthcare system) are able to recognise that biological sex remains a fact of life. Every female person should have access to contraception, abortion and maternity services, and should be called for cervical smear tests and so on. This needs to happen for as long as they need such services, notwithstanding that they may identify as a man, non-binary or any other gender identity. Forthcoming government plans to develop a **digital identity and attributes framework** present an opportunity to do much to reconcile the need for accurate sex-based information with individuals’ desire to express their gender identity.

¹ <https://www.equalityhumanrights.com/en/our-work/news/our-letter-minister-equalities-government-departments-and-public-sector-equality-duty>

² https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf

In the recent case of *Elan Cane v The Home Department* about the question of “X” passports, the Supreme Court found that it was legitimate for the UK government to balance its policy aims of administrative coherence against an individual’s desire not to have “male” or “female” registered against their identity.³

Similarly, as the case of *McConnell and YY* found, children have the right to have their biological mother recorded on their original birth certificate.⁴

The government’s current proposal to introduce criminal legislation banning conversion “talking therapies” also raises concerns and issues that demand careful consideration. As the EHRC said in its response to the consultation:

“The legislation must be carefully drafted in order not to catch legitimate and appropriate counselling, therapy or support which enables a person to explore their sexual orientation or gender dysphoria, and to avoid criminalising mainstream religious practice such as preaching, teaching and praying about sexual ethics. Specific consideration will be needed to determine whether a differentiated approach to what constitutes conversion therapy in relation to sexual orientation and being transgender is required to achieve this. Similarly, the legislation must define clearly what is meant by sexual orientation and being transgender.”

It has called for pre-legislative scrutiny.

We are gravely concerned by the attacks on the Equality and Human Rights Commission and call for you to support it.

The EHRC is doing its job in recognising that there are complex issues at play, requiring attention to evidence and to the balance of rights between people with different protected characteristics.

The **Paris Principles** set out international principles for National Human Rights Institutions to act with competence to promote and protect human rights.

³ <https://www.bailii.org/ew/cases/EWCA/Civ/2020/363.html>

⁴ <https://www.judiciary.uk/wp-content/uploads/2020/04/McConnell-and-YY-judgment-Final.pdf>

The principles set out that, although they are State institutions, NHRIs must be independent from both government and NGOs. They should have legal, operational, policy and financial independence. Crucially, they must have independent members who exercise independent thinking and leadership.

The Paris Principles seek to ensure pluralism and a board mandate to promote and protect all human rights recognised in international human-rights law. As the principle for 'Composition and guarantees of independence and pluralism' states:

"The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights..."

In calling into question its good standing as our National Human Rights institution, Stonewall, the LGBT Foundation, the Equality Network, Mermaids, Gendered Intelligence and others seek to bully the EHRC into continuing the one-sided engagement that has characterised its approach to these issues until recently.

We note that your committee; the Joint Committee on Human Rights and the Women and Equalities Committee unanimously approved Baroness Falkner's appointment as Chair of the Commission.

We urge you to write to the UN confirming your parliamentary role in overseeing our National Human Rights Institution and stating your confidence in it.

Yours sincerely



Naomi Cunningham
Chair, Sex Matters



Maya Forstater
Executive Director, Sex Matters