



**sex**matters  
in life | in law

**Why sex matters  
for human rights:  
our organisational  
framework**

November 2022

## Contents

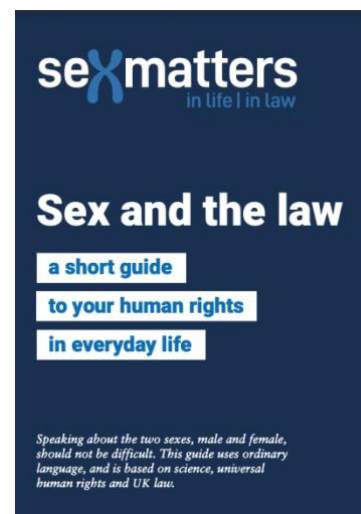
<b>Introduction</b> .....	<b>3</b>
Key principles.....	3
<b>Which rights does sex matter for?</b> .....	<b>4</b>
Freedom of thought, conscience, and religion .....	5
Freedom of expression .....	5
Freedom of assembly and association .....	6
Right to a fair trial .....	7
The right to respect for private and family life .....	7
The right to have a family .....	9
The right not to be subject to degrading treatment .....	10
Prohibition of discrimination .....	11
Children’s rights and parents’ rights .....	11
<b>A framework for resolving rights</b> .....	<b>12</b>
Equality is for everyone.....	12
Recognise conflicting interests .....	13
Be clear about sex .....	15
Women are a vulnerable class.....	15
Get the comparator right .....	16
Trans rights are privacy rights .....	16
Sex matters for sex.....	18
Children need protection.....	18
<b>Sex Matters as an organisation</b> .....	<b>19</b>
A human-rights organisation .....	19
“Gender-critical” .....	19
Standing for women and men .....	20
Solution-oriented.....	20

## Introduction

**Sex Matters' mission is to promote clarity on sex in law and policy in order to protect everybody's human rights.**

It is an organisation that works for both women and men. Clarity about the meaning of man and woman, male and female, is essential to protecting human rights, combatting discrimination, resolving conflicts and competing interests, and safeguarding children (including for people who identify as transgender). Doing these things fairly, equitably and transparently protects not only individuals' rights, but the integrity and effectiveness of society's institutions.

This document sets out the key human rights that are relevant, and why and how our work is guided by the promotion of human rights. (Also see our short guide to sex and the law<sup>1</sup>.)



## Key principles

- **Human rights are the basic rights and freedoms that belong to every person** by virtue of being born human. As article 1 of the Universal Declaration of Human Rights (UDHR) states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”
- **Human rights are universal.** Article 2 of the UDHR states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- **Everyone is born male or female**, and everyone is born from the reproductive contribution of a man, who provides the sperm, and a woman, who provides the egg and the body to gestate the pregnancy. Being male or female determines which reproductive role you can play. These facts of life are important.<sup>2</sup>
- **Men and women have equal rights.** But being a man is not the same as being a woman, and a person's sex impacts upon their life and relationships with others. Women in particular

<sup>1</sup> Sex Matters (2022). *Sex and the law: A short guide to your human rights in everyday life.*

<sup>2</sup> “Intersex” is an old-fashioned term, considered offensive by some, for a varied group of disorders of sexual development. People who have these conditions are still male or female; they are not a third sex or “in between” male and female. In a tiny number of births, a baby's sex is not clear to medical staff and tests are needed. These tests are determinate: it is always possible for doctors to determine whether an individual is male or female.

have often been discriminated against, subjugated and denied fundamental rights, both in law and in practice.

- **Protections against sex discrimination are important** and have therefore been included in both international human-rights conventions (such as the Convention on the Elimination of All Forms of Discrimination against Women<sup>3</sup>) and national anti-discrimination laws (the Equality Act 2010 in the UK).
- **Men and women may be treated differently (or separately) where there is a good reason**, such as different biological or medical needs, in sport, or in order to respect bodily privacy and consent in a communal setting. People of both sexes have a right to reasonable bodily privacy and dignity, but the provision of separate-sex facilities is particularly important for the inclusion of women in public life.
- **Resolving conflicts of interest through clear and open debate and evidence-based policy-making is crucial to democratic society, and to the protection of rights.** The current controversy around women's rights and the rights of people who identify as transgender can and should be resolved using the human-rights framework and the rule of law.

## Which rights does sex matter for?

Key rights that may be undermined by lack of clarity about sex, or conflation with ideas of gender identity, include:<sup>4</sup>

- freedom of thought, conscience and religion (article 9)
- freedom of expression (article 10)
- freedom of assembly and association (article 11)
- the right to a fair trial (article 6)
- the right to respect for private and family life (article 8)
- the right to form a family (article 12)
- the right not to be subject to degrading treatment (article 3)
- protection against discrimination (article 14).

It is not unusual for there to be conflicting rights. For example, article 8 (the right to private life) is inherently in tension with article 10 (freedom of expression, which includes the right to impart

---

<sup>3</sup> The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly which has been ratified by 189 states.

<sup>4</sup> NB: we refer here to articles in the European Convention on Human Rights (and those corresponding in the Human Rights Act 1998) which protects the human rights of people in the UK. The principles are universal.

and receive information). There can be conflicts between parents and children in relation to article 8 (right to private life).

## Freedom of thought, conscience, and religion

Article 9 of the ECHR states:

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.

Thinking about the two sexes is automatic. An English speaker will think of someone they perceive to be female as “she” and someone they perceive to be male as “he”. Many other common words and concepts relate to the sexes: son, daughter, mother, father, husband, wife, lesbian, gay, bisexual, homosexual and heterosexual. The right to think, and to use ordinary words and concepts about the world, is a fundamental freedom.

Article 9 relates to both religious and non-religious beliefs. People have different beliefs about the nature of the two sexes, about internal feelings of “gender identity” and about whether those feelings are more important than sex. Both people who agree with, and people who disagree with, the idea of innate or fluid gender identity are protected by article 9 and hold beliefs that are “worthy of respect in a democratic society” (*Forstater v CGD Europe and others [2021] UKEAT*).

Although people can be required to be polite at work to those with fundamentally different beliefs about sex and gender (such as making reasonable accommodations for people who prefer not to be referred to by their sex), people cannot be required not to manifest their own beliefs, or be compelled to state that they hold beliefs that they do not hold.

Article 2 of protocol 1 to the convention concerns the right of parents to ensure the education of their children in accordance with their religious convictions: “in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching for their children in conformity with their own religious and philosophical convictions.”

## Freedom of expression

Article 10 of the ECHR states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

People have the right to express themselves using ordinary words about the sexes.

Restrictions may be justified as set out in 2:

“As prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

These restrictions must be construed strictly, and the need for any restrictions must be established convincingly (*Stoll v Switzerland* ([GC], § 101), reiterated in *Morice v France* ([GC], § 124) and *Pentikäinen v Finland* ([GC], § 87).

Protection for freedom of expression is not limited to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but extends to those that offend, shock or disturb (*Handyside v the United Kingdom*, § 49; *Observer and Guardian v the United Kingdom*, § 59).

This right includes the freedom to receive and impart information. Freedom and pluralism of the media are essential. Journalists must be able to report the news accurately, and to express their opinions and ideas without fear, even if those opinions and ideas run counter to popular or political opinion (*Dink v Turkey*, § 137; *Khadija Ismayilova v Azerbaijan*, § 158).

People exercising their right to freedom of expression may do this by referring to themselves in the way they wish, and by requesting that others refer to them in the same way, such as through the use of “preferred pronouns”. But this does not oblige others to comply. In practice workplaces and institutions may have policies about how people refer to staff members or clients. These rules may be lawful where they are a proportionate means to a legitimate aim. But blanket prohibitions against “misgendering” (that is, referring to people with words that relate to their sex when they would prefer not to be referred to in this way) destroy freedom of expression and freedom of belief.

## Freedom of assembly and association

Article 11 states that:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

This includes the right to meet and establish groups and associations based on sex (men or women), sexual orientation (gays, lesbians, bisexuals, heterosexuals or any combination), religion or belief, transgender identity or any other self-determined characteristic.

There have been cases of single-sex associations being refused venue bookings or support from university student unions. Some previously single-sex organisations, such as the Women’s Institute and Girlguiding, have switched from single-sex to open on the basis of gender identity without consulting their members.<sup>5</sup> Lesbian groups in particular report extreme pressure to include males (“trans women”).<sup>6</sup>

## Right to a fair trial

Article 6 states:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Being able to talk about and understand the law is fundamental to a democratic society. The law must be clear, foreseeable and adequately accessible to enable individuals to act in accordance with it. The words and concepts for sex that are used in the law are often presented as “transphobic” or outdated, including in the *Equal Treatment Bench Book*, which guides judges’ conduct. This undermines people’s right to a fair trial.<sup>7</sup>

Where judges become confused by the concepts “man” and “woman” they may make judgments that are wrong in law. Victims of crime and witnesses have been required to describe men as women, and public records of trials have been distorted by recording men as women (and vice versa).

## The right to respect for private and family life

Under article 8:

---

<sup>5</sup> Sex Matters (2022). *Clear Rules and Girls’ Schools*.

<sup>6</sup> Sex Matters (2022). *Why single-sex services matter: privacy, dignity, safety and choice*.

<sup>7</sup> Sex Matters (2022). *How can the Equal Treatment Bench Book be made fit for purpose?*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

This is a limited right. Public authorities may interfere where it is

“in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The primary purpose of article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority (*Libert v France*, §§ 40–42). This obligation is of the classic negative kind. However, member states also have positive obligations to ensure that article 8 rights are respected, even between private parties (*Bărbulescu v Romania* [GC], §§ 108–111).

Clarity about the law is important to article 8, since without clarity the state may capriciously intervene in people’s private life. The phrase “in accordance with the law” implies that the law must be sufficiently foreseeable that individuals have an adequate indication as to the circumstances in which the authorities are entitled to limit their freedoms. The current ambiguity over whether sex and other associated words mean biological sex or sex as modified by a gender recognition certificate (or even, as some mistakenly think, self-declared “gender identity”) puts the foreseeability of the law in question.

Article 8 also covers “family life”: at its core is the relationship between parents and their children, although there are other models of family life. For any child, parental responsibility is established in the first instance through the fact of a child’s mother giving birth, and then through presumed or confirmed paternity. Other types of family are also supported through legal recognition, but in the first instance, parental ties reflect the role of women and men in sexual reproduction. No matter how a family is formed, the state must act to enable children to be integrated in their family.

Issues concerning the disclosure of religious and philosophical beliefs, personal appearance and provision of official personal identification documents, including birth registration, all come under article 8. Privacy and consent over who gets to see and touch your body are covered too.

It was an ECHR decision on article 8 that led the UK to pass the Gender Recognition Act, which enables people to change the sex recorded on their birth certificate. The case of *Christine Goodwin v the United Kingdom*, 2002 related to respect for Goodwin’s private life by allowing Goodwin to keep information about sex private (for example, when dealing with a bank). The court ruled that there were “no significant factors of public interest to weigh against the interest of the applicant in obtaining legal recognition of her gender reassignment”.



However, it has become clear that the UK's gender-recognition regime, which went further than the limited privacy that was required by the Goodwin judgment, *does* have implications for the interests of others and for the public interest (for example in collecting statistics on sex and managing single-sex services). There are also human-rights concerns with reforming this law, as is proposed in Scotland.<sup>8</sup>

Seizure of documents needed to prove one's identity is an interference with private life. It might be argued that in effect the Gender Recognition Act 2004 amounted to a seizure and modification of everyone's birth certificate as a means to prove their sex. The field that records "sex" is no longer an accurate attestation of sex (since having an "F" on a birth certificate could mean the person is either female or male with a GRC). This inability to routinely attest to one's own sex and to confirm the sex of others using official documents undermines the ability to enforce sex-based rules.

The concept of private life covers the physical and moral integrity of persons, including their sexual life. In *X and Y v the Netherlands*, § 22, the state was found to have responsibility for providing effective protection of criminal law in the case of the sexual assault of a mentally disabled 16-year-old girl. The authorities' duties include a duty to maintain, and apply in practice, an adequate legal framework affording protection against acts of violence by private individuals. We argue that removing clarity about the words "male" and "female" prevents individuals from being able to maintain their own physical and moral integrity through being able to give or withdraw consent, for example to undressing or sharing intimate spaces with a member of the opposite sex.

## The right to have a family

Men and women of marriageable age have the right to marry and to found a family (article 12). Article 12 of the convention did not impose an obligation on the respondent states to grant same-sex couples access to marriage. The question of whether or not to allow same-sex marriage was left to regulation by individual states (*Schalk and Kopf v Austria*, 2010, §§ 61–62, *Hämäläinen v Finland* [GC], 2014; *Oliari and Others v Italy*, 2015; *Chapin and Charpentier v France*, 2016).

Consent is a condition for marriage in all Council of Europe member states. Generally speaking, a forced marriage would violate the right to marry of the party not giving consent.

In *Goodwin v the United Kingdom*, 2002, the judgment said that a post-operative transsexual has the right to marry a person of the same sex. It said that it could no longer be assumed that the words "man" and "woman" related purely to biological criteria, because of "dramatic changes

---

<sup>8</sup> Sex Matters (2022). *Letter to MSPs on the Gender Recognition Reform Bill (Scotland)*.

brought about by developments in medicine and science” in the field of transsexuality since the adoption of the convention. However, this decision has in practice been superseded by the institution of same-sex marriage (and civil partnership) in the UK, so that anyone can marry a person of the same sex.

The rights of the unhappy spouse in a marriage where one partner has transitioned (“trans widows”) are rarely considered in debates on the rights associated with a legal change of sex. Currently, the transitioner must have agreement from the spouse to continue the marriage, or else must end it via divorce or annulment before being awarded a Gender Recognition Certificate. This has wrongly been termed a “spousal veto” and has been a target for reforms.

## The right not to be subject to degrading treatment

Article 3 of the convention enshrines one of the most fundamental values of democratic societies: the prohibition of torture and inhumane or degrading treatment or punishment. The prohibition is absolute. Degrading treatment includes treatment that arouses feelings of fear, anguish and humiliation. This can include being made to undress, and in particular being made to undress in front of members of the opposite sex.

Ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3. The assessment of that level is relative and depends on all the circumstances of the case, such as duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. Treatment that was found to breach article 3 included strip-searching in front of an officer of the opposite sex (*Valašinas v Lithuania*, 2001, § 117). The court has also found that treatment that had failed to reach the minimum level of severity under article 3 breached article 8, for example in a case of lack of courtesy by prison officers when strip-searching visitors in prison (*Wainwright v the United Kingdom*, 2006, §§ 44–49).

The court has found that sterilisation constituted a major interference with a person’s reproductive health status. It may be legitimately performed at the request of the person, for example as a method of contraception or for therapeutic purposes where the medical necessity had been convincingly established. However, the imposition of such medical treatment without the consent of a mentally competent adult patient is not compatible with the requirement of respect for human freedom and dignity (*V.C. v Slovakia*, 2011, §§ 106–107).

States are required to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals. In particular, children and other vulnerable individuals are entitled to effective protection, including from child abuse and domestic violence.

Physical and verbal harassment, including by counter-protestors, has also been included under article 3 (*Women’s Initiatives Supporting Group and Others*, Georgia, 2021).

## Prohibition of discrimination

Article 14 of the convention states:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 1 of Protocol 12 further sets out a general prohibition of discrimination:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 does not prohibit a member state from treating groups differently in order to correct “factual inequalities” between them; indeed in certain circumstances a failure to attempt to correct such inequality through different treatment may in itself give rise to a breach of article 14. Differences in treatment on the basis of sex may be justified only by weighty reasons (*Abdulaziz, Cabales and Balkandali v the United Kingdom*, 1985, § 78; *Konstantin Markin v Russia* [GC], 2012, § 127). Protection of bodily privacy and consent (as covered by articles 3 and 8) are a common reason for single-sex and separate-sex services. Differences in male and female physical characteristics are also the reason for separate sports categories.

Confusion (or conflation) of the terms man and woman, and male and female, can lead to discrimination on the basis of religion or belief<sup>9</sup>, and the misapplication of positive actions intended to correct factual inequalities between men and women, such as by allowing males who declare themselves to be women to receive women’s prizes or compete in women’s sports.

## Children’s rights and parents’ rights

Children’s rights are a subset of human rights in which the special protection and care afforded to minors is central. Children are defined as people under eighteen years old. Protecting children’s rights often requires protecting parents’ rights, and this starts with the mother. Her right to safety and to registration of her children is a key enabler of infant welfare.

Children’s rights include their right to association with both parents and the right to their own identity, as well as the basic needs for physical protection, food, education and healthcare, and criminal laws appropriate for the age and development of the child.

---

<sup>9</sup> *Forstater v CGD Europe and others* [2022] UKET 2200909/2019, *Bailey v Stonewall and Garden Court* [2022] UKET 2202172/2020

Childhood is recognised as a developmental period in which a child's capacities evolve. Parents usually make decisions for their children, and the state should step in only where it is in the best interests of the child.

As children grow up their maturity and intelligence increase, and their views and wishes should be given greater weight. Parents have a right to information about their children from institutions that hold it, such as schools and doctors. But as children get older, they gain increasing rights to privacy and eventual independence from their parents.

In relation to medical treatment (and associated information), the issue of whether a child under 16 has the necessary competence to consent was decided by the House of Lords in *Gillick v West Norfolk and Wisbech AHA, 1986*<sup>10</sup>. Their Lordships held that a child under 16 had the legal competence to consent to medical examination and treatment if they had sufficient maturity and intelligence to understand the nature and implications of that treatment. Legal competence to make decisions is conditional on the child gradually acquiring both the maturity to manage influences on their decision-making, such as information, peer pressure, and family pressure, and the intellectual ability to weigh risk and benefit, and to consider long-term implications. The question of Gillick competence related not only to the competency of the child but to the nature of the decision.

While adults have the liberty to choose to live as they choose and to manifest their beliefs (insofar as this doesn't destroy others' rights), encouraging children to pursue the idea of "sex change" engages the human rights of children, who are unlikely to be Gillick competent to make life-changing decisions relating to their sexed body and future family life.<sup>11</sup>

## A framework for resolving rights

### Equality is for everyone

When we talk about the rights that women have or the rights that transgender people have, these are not separate sets of rights, but the rights that all human beings share. There is no hierarchy of equalities between different groups.

It is sometimes argued that those who call for clarity on sex, for clear single-sex services and spaces, and for protecting children from making decisions that may permanently harm their health are "anti-trans" or seeking to destroy "trans rights". This is not the case.

---

<sup>10</sup> British Journal of Nursing (2021). *The right to respect for family life, consent, minors and Gillick competence*.

<sup>11</sup> See *Bell v Tavistock* [2020] EWHC 3274 (Admin) and *Bell v Tavistock* [2021] EWCA Civ 1363

## Recognise conflicting interests

Conflicts of rights are normal and unavoidable. When the state constrains the realisation of people’s rights (or allows private actors to constrain their rights) it must be proportionate. There needs to be a fair balance between the competing rights of individuals, and between the interests of the individual and the community (or the enterprise). As Lady Hale set out in a lecture to the Employment Lawyers Association:

“The tools are comparatively clear: what is the importance of the right interfered with; what is the reason for the interference; is it legitimate; is the interference rationally connected to that aim; might a lesser degree of interference have been employed; and overall does the end justify the means?”<sup>12</sup>

In recent years there have been strong pressures against recognising this when it comes to the demand for “trans rights”. Stonewall, when asked to consider conflicting rights, said: “We do not and will not acknowledge a conflict between trans rights and ‘sex based women’s rights’.” It argued that to do so “would imply that we do not believe that trans people deserve the same rights as others”.<sup>13</sup> Amnesty International also says that “trans rights are women’s rights” and claims that:

“Trans women are women and there is no risk to single sex services. You might have heard discussions on the media and social media trying to tip trans rights against women’s rights. These discussions are informed by prejudice and misinformation.”<sup>14</sup>

### *Conflating sex and gender identity leads to abuses of human rights*

Article	Abuses of human rights
<b>Freedom of thought, conscience and religion (article 9)</b>	<ul style="list-style-type: none"> <li>• Compelled speech – enforced pronoun declaration and workplace allyship</li> <li>• Cancel culture, bullying and harassment</li> <li>• Discrimination against “gender-critical” people (both religious and non-religious) at work, in education and beyond</li> </ul>
<b>Freedom of expression (article 10)</b>	<ul style="list-style-type: none"> <li>• Erosion of parents’ rights to bring up children according to their belief (RSE in school promoting gender ideology)</li> <li>• Blanket bans on “misgendering”</li> </ul>
<b>Freedom of</b>	<ul style="list-style-type: none"> <li>• Lack of tolerance of single-sex associations (for example refusal of venue</li> </ul>

<sup>12</sup> Hale, B (2013). ‘The Conflict of Equalities’: Alison Weatherfield Memorial Lecture at the Employment Lawyers Association.

<sup>13</sup> Stonewall (2018). *Our work for trans equality is at the heart of our mission for acceptance without exception.*

<sup>14</sup> Amnesty International (2020). *Have your say on the Gender Recognition Act.*

<b>assembly and association (article 11)</b>	<p>bookings, student-union bans)</p> <ul style="list-style-type: none"> <li>• Groups/venues for lesbians and gay men in particular being targeted</li> <li>• Girlguiding accepting boys who identify as girls (without consultation with members)</li> <li>• Targeting of LGB Alliance – the right of same-sex oriented individuals</li> </ul>
<b>The right to a fair trial (article 6)</b>	<ul style="list-style-type: none"> <li>• <i>Equal Treatment Bench Book</i> and training of the judiciary on gender instead of sex</li> <li>• Compelling witnesses to refer to “gender identity” not sex</li> <li>• Recording “gender identity” instead of sex in hearings and judgments</li> </ul>
<b>The right to respect for private and family life (article 8)</b>	<ul style="list-style-type: none"> <li>• Changing personal data from “sex” to “gender identity”</li> <li>• Forcing people to declare their gender-critical beliefs in order not to be regarded as having a “gender identity”</li> <li>• Loss of single-sex privacy</li> <li>• Loss of clear, accurate sex markers in official documents (right to identity documents)</li> <li>• Lack of clarity about the law (which creates lack of foreseeability; arbitrary justice)</li> <li>• Schools keeping secrets from parents (social transitioning in school)</li> <li>• Removal of children from parents due to disagreement with transitioning</li> <li>• Inability of authorities to judge what is in the best interests of children because of capture by gender-identity ideology</li> </ul>
<b>The right to form a family (article 12)</b>	<ul style="list-style-type: none"> <li>• The rights of “trans widows”</li> <li>• Undermining the meaning of “mother” and “father” in legislation</li> </ul>
<b>The right not to be subject to degrading treatment (article 3)</b>	<ul style="list-style-type: none"> <li>• Children and vulnerable people being put onto medication that results in sterilisation without adequate consent</li> <li>• Confusion about the sexes undermining child safeguarding and protections against child sexual abuse</li> <li>• Creation of environments without clear rules, which enable sexual harassment (voyeurism and exposure)</li> <li>• Being forced to say that men are women (and vice versa) – in particular for wives and children of transitioners, and for victims of sexual assault and rape</li> <li>• Male prisoners in women’s prisons</li> <li>• Male prison officers searching female prisoners (and visitors and staff)</li> <li>• Male police officers searching female suspects</li> <li>• Female officers forced to search males</li> <li>• People unable to request carers, healthcare professionals or chaperones of the same sex (rather than “gender identity”)</li> <li>• Women in rape crisis centres/ group counselling coerced to disclose details in front of males</li> </ul>

<b>Protection against discrimination (article 14)</b>	<ul style="list-style-type: none"> <li>• Lack of clarity about the protected characteristic of sex, which implies lack of ability to protect against sex discrimination</li> <li>• Lack of clear data collection on sex</li> <li>• Even clearly stating the protected characteristic of sex is viewed as controversial and “harassment”</li> <li>• Reporting of situations that would be viewed as sexual harassment (such as a male in the women’s changing rooms) is now viewed as harassment of the male</li> <li>• Fear of making distinctions based on sex leads to institutions going “gender neutral” (mixed sex), meaning many people (particularly women) self-exclude</li> <li>• Discrimination against people on the basis of religion and belief</li> <li>• Lack of protection for the women’s category in sports.</li> </ul>
---	---

These abuses of human rights and patterns of discrimination often arise from misunderstandings and misrepresentations of human rights and equality frameworks themselves. For example any recognition of the sex of a person who identifies as transgender is labelled as “harassment”.

In order to resolve conflicts between the rights of women and those of transgender people, these conflicts need to be identified and discussed openly and clearly. Where conflicts or rights are ignored or made unspeakable, rights may be undermined. This section sets out six principles to untangle and resolve the conflicts of rights.

## Be clear about sex

Sex is binary and immutable. Changes to “gender expression” (such as clothing, hairstyle, mannerisms, pronouns, name or cosmetic surgery to the body) may be deeply meaningful to an individual and constitute a “gender identity” to them. But identifying as trans does not change a person’s sex.

## Women are a vulnerable class

Equality frameworks protect both men and women from discrimination. However, it is important to acknowledge that women tend to be more vulnerable to sex discrimination, domestic violence, sexual violence and sexual harassment.

98% of sexual crimes are carried out by men. When we say this we are not saying that all men (or all trans-identifying males) are deviants or criminals. Recognition of population-level differences in tendencies and behaviours between men and women does not mean demonising all males as rapists.

Similarly, in sport the female category allows women to compete without men. If there were not clear sex-based rules, women's sports would be dominated by males. The same is not true for the men's category (which is sometimes called the "open" category).

## Get the comparator right

When considering discrimination (including access to single-sex spaces and services), the question of comparators is crucial. It has been argued that the correct comparator for a "transwoman" (that is, a man who identifies as a woman) is a woman and thus to avoid unlawful discrimination the person should be treated "no differently to another woman" in relation to single-sex services.

However, European case law does not support this reasoning. The question of whether or not two persons are in a comparable situation is specific to the context –the particular nature of the complaint in which someone was treated differently (*Fábián v Hungary* [GC], 2017, § 113; *Clift v the United Kingdom*, 2010, § 66; *Demokrat Parti v Turkey* (dec.), 2021). Elements which characterise different situations, and determine their comparability, must be assessed in the light of the subject matter and the purpose of the measure by which they are treated differently (*Fábián v Hungary* [GC], 2017, § 121).

Given that states are allowed to treat the sexes differently only where there are "weighty reasons", this suggests that when there are lawful sex-based rules it is because there are good reasons to treat people differently *based on sex*. Being a woman (female) is not a comparable situation to being a "transwoman" (male). The similarities between a man who identifies as a woman and an actual woman are superficial (even though they may be deeply meaningful to the individual). They may include, for example, the adoption of a traditionally feminine name and "preferred pronouns"; the adoption of typically feminine clothing, hairstyle and makeup; or having cosmetic surgery. These aspects of appearance would not constitute good reasons for having sex-based rules.

Similarly laws which protect women's rights (for example in relation to pregnancy and maternity) would apply even to a woman who identifies as a man by changing hairstyle, pronouns and name, taking hormones, having surgery or changing the sex recorded on a birth certificate.

## Trans rights are privacy rights

Individuals should not be discriminated against because they identify as trans (such as by being arbitrarily denied "access to work, access to restaurants, or to services which private persons may make available to the public such as medical care or utilities such as water and electricity", as set out in article 1 of protocol 12). But they do not have the right to compel others to pretend they are a member of the opposite sex or to force them to share intimate spaces on this basis.



Key rights of transgender people concern their right to private life, including the right to decline to give information on their sex (or any medical diagnosis, mental-health condition or treatment they have or have not had). This right to say “None of your business” is practically limited in many situations by the need for accurate information about sex, such as in relation to healthcare or parental responsibility. In many situations it is in any case impossible to keep sex private, as people readily perceive or remember someone’s sex.

*Key applications of human rights relevant to people with trans identities*

Article	Particular relevant rights for trans-identifying people
<b>Freedom of thought, conscience and religion (article 9)</b>	<ul style="list-style-type: none"> <li>• Freedom to express ideas about sex and gender</li> <li>• Freedom to refer to yourself in any way</li> <li>• Freedom to dress how you choose</li> </ul>
<b>Freedom of expression (article 10)</b>	
<b>Freedom of assembly and association (article 11)</b>	<ul style="list-style-type: none"> <li>• Freedom to meet as trans people or in other groups based on gender identity</li> </ul>
<b>Right to a fair trial (article 6)</b>	<ul style="list-style-type: none"> <li>• Courteous and respectful treatment by courts</li> <li>• Innocent until proved guilty</li> </ul>
<b>The right to respect for private and family life (article 8)</b>	<ul style="list-style-type: none"> <li>• Privacy about home and lifestyle (for example cross-dressing)</li> <li>• Limited privacy about sex (where it is not necessary for the information to be shared or recorded)</li> <li>• Ability to wash/ change/ toilet with reasonable privacy</li> <li>• Not to be asked about private information such as medical history, gender identity, surgery and so on</li> <li>• Bodily autonomy</li> </ul>
<b>The right to form a family (article 12)</b>	<ul style="list-style-type: none"> <li>• Right to marry</li> </ul>
<b>The right not to be subject to degrading treatment (article 3)</b>	<ul style="list-style-type: none"> <li>• Gender-questioning children should be protected and safeguarded from bodily harm</li> <li>• Adults should not be forcibly sterilised or offered treatment under false pretences (“sex change”)</li> <li>• Ability to wash, change and so on with dignity</li> </ul>
<b>Protection against discrimination (article 14)</b>	<ul style="list-style-type: none"> <li>• General protection against discrimination for being trans</li> <li>• Reasonable accommodation where there are sex-separated spaces</li> </ul>

## Sex matters for sex

Reproduction and sexual orientation are clearly areas where sex matters. This is true for example in relation to contraception and abortion, assisted conception and surrogacy. These are all areas where complex legal and ethical issues are at play, and where clear language about the impacts of policy choices on females and males is crucial.

Similarly, while “LGBT” may be used by some to denote a political identity, it should not be used as a characteristic to erase the distinctly different realities of each letter. For example, understandings of “conversion therapy” in relation to sexual orientation do not find direct parallels in transgender identity, since sexual orientation and cross-sex identification are not the same kind of thing.<sup>15</sup>

## Children need protection

Safeguarding must not be undermined. Prematurely ascribing to children the right to make adult choices puts them at risk and undermines their rights.

In recent years there has been a rapid rise in children and young people transitioning. The use of puberty-suppressing drugs and cross-sex hormones, and the provision of gender surgery involve high risks of long-term adverse consequences.

Dr Hilary Cass, in her review of the NHS Gender Identity Development Service, highlights that “social transition” (adopting a non-sex-based identity) has been recognised as a serious psycho-medical intervention.<sup>16</sup>

The rights of parents (which are crucial to protect children) should not be undermined by keeping secrets or promoting ideological viewpoints in schools. Children have the right to education, which should be based on facts and science. Understanding the words male and female is crucial to this.

Any move towards socially transitioning a child at school would engage questions of Gillick competence (whether a child is mature enough to consent to a treatment). Children should not be assumed to be developmentally competent to understand the concepts and choices they are being offered. Any measures to accommodate children experiencing gender distress in school must respect the rights of other children (and teachers) in relation to freedom of belief and expression, bodily privacy and consent, and non-discrimination (including the equal provision of fair, safe sports for girls).

---

<sup>15</sup> Sex Matters (2022). *Why ban talking therapy?*

<sup>16</sup> Cass, H (2022). *The Cass Review (interim report): Independent review of gender identity services for children and young people.*

## Sex Matters as an organisation

### A human-rights organisation

As this paper sets out, Sex Matters is a human-rights organisation. We use human-rights analysis (including children’s rights) to understand the issues we are addressing. We monitor, research and raise awareness and understanding of human-rights issues, infringements and abuses; provide advice and contribute to sound administration of human-rights law; comment on proposed legislation; and work to obtain redress for victims.

We mainly campaign for policies and guidance that promote the sound administration of existing equality law in relation to biological sex and broader human rights. We may also promote amendments and reforms to laws where we think this will eliminate infringements of human rights or result in a more equitable balance of rights.

### “Gender-critical”

Sex Matters is an organisation with an ethos based around the “gender-critical” (sex-realist) belief that sex in humans is real, binary, immutable and important.

This is founded in basic science, and recognised as being covered by the protected characteristic of belief in the Equality Act 2010 and under article 9 of the European Convention on Human Rights (*Forstater v CGD Europe and others [2021] UKEAT*). It also reflects the law in the UK. It is, in fact, a perfectly ordinary belief held by most people.

We are non-partisan and will seek to work with partners who support our four guiding principles:

#### **Sex Matters principles**

- **Reality:** There are two sexes: female and male. People shouldn’t be afraid to say this.
- **Clarity:** Organisations and governments should be clear about the sexes and where sex matters.
- **Human rights:** Everybody’s human rights matter, including private life, freedom of beliefs and speech.
- **Democracy:** A cohesive society depends on open debate and evidence-based policy-making.

This does not limit the beneficiaries of the organisation (the general public), since we seek to provide education and information, based on the law and biology, broadly to people whether they share our “gender-critical” ethos or not.

## Standing for women and men

Sex Matters is an organisation for both women and men, and advocates for protections against sex discrimination for both women and men. This includes women and men with transgender identities.

While we emphasise the vulnerability and needs of women, and may sometimes quote people using the shorthand of “sex-based rights”, we recognise that issues of rights are not a simple matter of rights divided by sex: the framework in human rights is universal, and relates to freedom of belief and expression and respect for privacy, as well as protections against sex discrimination, for both women and men.<sup>17</sup>

## Solution-oriented

We support the universal human rights of everyone, including those people who do not share our beliefs and those who identify as transgender. We will seek to propose practical solutions which respect everyone’s human rights and to be clear about the trade-offs.

Conflicts of rights and interests can be a “zero-sum game” in some situations. If the rules governing single-sex spaces are changed so that members of the opposite sex are able to enter, those spaces become mixed-sex, and many women will self-exclude.<sup>18</sup> Similarly if males are allowed to play in women’s sport then fairness and safety are destroyed.<sup>19</sup>

In this sense “rights are pie” – and compromises which negate and destroy the human rights of one group are not a fair solution. But solutions are needed which enable everyone’s rights (including the right to privacy) to be respected.

---

<sup>17</sup> Several of Sex Matters’ trustees and staff are signatories to the Women’s Declaration International (WDI) on Sex-Based Rights. Sex Matters is not a signatory as an organisation, but we believe the WDI is consistent with the protection of human rights. The declaration reaffirms the sex-based rights of women that are set out in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted by the United Nations General Assembly on 18th December 1979.

<sup>18</sup> Sex Matters (2022). *Why single sex services matter: privacy, dignity, safety and choice*.

<sup>19</sup> UK Sports Councils (2021). *The UK’s Sports Councils Guidance for Transgender Inclusion in Domestic Sport*.

## About Sex Matters

**Sex Matters promotes clarity about sex in law, policy and language in order to protect everybody's rights.**

**We believe that sex matters in law and in life, and it shouldn't take courage to say so.**

We are a human-rights organisation that educates and empowers people to:

- ensure that laws and policies are clear about sex
- understand and use the law to protect everyone's rights
- speak up and use clear language about the sexes.

**Find out more at [sex-matters.org](https://sex-matters.org)**

**Contact us at [info@sex-matters.org](mailto:info@sex-matters.org)**

This work is licensed under the Creative Commons Attribution 4.0 International License.

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