

## MEETING with Sex Matters

Meeting with:	Maya Forstater and Helen Joyce, Sex Matters
Date:	31 <sup>st</sup> January 2023
Time of event:	11:30 – 12:00
Place:	Teams
Who is attending:	Kishwer Falkner, Marcial, Melanie Field and <sup>S40(2)</sup>
Agenda and asks:	Meeting organised at the Chairwoman's request

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## 1. Overview

- 1.1. Sex Matters is a not-for-profit organisation made up of 8 officers. It relies on monthly paying subscribers and one-off donations. They campaign, advocate and produce resources to promote clarity about sex in public policy, law and culture. They have a singular stated mission: to re-establish that sex matters in rules, laws, policies, language and culture.

## 2. Sex Matters' recent policy and media updates (since meeting in September)

### Freedom of belief matters

- 2.1. Jan. 2023: Sex Matters published [Freedom of belief matters](#) – 'our response for a call to input by the United Nations' Independent Expert.'

### GRA

- 2.2. Jan. 2023, Sex Matters published an article on their website entitled [The UK government is right to challenge the GRR Bill](#). This laid out their reasons for opposing the Bill and built on their [statement](#) of 16 Jan. explaining why they were 'very pleased the Prime Minister and the Secretary of State for Scotland have decided to use their constitutional powers to stop the Gender Recognition Reform (Scotland) Bill from going to royal assent.'

### Education

- 2.3. Jan. 2023, Sex Matters published an article on [What guidance from the Department for Education needs to say](#), outlining 'ten principles for clarity and fairness'. This follows the 2022 [survey](#) commissioned by Sex Matters and carried out by YouGov which showed, 'there has been a huge increase in the number of school pupils identifying as trans or non-binary, alongside huge disagreement about how best to manage this.'

- 2.4. 1 Nov. 2022: Sex Matters [call for a “Cass’ Review on Education”](#). In the article, they include a [letter](#) sent collaboratively with Bayswater Support Group, Fair Play For Women, LGB Alliance, Safe Schools Alliance and Transgender Trend to Secretary of State for Education, Gillian Keegan MP to draw her attention to the problem of gender ideology being promoted in schools.

### Updating the Equality Act (EquA)

- 2.5. Sex Matters released a [petition](#) for the government to update the EquA to make clear the characteristic “sex” is biological sex; they state: *The Government must exercise its power under s.23 of the Gender Recognition Act to modify the operation of the Equality Act 2010 by specifying the terms sex, male, female, man & woman, in the operation of that law, mean biological sex and not “sex as modified by a Gender Recognition Certificate”* The petition currently has nearly 75,000 signatures.

## **3. Sex Matters’ proposal for amending the 2010 EA**

- 3.1. We agree with Sex Matters that it is important to have clarity in the law, and we will be actively observing the outcomes of the anticipated appeals of both the For Women Scotland case and the UK Government’s decision to prevent the Scottish Gender Recognition Reform Bill receiving Royal Assent.
- 3.2. We are committed to ensuring that the rights of women and of transgender people are protected, and that all groups can go about their daily lives without harassment or discrimination.
- 3.3. We might also want to ask Sex Matters regarding any specific practical issues they’ve identified as arising from the current drafting of the Act, and any provisions they’ve identified where contrary provision would need to be made to ensure appropriate treatment of trans people.

### Background

- 3.4. Sex Matters has written to Minister for Equalities, outlining their concerns (attached) and asking her to consult on using the GRA order-making power to amend the EquA.
- 3.5. We intervened in the most recent [For Women Scotland case](#) brought against the Scottish government. In that intervention, the EHRC put forward the position, shared by UK and Scottish Governments that sex, for the purposes of the EquA 2010, means **legal sex**. This would include transgender people with a Gender Recognition Certificate. Lady Haldane’s judgment found in favour of this position.
- 3.6. She agreed with the position that at the time the EquA was being drafted, Parliament chose not to legislate for sex to be defined as ‘biological sex’. Notably, the Gender Recognition Act 2004 had already established the position in relation to the legal sex of people with GRCs when this drafting took place.
- 3.7. For the vast majority of people, their legal sex will be the same as that recorded at birth. However, were sex in the EquA **not** to mean legal sex, those with a Gender Recognition Certificate would be of one sex for most legal purposes,

including personal documentation, pension rights and marriage, but of the other for equality and non-discrimination rights.

- 3.8. Sex and gender reassignment are already defined as separate protected characteristics under the EquA, for the purpose of protecting people from discrimination on the grounds of having that particular characteristic. Everyone has several protected characteristics; for example, everyone is protected against discrimination on the grounds of both age and sex. Which protected characteristic is relevant will depend upon the nature of the discrimination experienced by an individual.
- 3.9. Our position in the For Women Scotland case was that the current drafting of the EquA 2010, including the exceptions for single-sex spaces, generally provides a practicable framework to appropriately balance rights between groups where necessary.

#### **4. Sex Matters' response to our call for evidence for the statutory report**

- 4.1. Sex Matters wrote to us with their concerns regarding our call for evidence (letter attached).
- 4.2. The reference to "gender differences" is referencing the Measurement Framework topics specifically as they are described in that document. Here we do mean sex, rather than gender identity. We have added a footnote to the call for evidence documents to clarify that. We also note that there is frequent use of the term gender in instances where sex is the intended subject, for example we discuss the gender pay gap rather than referring to it as the sex pay gap.
- 4.3. Regarding religion, this was a shorthand term to represent religion or belief. In the final document, "or belief" was omitted in error. This has now been corrected.

#### **5. Biographies**



Maya Forstater is an independent researcher, writer and advisor working on the business of sustainable development. In 2019 she lost her job after tweeting and writing about sex and gender. She is the claimant in a landmark test case on whether the protected characteristic of belief in the EquA covers gender critical beliefs.

Maya is one of Sex Matters founders and Executive Director.



Helen Joyce joined Sex Matters in April '22 as Director of Advocacy, a role which she has taken a leave of absence from her position as senior staff journalist at *The Economist* to carry out. Helen is the author of *Trans: When Ideology Meets Reality*, a non-fiction book that criticizes the transgender rights movement and transgender activism. Helen's earlier career has consisted of editing and writing for various publications and she has been at *The Economist* for 16 years.



## 6. Annex A: Sex Matters' key policy priorities

### Data and Statistics

- 6.1. *'We need accurate data, disaggregated by sex in order to understand differences in the lives of women and men.'*
- 6.2. April '22, Sex Matters welcomed that the Financial Conduct Authority had issued new rules about its requirements for listed companies to report on the proportion of women on corporate boards, scrapping its earlier proposal for this to be based purely on gender self-identification. They followed this up with [advice to companies on the FCA's new reporting requirements](#).

### Freedom of Speech

- 6.3. *'Being offensive is not an offence'*
- 6.4. March '22, [Sex Matters interviewed their Executive Director, Maya Forstater](#) who was in a legal case after suing her former employer after she was terminated for voicing her beliefs on gender. Maya went on to win this case in July '22, which Sex Matters announced as [A win for free speech and sex-based rights](#) and followed up with some guidance – [What does the Forstater judgment mean for employers?](#)
- 6.5. April '22 Sex Matters and Transgender Trend published their [Sex and gender identity guidance for schools](#). This was published following their survey on trans-identifying pupils in schools.

### Healthcare

- 6.6. *'Confusing sex and gender identity creates risks in the healthcare system.'*
- 6.7. February '22, Sex Matters wrote to the JCHR to urge it to write to the United Nations to confirm its parliamentary role in overseeing the EHRC and stating its confidence in the organisation after recent attacks which have sought to undermine it.
- 6.8. February '22, Sex Matters published their [Responses to the government consultation on banning conversion therapy](#). They have shared many other updates on their opinion of banning conversion therapy through the year.
- 6.9. August '22, Sex Matters published a [guide on Sex and the law](#).

### Legal System

- 6.10. *'The argument for "No Debate" does not work in court: judges should listen to evidence and reasoned argument.'*
- 6.11. June '22, Sex Matters published their own leaflet to print at home - [Gender-critical: your rights at work](#).

### Prisons

- 6.12. *'Keeping male and female prisoners in separate accommodation is one of the minimum expectations for the treatment of prisoners.'*
- 6.13. [Sex Matters believe men and women should be detained separately](#) but share some statistics from FOI requests by Fair Play for Women – '163 recorded transgender prisoners in England and Wales. Almost 50% have at least one conviction for a sexual offence. There is emerging evidence that the Prisons

Service is failing to keep track of any of the data relating to transgender prisoners.

#### Safeguarding and schools

- 6.14. *'Replacing "sex" with "gender identity" undermines safeguarding.'*
- 6.15. January '22, Sex Matters published an information pack on [Clear rules and girls' in schools](#).

#### Science

- 6.16. *Understanding and being able to speak clearly about the two sexes is perhaps most fundamental in science.*
- 6.17. January '22, Sex Matters Director, Dr Emma Hilton [responded to the argument that sex is "bimodal"](#).

#### Single sex services

- 6.18. *'Single sex services are critical for inclusion. Vulnerable women in particular rely on specialist women's services such as refuges and rape crisis centres. Everyday services such as changing rooms and hospital wards provide dignity and privacy for all.'*
- 6.19. April '22, Sex Matters shared their [Analysis of the open letter to the Equality and Human Rights Commission from the Survivor' Network](#), considering its contents.
- 6.20. February '22, published a briefing on [recent cases and the implications for single-sex and separate-sex services](#), considering the implications of the cases of Green v Secretary of State, for Justice, AEA v EHRC, Taylor v Jaguar Land Rover, Forstater v CGD and FDJ v Secretary of State for Justice for understanding the law in relation to single-sex services.

#### Sport

- 6.21. *'Policies which allow males to play in women's sport are not supported by evidence. They are unfair and unsafe.'*

#### Universities

- 6.22. *'Universities are creating an intimidating and hostile environment for staff and students who recognise that sex matters. They are not only being denied freedom of expression, but also suffering harassment and discrimination.'*
- 6.23. Sex Matters believe the [Reindorf Review](#) and the [Forstater case](#) confirmed that it is unlawful to persecute university staff or students because of their beliefs about sex and gender. University leaders should be seeking to rebuild cultures of academic freedom and legal compliance. But it has become clear that many lack the courage or capacity to address the issue.

#### Workplaces

- 6.24. *Employers that replace sex with "gender identity" risk undermining fairness at work.*
- 6.25. June '22, Sex Matters published a [leaflet, Gender-critical: your rights at work](#).



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<b>Who is attending:</b>	Kishwer Falkner, Marcial Boo, Melanie Field, S40(2)

### Readout

The meeting was at the request of Sex Matters and Kishwer (KF) invited Maya Forstater (Maya) and Helen Joyce (Helen) to explain what they would like to discuss. Maya said they wanted to provide an update on the Sex Matters petition and get the EHRC's views on it, as well as to check in on DfE's trans guidance for schools.

Maya noted the petition was a 'steady but slow burner' that has been up since Nov. 2023 and has now reached over 75,000 signatures. She was hopeful they would reach 100,000 to get a parliamentary debate. She noted a lot of people who had signed were based in Scotland, and reiterated the need to look at the definition of sex in the EquAct and how it is threaded throughout the Act inconsistently. She underlined it was vital to be consistent throughout the law, or at least within one single Act, and that the GRA provides an opportunity to amend other laws to make it clear whether a GRC changes the definition of sex for that law. Maya underlined there was a pressing case to address this given the implications for single sex colleges and schools, lesbian associations or similar settings, where people are unable to say 'no' to somebody with a GRC. She said they had written to the Cabinet Office (CO) but only had a standard letter back that repeated language from earlier Government correspondence.

KF asked who in CO responded. Maya confirmed the letter was not signed by a Minister. Marcial (MB) noted it would have probably been drafted by CO's correspondence unit and not passed Ministers' desks. KF asked what exact question was put to the CO. Maya explained their letter had asked for clarification of what same sex and opposite sex mean in the EquA and called on the Government to amend the Act so it defines sex as biological sex. She added it was not right that a trans man (holding a GRC) who is pregnant or breastfeeding or being seen by an employer as female, would not have the same legal protections as a woman. Maya noted the CO's response used language from Liz Truss' February 2022 letter and pointed to the EHRC's single sex spaces guidance; another petition from a trans rights activists group (calling on the Government not to change the definition of sex) had received a very similarly worded response.

Maya reiterated Sex Matters' concerns that the proposed Gender Recognition Reform in Scotland will have significant implications for the operation/working of the EqAct.

Melanie Field (MF) stressed that the EqAct was drafted after the GRA and makes clear that sex means legal sex, i.e. recorded at birth or recorded on a GRC. MF said she was interested in examples where Sex Matters believes the EquAct is not working as intended. MF stressed it was one of the EHRC's main objectives to ensure that the law is working effectively and noted the EqAct's exceptions and provisions for pregnancy and maternity discrimination. KF observed that, whilst there are exceptions in the EquAct, often if someone tries to enforce them they end up in front of a first tier tribunal. These tribunals are not expert and come to questionable rulings which organisations and businesses (who have invested

considerable amounts of money) are then reluctant to appeal. KF stated that this leads to a chilling effect; and subsequent tribunals look at previous judgments which, even though they do not set a legal precedent, are persuasive. This leads to continuing confusion and the need for legal clarity remains.

Helen picked up on MF's question regarding examples where the EquAct is not working, stating lesbian associations, charities, schools and sports settings all struggle to provide services for women only. Maya added trans women and trans men do not exist legally; if trans women as a distinct group are discriminated against they could be referred to as 'males with a GRC'. There were also issues in how the Public Sector Equality Duty operates because the sex protected characteristic includes people who are not legally of their biological sex. She also said that the case of Isla Bryson demonstrated that the whole framework was not working logically nor philosophically.

MF responded that gender recognition and the protected characteristic of gender reassignment are different concepts; a trans woman with a GRC is protected from gender reassignment discrimination. She stressed the EquAct does not define different groups of people, but different protected characteristics. MF also recognised a perhaps overly risk-averse approach to gender identity and inclusion has blurred people's understanding of the law and that the EHRC's single sex spaces guidance was an attempt to help with that, but that it is helpful to hear Maya's articulations of where the law is not working as intended.

Maya said that Lady Haldane's ruling in the For Women Scotland case did not clarify the position because it concluded that legal sex applies apart from where it doesn't and the pregnancy and maternity exemptions were muddled as illustrated by the Freddie McConnell case and others.

KF agreed there is confusion. She asked where Sex Matters hope to go next with their proposals, whether they would continue to push for a debate and whether they had sought legal advice on their specific proposals.

Helen noted Sex Matters' Chair and most of their members are lawyers and confirmed they are hoping to get a sufficient number of signatures to secure the debate. Maya added they would like Government to lay a statutory instrument if there is enough political will. They will continue to make the arguments politically and try to get support; she noted the For Women Scotland case was only relevant to one minor aspect of the EqAct, but Sex Matters is keen to push a much wider legal debate. She also thought that the section 35 order in relation to the Scottish gender recognition reform proposals presents an opportunity and has made their own proposals 'an acceptable thing to talk about'. Helen noted it was important to have a debate about what the EquAct should do and move away from the 'sterile to the practical'.

KF suggested to move the discussion to DfE's trans guidance for schools. Helen said she understands that the draft guidance is circulating and noted Kishwer's recent remarks in the House of Lords. She observed it seems that every time a new Minister looks at the draft they get nervous because they believe they will be attacked. She hoped it would be published soon and noted the ASCL had published their own guidance but they themselves were calling on DfE to publish the guidance for consultation. She asked whether the EHRC would be prepared to write to DfE and noted Sex Matters had also made the case in front of the Women and Equalities Select Committee.

KF and MF noted the EHRC is due to meet with DfE shortly but we don't know what they will offer when we meet, but agreed it was important to prompt progress. MB noted there have been so many ministerial changes and that it was not an easy issue to get one's head around which might explain the delay. KF stated what concerned her was that Baroness



Barran had stated that DfE are waiting for the next phase of the Cass Review, but when she had met with Dr Cass she was clear that the second part of the review would look at the medical implications of hormone blockers and the ability to get these drugs online, as well as what other countries were doing internationally, which was less relevant to getting the trans guidance for schools out.

MB noted as EHRC was meeting with DfE and GEO, we could consider the action of writing formally after those meetings. He reiterated that everyone was in the same space and agreed on the importance of getting the guidance right. Helen added that at least once the consultation is out, people would be able to engage with it.

Maya concluded by noting that they will be attending the upcoming regulators conference. MB noted we would not be attending as we are relatively small organisation and often work through and with the other regulators.