

For immediate release

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Sex Matters to intervene in landmark For Women Scotland case on meaning of sex in the Equality Act

The submission marks the first time human-rights arguments on the importance of recognising biological sex are made in a case concerning the legal meaning of sex in UK courts

Human-rights campaign group Sex Matters is intervening in the For Women Scotland case being heard on appeal by the Court of Session Inner House in Edinburgh on Wednesday 4th October. Sex Matters' submission, which will be made public on Wednesday, will urge the court to consider the impact of the legal meaning of sex on human rights.

The case concerns whether it is lawful for the Scottish Government to tell public bodies to include men who have transitioned by obtaining a gender-recognition certificate (GRC) when considering whether the legal quote for female board members has been met as part of the Gender Representation on Public Boards (Scotland) Act 2018.

In December 2022, Lady Haldane ruled that the Scottish Government's approach was lawful, saying that the definition of woman in the Equality 2010 Act includes biologically male people in possession of a GRC, recognising their "acquired gender" as female.

Sex Matter's intervention supports For Women Scotland's appeal against this judgment. It argues that it is wrong in law because it did not consider the impact on fundamental human rights protected by the European Convention on Rights, as legally required by the Human Rights Act (1998).

Maya Forstater, Executive Director of Sex Matters, said:

"It is important that the impact of the definition of sex on human rights is considered by the court.

"On its face, this case is narrowly about the operation of diversity quotas on public boards in Scotland. But the legal interpretation concerns the definition of woman in the Equality Act 2010, which has significant implications for women's rights.

"This concerns the whole of Great Britain: all our protections against sex discrimination as well as every area where organisations can lawfully treat men and women differently, including single-sex services, single-sex charities and associations, and jobs that need to be done by a man or a woman in order to protect other people's dignity and privacy.

"Lady Haldane said in her judgment that the issue of transgender rights was beyond the scope of the case. But redefining the words 'woman' and 'female' in law to include some male people with a government-issued certificate will destroy women's rights in favour of an expansive view of 'transgender rights'.

"The Gender Recognition Act is based on the right to privacy and the right to marry, which are protected by the European Convention. But these rights should not override other people's rights, or

make equality and anti-discrimination law unworkable and impossible to understand.”

Sex Matters’ intervention argues that changing the definition of man and woman in the Equality Act to include members of the opposite sex undermines the protection under Article 3 of the European Convention against inhuman or degrading treatment. The European Court of Human Rights has already ruled that being searched or intimately examined by a member of the opposite sex can fall foul of this provision.

Helen Joyce, director of advocacy at Sex Matters, said:

“Unless the court makes clear that gender-recognition certificates are not access-all-areas passes that erase people’s actual sex, they will become weapons that can be used to destroy women’s human rights in a wide range of situations. These include the criminal-justice system, the NHS and schools, where employees have powers to undertake searches and medical examinations, and women and girls are supposed to have the right to refuse searches by men – that is, by male people.

“Blurring sex categories also infringes on Articles 9, 10, and 11: freedom of belief, freedom of speech and freedom of association. Deciding on the meaning of ‘sex’ in the Equality Act cannot be settled with reference only to the narrow application of diversity quotas for Scottish public boards, when that definition also determines whether lesbians are allowed to have women-only associations, and whether charities are allowed to provide rape-crisis services that exclude all men, however they identify and whatever their paperwork.”

Sex Matters’ research on single-sex services, which has been made available to the court, has found that many previously women-only groups and services are coming under pressure to include men who identify as women.

Sex Matters recognises that the question of how the Gender Recognition Act and the Equality Act interact may only be resolved definitively by way of legislation. Following a debate on this topic in Westminster Hall in June 2023, Sex Matters is calling on the government to resolve the issue via secondary legislation rather than leaving it to courts, which may not consider the impact on wider human rights.

Sex Matters is represented by David Welsh of Axiom Advocates and Rosie Walker, Head of Litigation & Dispute Resolution, Gilson Gray LLP.

Sex Matters will publish its intervention on Wednesday 4th October.

Notes for editors

About Sex Matters

Sex Matters is a human-rights organisation co-founded in 2021 by Maya Forstater, who is its director, to campaign for sex-based rights. It lobbies for clarity on sex in law and institutions; publishes research, guidance and analysis; supports and mobilises people to speak up; and holds organisations accountable.

About Maya Forstater

Maya Forstater is co-founder and executive director of Sex Matters. In 2019 she lost her job as a researcher with the European arm of American think-tank Center for Global Development, after tweeting and writing about sex and gender. She was the claimant in the landmark test case which

established that the protected characteristic of belief in the Equality Act covers gender-critical beliefs. Her website is forstater.com and she tweets @MForstater.

About Helen Joyce

Helen Joyce is a journalist and author of *Trans: When Ideology Meets Reality*, an Amazon top ten bestseller, and *Times of London* and *Spectator* book of the year (recently reissued as *Trans: Gender Identity and the New Battle for Women's Rights*). She was a staff journalist at *The Economist* between 2005 and 2022, holding several senior positions, including International editor, Finance editor and Britain editor. She is director of advocacy for Sex Matters. Her newsletter can be found at thehelenjoyce.com.

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