The Lord Alton of Liverpool, Chair of the Joint Committee on Human Rights of the Parliament of the United Kingdom

Ms Sarah Owen MP, Chair of the Women and Equalities Committee of the House of Commons of the United Kingdom

17th October 2025

Dear Lord Alton and Ms Owen

Sex Matters is a human-rights charity which campaigns for clarity on sex in law and policy in the UK, to protect everyone's human rights. I am writing concerning the letter you have received from Dr Michael O'Flaherty, the Council of Europe's human rights commissioner, about the implementation of the Equality Act 2010, in light of the Supreme Court's judgment in *For Women Scotland v The Scottish Ministers [2025] UKSC 16*.

We share Dr O'Flaherty's concern that the UK's legislative framework should protect everyone's human rights, and we intervened in the case on this basis. However, we think that his letter is fundamentally misconceived. The question before the court concerned the meaning of the protected characteristic of **"sex"** in the Equality Act 2010 and of the associated terms male and female, man and woman.

The judgment makes unequivocally clear that working through tensions between the human rights of different groups depends on correctly defining and identifying the groups defined by these terms. It concludes that the *only* coherent and workable interpretation of the law – to protect both the rights of *everyone* against sex discrimination, and of people who are, or are perceived to be trans, from discrimination – is to read the terms and concepts related to sex as having their ordinary meaning.

Dr O'Flaherty's letter does not engage with the meaning of "sex". Nor does he use the terms "gender reassignment" or "protected characteristic". As such, he bypasses understanding of the UK legislative framework before claiming that trans people's human rights are not protected by it.

This is a highly inflammatory statement with which to intervene in what is a difficult area of domestic debate and legal understanding, where clarity, consistency and calm are needed.

As you will be aware, in 2019, based on the same misunderstanding of the Equality Act which the Supreme Court has now overturned, an Employment Tribunal ruled that the belief that sex is binary, immutable and important was "not worthy of respect in a democratic society". That meant that

those who hold that view were held to be outside the protection from discrimination, because their belief was judged to be incompatible with other people's human rights. As such it gave licence to attack, discriminate against and harass these people, calling them "bigots" and "transphobes", and removing them from public life and the ability to earn a living. That judgment was overturned by the Employment Appeal Tribunal in 2021.[1]

The Supreme Court quotes the EAT in relation to the "gender critical" claimant (which was me):

> "The effect of a GRC, whilst broad as a matter of law, does not mean that a person who, like the claimant, 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**, any more than the recognition by the state of civil partnerships can compel some persons of faith to believe that a marriage between anyone other than a man and a woman is acceptable. That is not to say, of course, that the claimant can, as a result of her belief, disregard the GRC; clearly, she cannot do so in circumstances where the acquired gender is legally relevant, eg in a claim of sex discrimination or harassment."

The Supreme Court's judgment is grounded in careful consideration of the purpose of the Equality Act 2010, in relation to all protected characteristics. It does not remove any protections from discrimination or harassment from transgender people, as the recent case of *Sophie Cole v Royal Mail* demonstrates.The claimant succeeded in claims of discrimination and harassment related to gender reassignment as well as a claim of discrimination and harassment related to sex. It is reported that this was unwanted conduct related to the female sex, despite Cole being male.[2] This is in line with the Supreme Court's reasoning, since the Equality Act addresses discrimination and harassment by perception and association.

Dr O'Flaherty raises concerns about legal uncertainty or dissonance "between the lived experiences of trans people and their treatment in law". The Supreme Court paid careful attention to this, considering the importance of biological sex to a person's lived experience. It noted that:

> "The group-based rights or protections in the EA 2010 recognise that people who share a particular protected characteristic (known or perceived) often have common experiences or needs, whether arising from differences of biology or physiology, or societal expectations or structures affecting their group."

The Supreme Court recognised that women have the common lived experience of being female, which is not shared with men. The lived experience of being a transgender male is not shared with women. Based on this consideration of lived experience, the Supreme Court concluded:

> "We can identify no good reason why the legislature should have intended that sex-based rights and protections under the EA 2010 should apply to these complex, heterogenous groupings [women, plus transgender males with a GRC minus

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[1] Forstater v CGD Europe [2021] ICR 1, EAT

[2] https://www.thetimes.com/uk/law/article/sophie-cole-trans-royal-mail-873rz3bfw

transgender females with a GRC] rather than to the distinct group of (biological) women and girls (or men and boys) with their shared biology leading to shared disadvantage and discrimination faced by them as a distinct group."

Dr O'Flaherty expresses concern about "the exclusion of trans people from many public spaces". The Equality Act protects people against discrimination in general from services, but allows the provision of single-sex services under specific exceptions.

Most situations in life (such as housing, transport, workplaces and education) are mixed sex, and it is not lawful to exclude people because they are transgender. It is only lawful to discriminate against people who share the protected characteristic of being male or female (by setting sex-based rules) where there is an explicit exception in the Act.

Dr O'Flaherty refers to these as "gender-segregated spaces" but it is clearer to refer to them as sex-segregated spaces. As the Supreme Court concludes, it is impossible to lawfully justify or to workably operate such spaces without clear rules that relate to sex. Such rules engage Article 8. As Dr O'Flaherty rightly recognises, this right is not absolute and can be subject to limitations in the interests of a number of grounds, in accordance with the law, when necessary in a democratic society and proportionate to the aim sought.

It should be remembered that these rights apply to all. Women using a toilet, changing room or shower are engaging in a "private act" under the Sexual Offences Act 2003, and their right to privacy is infringed if they are exposed (or put at risk of exposure to) unexpected members of the opposite sex.

UK legislation enabling (and in some cases requiring) single-sex and separate-sex services protects everyone's rights. I would ask that the committees be robust in recognising this.

The committees may find the following further resources useful:

- *Why the Supreme Court's judgment does not remove, diminish or breach the rights and protections of trans people* by Ben Cooper KC (who represented Sex Matters in the Supreme Court)
- *Is an ECHR showdown on women's rights and trans rights inevitable?* by Associate Professor Michael Foran of Oxford University
- *Statement in response to Council of Europe Commissioner's letter on UK ruling*, Athena Forum

I would appreciate it if you could share this letter with the other committee members.

Yours sincerely

Maya Forstater
CEO