

Lesbians without liberty

How the UK denies
freedom of association to
women who love women

February 2023

A white banner with the words 'LESBIAN LOVE IS BEAUTIFUL' written in large, colorful, block letters. The letters are in various colors including green, red, blue, and yellow. The banner is held up by two black poles and is positioned in front of a stone building.

LESBIAN
LOVE
IS
BEAUTIFUL

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Foreword by Joanna Cherry

It's timely that Sex Matters should publish this paper during LGBT History Month. It should be a time of celebration for lesbians, but many of us don't feel like celebrating. This paper explains why but it also sets out a solution that has regard to human rights and equality law.



In the words of my constituent, Sally Wainwright: "With the reversal of Section 28, changes in public attitudes, eventually the introduction of gay marriage, I thought lesbians would finally be able to live free from prejudice, and certainly without state interference. For a few years that was more or less true – homophobia persisted of course, but we were able to organise lesbian discos, bookshops, nights out, walking groups. Naively, I thought that we had achieved an unchallengeable right to live publicly as lesbians. How wrong I was."

Women who love women are being forced back into the closet because we are being told we cannot meet or socialise without including men who identify as women. Lesbians feel betrayed by politicians, who seem happy to stand by as lesbians are erased from public life unless we accept the mantra of the gender ideologues who believe that we should be same-gender attracted rather than same-sex attracted.

Sex Matters explains why these politicians and the organisations whose propaganda they fail to challenge are wrong, both ethically and legally. It argues persuasively that the law has been widely misunderstood and misrepresented by government, the Equality and Human Rights Commission and lobby groups such as Stonewall and the LGBT Foundation.

Under the Equality Act it is lawful for an association to restrict membership to those who share a protected characteristic (in this case, sex and sexual orientation). A proper analysis of the interaction of the Equality Act and the Gender Recognition Act, with reference to the Human Rights Act and relevant case law, makes it clear that neither a Gender Recognition Certificate nor self-identification trumps the reality of a person's biological sex. Accordingly, prohibiting a lesbian from expressing her sexual orientation as being exclusively towards biological women and forcing her to associate with, or coercing or tricking her into having sexual relations with, biological males is a breach of her human rights under the European Convention on Human Rights.

I hope this paper will be widely read and acted upon by government, the EHRC and lobby groups. As barrister Allison Bailey, who is lesbian, has said: "Our rights are not conditional on accepting gender identity theory."¹

¹ Keynote speech by Allison Bailey, LGB Alliance conference 2021.

Introduction

Everyone has the right to freedom of peaceful assembly and association and to freedom of expression, as laid down in the Universal Declaration of Human Rights and the European Convention on Human Rights.

Discriminating against people because of their sexual orientation is a violation of their fundamental human rights. However, lesbian women and gay men are facing discrimination in the UK today, as their freedom of association and freedom of expression are being denied.²

Shockingly, this is supported by the UK government and the Equality and Human Rights Commission as being lawful,³ and by LGBT lobby groups as being moral. The government has recently stated that it believes that “the Gender Recognition Act outlaws single-sex associations setting membership criteria based on biological sex”.⁴

This is, we think, a fundamental misinterpretation of the Gender Recognition Act and its interaction with the Equality Act. It discounts the human rights of others in favour of an extreme view of “trans rights”.

The Gender Recognition Act was never intended as a legal charter to give men access to women’s bodies without their consent, or to undermine women’s autonomy, but that is what it has become. And lesbians are at the sharp end of this.

Destroying the right to freedom of association is inconsistent with the European Convention on Human Rights, and we believe it is wrong in law. The law should be clarified.

² While this report focuses on the experience of lesbians, the same human-rights arguments can also be made in relation to gay men, although their experience in practice is somewhat different. See, for example, the Gay Men’s Network’s response to the CPS consultation on deception as to biological sex.

³ Equality and Human Rights Commission (2022). ‘Statement following Lady Haldane’s opinion on the petition of For Women Scotland Ltd for judicial review’.

⁴ Equality Hub, Office of the Secretary of State for Scotland, and Government Equalities Office (2023). ‘Statement of reasons related to the use of section 35 of the Scotland Act 1998’.

Lesbian experiences



In 2022 Sex Matters carried out a survey of users of single-sex services and associations.⁵ Among the responses were many from lesbians who told us about losing their associations. This report draws together some of these experiences, as well as other published stories and research.⁶

Lesbian groups have disappeared

As a lesbian I want to be able to meet up with other biological females only. I am same-sex attracted not gender attracted. **Lesbian, England, 55–64**

“It would have been harder for me as a young black lesbian to come out and find a community.”

Being able to meet to share experiences and support in women-only and lesbian-only groups has been vital for my emotional well-being, as a young lesbian and a lesbian mother... These organisations and networks are no longer there in Manchester. **Lesbian, England, 65 and over**

“I now have nowhere to go... I feel more alone than ever.”

Coming out as a young lesbian in my late teens and early 20s women and lesbian only social events, meetings, conferences, clubs, outings were so important. I feel very sorry for young lesbians now... It would have been harder for me as a young black lesbian to come out and find a community. **Lesbian, England, 45–54**

Two of my daughters are lesbian and they’d love a female space with other female lesbians but sadly it’s not available. There is an LGBT teen space but with men who identify as lesbians. **Mother, Scotland, 45–54**

There are no lesbian groups locally any more. Recently, for my job, I was also looking for single-sex support for an elderly gay man and found there were no such supports locally. All previous LGBT charities were now only offering either open groups for all LGBT people or trans-only groups. It was a shock for me to find that even gay men have lost single-sex support services.

Lesbian, Scotland, 45–54

“This is discrimination against lesbians. Again.”

⁵ Sex Matters (2022). *Why single-sex services matter: privacy, dignity, safety and choice*.

⁶ See for example Get the L Out (2019). *Lesbians at Ground Zero*.

We are made unwelcome in our own associations

My partner of 20 years and I no longer attend “lesbian” nights out or trips away as these club nights and trips believe they have to be inclusive of trans-identifying males.

Lesbian, Scotland, 55–64

“I do not know of any local meetups that are purely women only.”

There are no organisations that run groups just for female lesbians as they all come under great pressure to be inclusive of males.

Lesbian, England, 35–44

I belong to an LGB group (GLADD-UK) that has become LGBT (fair enough, we are all stigmatised minorities in the medical profession). But the young white gay men who have always dominated the

organisation in numbers and influence, despite paying lip service to sexism / equality with lesbians and bi women, decided that we cannot meet as a women’s group socially or have women’s events without promising transwomen would be allowed in. **Lesbian, England, 55–64**

I am so upset that as a lesbian I now have nowhere to go. I want to be proud as I was and feel safe to discuss what is important. The one group I did attend has now allowed those who identify as a woman into our space. This changes the dynamic and the group is now compromising what it can and cannot talk about to not cause offence... I feel more alone than ever. **Lesbian, England, 35–44**

I am a lesbian but would never feel comfortable going to a lesbian meetup because they always include men. The posters say lesbian meetup, I get excited then further down it says “all genders welcome”. I know that if they didn’t write that, they would get hell. It is very isolating being an actual lesbian these days. **Lesbian, Scotland, 25–34**

I used to love the lesbian groups that I attended and the events – now men attend which has altered the atmosphere and I do not feel welcome any more in these spaces which is a great tragedy. I do not know of any local meet-ups that are purely woman only. **Lesbian, England, 45–54**

“As a lesbian – I feel very unsafe.”

I stopped going to lesbian and bisexual events because they started to have so many male people in them that it completely changed the dynamic of the events. **Lesbian, England, 35–44**

Lesbian spaces becoming “trans inclusive” has meant that as lesbians, we have no private lesbian-only spaces... my lesbian community organisations and events are being forced to include trans women or to close down. This is discrimination against lesbians. Again.

Lesbian, England, 45–54

The only lesbian group available in London for discussions includes trans women, even without surgery. Trans cannot be lesbians, but this is seen as controversial, rather than a fact. There are many trans-inclusive places but this is the only discussion group for lesbians, which I now feel uncomfortable in attending. **Lesbian, England, 35–44**

I have been removed from lesbian groups for saying that a male who identifies as a woman is not a lesbian. Lesbian venues and events are no longer same sex because they've been called transphobic. As a lesbian I feel very unsafe.

Lesbian, England, 55–64

“Women-only events go on still, but underground.”

I'm a lesbian and I find it really homophobic that organisations and groups include trans-identified men as lesbians and that if I object I'm the one banned from their service.

Lesbian, England, 45–54

We are forced to meet in secret

“For some years now, lesbian groups have been forced to organise and meet in secret, taking care how we advertise our activities or invite new members. Almost all our social spaces and meetings closed.” **Sally Wainwright⁷**

“I feel silenced.”

I belong to a couple of lesbian-only groups and we have to meet in secret in order to remain single sex and keep males who identify as lesbians out of the spaces.

Lesbian, England, 45–54

From around 2010 most of my lesbian circles have been invaded by men who identify as lesbians and now any lesbian-only or women-only events are advertised carefully among a group of trusted friends and contacts. Women-only events go on still, but underground. It means that young lesbians or women who are just coming out have no idea of what's available for them. **Lesbian, Wales, 55–64**

I want to share details on my workplace (FE college) online forum of a new group for young lesbians, but I am concerned that it will be signposted to people who might want to close it down, or demand that it allow in trans-identified males. I will probably not share it. I feel silenced.

Lesbian, England, 45–54

⁷ Sally Wainwright (2023). 'Gender reform bill has betrayed lesbians — and will send them back into the closet'. *The Times*.

We are sexually harassed

Lesbians should have the right to meet and organise without males. A male person attending a lesbian group is an abusive homophobe – lesbians must have the right to our own spaces. Every single public lesbian space has men attending too. **Lesbian, Scotland, 35–44**

When I attend lesbian events they are uniformly attended by men also. This is totally disheartening. What do these men share with me apart from an attraction to women? **Lesbian, England, 25–34**

*“The men allowed
to be there were
sexually aggressive
and intimidating.”*

I know from experience that many men have a fetish for lesbians and want to intrude on our spaces and this is not acceptable and we need a way to defend ourselves from it. **Lesbian, England, 45–54**

I see how hard it is for young lesbians now who have to put up with men on dating sites and in clubs. In my view it's potentially very dangerous for them, going out on dates with people they haven't met who could turn out to be men. **Lesbian, England, 65 and over**

I attended an event supposedly for lesbians, i.e. women only, but there were multiple men there who made me feel very uncomfortable, who made sexual comments and were very vocal about the fact that we should sleep with them to avoid being transphobic. It was supposed to be a safe, fun environment for me to meet other lesbians, but I have never gone back because the men allowed to be there were sexually aggressive and intimidating. **Lesbian, Scotland, 16–24**

Lesbian groups and dating sites are full of men demanding women date them and treat them as women. **Lesbian, Wales, 65 and over**

I used to go to women-only groups and lesbian-only groups for my social life. I am too scared to go now. I feel threatened and harassed by men saying they are women. I have nothing in common with these aggressive people. **Lesbian, England, 45–54**

I am a lesbian and would feel very uncomfortable in a lesbian space which included trans women. Experience tells me the trans women can be quite aggressive in making their case that lesbians should fancy trans women because they are women. I fundamentally disagree with this.

Lesbian, Scotland, 55–64

Lesbian spaces now include men. Men are not lesbians. They are not the same as us, and their presence makes our spaces unsafe. It doesn't matter how dangerous or not they are, males are a threat to females in a way the females can never be to each other. **Lesbian, England, 35–44**

There is extreme pressure not to speak up

This survey and our subsequent workplace survey⁸ highlight extreme social pressure on lesbians not to speak up, including workplace discrimination and harassment and long-term and costly career damage.⁹

The Stonewall Diversity Champions scheme and associated LGBT networks encourage employers to adopt policies that view same-sex attraction as “transphobic”. Pressure is put on trustees and staff of organisations providing single-sex services or funding other organisations to avoid setting explicit rules that exclude trans-identifying males from female-only services and associations.

Groups of lesbians arguing and protesting against this have faced violence and social and economic censure. As LGB Alliance Cymru says:

Lesbians have always faced challenges from men unable to accept our independent sexuality, but in the last five years we have seen such attacks ramp up every month. The number of assaults and the vitriol aimed at us has grown beyond many women’s ability to manage. The organisers of such spaces sometimes give in to these demands. Maybe they are not too concerned about lesbian boundaries, or they sincerely welcome male-bodied people into their organisations. That’s not a problem, so long as everyone knows what to expect.

But we hear too often from women saying that they don’t believe they have any legal choice but to allow men into women’s spaces. Or they are scared of the doxing and abuse that frequently follow when women say ‘no’. We are seeing lesbians forced into gathering in secret, meeting behind closed doors or passwords, and using false names in social situations.¹⁰

For example, in 2019 a group of lesbians protested at Pride in Lancaster:

“We came with banners bearing the simple messages: ‘Lesbians are female homosexuals,’ and ‘Lesbians don’t have penises,’ and stood on the steps of the Town Hall. We were not in the way of anyone, but wanted our message to be heard, as members of the LGBT community.”¹¹


The response was that they were physically mobbed, shouted over and spat at. They had their banners grabbed out of their hands and they were eventually removed from the area.

⁸ Forthcoming: see the Sex Matters website.

⁹ See for example the cases of Allison Bailey, Jo Phoenix, and Cathy Boardman, the public hounding of Julie Bindel, Kathleen Stock, Joanna Cherry and Martina Navratilova, and the case against LGB Alliance’s charitable status.

¹⁰ LGB Alliance Cymru (2022). ‘The defence of lesbian space’. Filia.

¹¹ Manchester ReSisters (2019). ‘Are lesbians welcome at Pride? The answer at Lancaster Pride is no’. Fair Play For Women.



**BEING A
WOMAN IS
NOT A HATE
CRIME**

What does the law say?

The Human Rights Act

Article 11 of the European Convention on Human Rights, as reflected in the Human Rights Act, says that:

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.

This is a qualified right. This means it can be restricted, but only where “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”.

Article 8 protects a person’s personal and private life. This includes the right to personal development and personal autonomy. It encompasses the right for each individual to approach others in order to establish and develop relationships with them, and prohibits interference in the intimate area of an individual’s sexual life (*Dudgeon v the United Kingdom*, § 52). This protects the right of people to define their sexual orientation and boundaries.

Article 3 protects against torture and inhuman or degrading treatment. It is an absolute protection, and it covers sexual assault and humiliation.

The Equality Act

The Equality Act 2010 lays down a general prohibition on discrimination by formal associations which have at least 25 members and a set of rules for selection of members. Schedule 16 modifies that prohibition heavily in order to allow for freedom of association. It provides that it is lawful for an association to restrict membership to persons who share a protected characteristic.

Being same-sex attracted is a protected characteristic (sexual orientation), and being a woman is another protected characteristic (sex). Lesbians have both of these characteristics. It is therefore possible to say with some confidence that a lesbian-only association is lawful.¹²

Charities can also be set up to solely benefit groups with a protected characteristic, provided that restriction is written into their charitable instruments and either is a proportionate means of achieving a legitimate aim or addresses a disadvantage linked to that protected characteristic.

¹² Naomi Cunningham (2022). *Lesbian-only spaces: advice for FiLiA*.

The Gender Recognition Act

The Gender Recognition Act allows men who identify as women to change their sex “for all purposes” by applying for a gender-recognition certificate (GRC). There is an open question about whether a GRC changes a person’s sex for the purposes of the Equality Act.¹³

Interpretation 1: Sex in the Equality Act means biological sex

Interpretation 2: Sex in the Equality Act means sex as written on a birth certificate or a UK gender-recognition certificate

The Equality and Human Rights Commission and the government argue for interpretation 2.

A person who has legally changed sex (or who has undertaken part of a process to do so) has the protected characteristic of “gender reassignment” (being transsexual). There is no corresponding protected characteristic of not being transsexual. The permission provided by schedule 16 for those who share a protected characteristic would not sanction an association for people who are *not* transsexuals.

Thus a trans-identifying male with a GRC could argue that it is unlawful for him to be excluded from associations for lesbian women, as he has a certificate saying he is a woman and is also sexually attracted to women.

¹³ See the two For Women Scotland cases: *For Women Scotland v the LA & the Scottish Ministers* and *Opinion of Lady Haldane in petition of For Women Scotland Limited*.

What do others say?



What does the government say?

The government agrees that a trans-identifying man with a GRC has the right to join a lesbian-only association. It interprets the Gender Recognition Act as changing a person's sex for the purposes of the Equality Act. In its recent statement of reasons for blocking the Gender Recognition Reform (Scotland) Act, it states:

"Where an individual has changed their sex for the purposes of the 2010 Act by obtaining a full GRC, the association is therefore not able to refuse membership on the grounds of their previous sex. They also cannot restrict membership to people who are not covered by the gender reassignment characteristic because an association's membership can only be based on a shared protected characteristic and not the absence of it."¹⁴

It explicitly argues that because of the existing Gender Recognition Act lesbians do not have the legal right to meet in formal associations of 25 people or more without including men who have a government certificate declaring them to be women. It recognises that this is an "existing problem" with the law that would be exacerbated if the criteria for issuing certificates were liberalised through a new law in Scotland.

It says that women-only associations, including long-established associations, are at risk of being found to be operating unlawfully if they exclude biological males who have a GRC. They might cease operating or not be established in the first place because of the perceived risks. The government recognises the impacts in terms of loss of provision and self-exclusion, but says that this is the law.

What does the Equality and Human Rights Commission say?

The Equality and Human Rights Commission similarly argues that a GRC changes a person's sex for the purposes of the Equality Act, and can thus turn a heterosexual man into a lesbian, with the right to join and lead lesbian associations, and to take part in all their activities.

Following the recent judgment by a Scottish court in the For Women Scotland case, the EHRC said:

"We welcome this judgment which confirms that the effect of a Gender Recognition Certificate is to change a person's legal sex, including for the purposes of the Equality Act. We will take the outcome of this judicial review, and all other legal rulings, into account in our ongoing work as the regulator of the Equality Act."¹⁵

¹⁴ Equality Hub, Office of the Secretary of State for Scotland, and Government Equalities Office (2023). 'Statement of reasons related to the use of section 35 of the Scotland Act 1998'.

¹⁵ Equality and Human Rights Commission (2022). 'Statement following Lady Haldane's opinion on the petition of For Women Scotland Ltd for judicial review'.

What do LGBT lobby groups say?

Organisations such as Stonewall and the LGBT Foundation, which are supposed to speak for and protect lesbians, go further than the government and argue that self-declared gender trumps sex, even when it comes to consent to engage in sexual activity. For example, in 2015 the LGBT Foundation issued a statement arguing in relation to sexual consent and assault that:

“Trans bodies are varied and the assumption that all men have penises and all women have vaginas is not only transphobic, but legally inaccurate.”¹⁶

Stonewall instructs member organisations that transphobia is defined as “the fear or dislike of someone based on the fact they are trans, including denying their gender identity or refusing to accept it”. Thus lesbians who refuse to accept that men can be women, and thus be lesbians, are defined as transphobic.¹⁷

During the case of *Allison Bailey v Garden Court Chambers and Stonewall [2022]*, Kirrin Medcalf, Stonewall’s Head of Trans Inclusion, was taken through a number of tweets directed at gender-critical feminists from 2015 on. These included several variations on “Kill all TERFs”, with pictures of knives, guns and a garotte, “Kindly suck my ladydick, preferably choke on it” and the like. Medcalf commented: “These words are not reflective of the trans community.”

In Medcalf’s view, nevertheless, the term TERF could not be a slur (offensive) because it was used by a powerless minority group (trans people) about those (feminists and lesbians) whom they deemed transphobic because they “deny trans people’s lived reality”. Objecting to gender self-ID was in itself transphobic (expressive of hatred of trans people), though Medcalf disavowed the threatened assaults.¹⁸

The response to the protest at Lancaster Pride is an illustration of how LGBT organisations line up against lesbians who dare to assert their sexual orientation. Local aspiring Labour politician Dominic Casoria boasted on Twitter that he led the group to “stand in front of the transphobes” and “drown them out”. Jan Gooding, then chair of Stonewall, tweeted: “Thank you. Exactly the right instinct!” Steve Taylor, a member of the board of Europride and head of special projects at Pride in London, tweeted: “My #Pride heroes of the day are the amazing young people at @LancasterPride who surrounded the transphobes to obscure them from view.” Tim Roache, general secretary of GMB, Ruth Hunt of Stonewall and Emma Dunn of the civil service’s “a:gender” network also tweeted their approval.¹⁹

¹⁶ LGBT Foundation (2015). ‘Sex by deception: Statement from LGBT Foundation’ by John Walding.

¹⁷ Human Rights Joint Committee (2021). *FOE0029 – Freedom of expression: written evidence from Professor Kathleen Stock*.

¹⁸ *Ms A Bailey v Stonewall Equality Ltd and others: 2202172/2020. Reserved judgment*.

¹⁹ Manchester ReSisters (2019). ‘Are lesbians welcome at Pride? The answer at Lancaster Pride is no’. Fair Play For Women.



Is this right?

We do not think any of this is right, either ethically or legally.

As people living in a democracy, Britons govern themselves through their elected representatives in Parliament. However, there are limits as to what Parliament can do. It cannot change material reality or do the impossible. As legal pioneer Sir Edward Coke observed in 1598 in Parliament, it is not possible to make a woman into a man.²⁰

While much has changed since the Tudor age, this remains true. A person born male might now be able to have cosmetic surgery, take cross-sex hormones and get a certificate deeming him to be a woman before the law for some purposes. But as a matter of material reality, he remains a man.

Sexual relationships are clearly a practical example where a certificate from the government cannot change a person's sex, or override another person's consent or their concept of their own sexual orientation. As lawyer Michael Foran told the Women and Equalities Committee recently:

"I am a gay man. I am not attracted to a legal category; I am attracted to a biological category."²¹

The GRA was considered by the House of Lords when it was still the Gender Recognition Bill in *Chief Constable of Yorkshire Police v A [2004] UKHL*. Baroness Hale made clear that other people's perceptions, memories and thoughts are not overwritten by a GRC:

"There is nothing in section 9 to require that the previous state of affairs be expunged from the records of officialdom. Nor could it eliminate it from the memories of family and friends who knew the person in another life."

A GRC does not eliminate knowledge of a person's sex from the long-held memories of family and friends. Nor can it eliminate that knowledge from the short-term memory of a person who recognises someone's sex on sight.

No more can it remove the need for informed consent to intimate relations, even with a person who manages to "pass". *R v Justine McNally [2013] EWCA Crim 1051* is the leading case on sexual consent. It concerned a case of deliberate deception about a person's sex and established that "deception as to gender [sex] can vitiate consent" (paragraph 27).²²

²⁰ Hartley (1995). 'The Ninth Parliament: 24 October 1597–9 February 1598'. *Proceedings in the Parliaments of Elizabeth I: Volume III. 1593–1601*. Continuum-3PL.

²¹ Women and Equalities Committee (2023). *Oral evidence: Gender Recognition Reform (Scotland) Bill and Equality Act 2010, HC 1098*.

²² It is clear from the facts and the reasoning that the judgment used the word "gender" as a polite synonym for "sex" (i.e. male/female, man/woman) and to disambiguate from sex meaning sexual intercourse.

As Leveson LJ put it (at paragraph 26):

“The sexual nature of the acts is, on any commonsense view, different where the complainant is deliberately deceived by a defendant into believing that the latter is a male. Assuming the facts to be proved as alleged, M chose to have sexual encounters with a boy and her preference (her freedom to choose whether or not to have a sexual encounter with a girl) was removed by the appellant’s deception.”

The case of *Forstater v CGDE [2021] UKEAT* found that holding and manifesting the belief that sex is immutable is covered by Articles 9 and 10 of the European Convention on Human Rights concerning freedom of expression and belief.

Thus the right to believe that a male person is male and a female person is female, both as a matter of categories and of individuals within them, is a belief “worthy of respect in a democratic society” that is covered under the category of “philosophical belief” within the meaning of section 10 of the Equality Act 2010.

The expression of this belief in the context of sexual orientation and consent (covered by Articles 8 and 3), and through freedom to associate as lesbians (Article 11), is not overridden by a GRC.

The judgment in Allison Bailey’s case specifically found that it was a protected belief that gender theory is severely detrimental to lesbians. This belief held by lesbian Allison Bailey was found to be protected and not to destroy the rights of others:

“In reclassifying ‘sex’ with ‘gender’, [Stonewall] has reclassified homosexuality from ‘same sex attraction’ to ‘same gender attraction’. The result of this is that heterosexual men who identify as trans women and are sexually attracted to women are to be treated as lesbians. There is therefore an encouragement by followers of gender theory on lesbians to have sex with male-bodied people. To reject this encouragement is to be labelled as bigoted. This is inherently homophobic because it denies the reality and legitimacy of same sex attraction and invites opprobrium and threatening behaviour upon people who recognise that reality and legitimacy.”

Prohibiting a lesbian from expressing her sexual orientation as being exclusively towards biological women infringes on her rights under Articles 8, 9 and 10. Preventing her meeting in an association with other lesbians (biological women) infringes on her rights under Article 11. Forcing, coercing or tricking her to have sexual relations with a man is an abuse of her right to freedom from degrading and humiliating treatment under Article 3.

The Gender Recognition Act was brought in to protect the privacy of transgender people, following the case of *Goodwin v UK [2002] ECHR* in line with Article 8. It concerns situations where someone does not wish to declare their sex through the process of showing official identification (such as in order to open a bank account). Article 8 is a qualified right. It can be constrained “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". Article 17 provides that it cannot and must not destroy the rights of others.

It is not proportionate to view Article 8, or its expression in a GRC, as giving a man the right to force lesbians to pretend he is female, to associate with him as a lesbian in lesbian clubs and associations, or to be coerced, cajoled, tricked or pressured into engaging in intimate relations.

The government and the Equality and Human Rights Commission argue that it is unlawful to have a lesbian association that excludes all males, because they have misread the way the Equality Act and the Gender Recognition Act interact.

The Crown Prosecution Service also wrongly views possession of a GRC as a factor that could counter a prosecution for rape or sexual assault by deception since it proves that a person is "living in their acquired gender".²³

Section 3 of the Human Rights Act provides:

"So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

If the rights of lesbians to autonomy, freedom of association and freedom from humiliating and degrading treatment are recognised, then the law must be read so that sex remains a protected characteristic in the Equality Act.

As the survey responses illustrate, the rights of lesbians are not being destroyed primarily by the direct situation of individual trans-identifying males with a GRC demanding access to associations through production of an amended birth certificate, or by bringing cases to court based on their legal status. Rather they are being destroyed through people and institutions believing that this is the law.²⁴

This interpretation has been promoted by the government and by the Equality and Human Rights Commission and is enforced through the policies of organisations, including universities and student unions, workplaces and trades unions, and through teaching in schools, venues, local councils, philanthropic funders and civil society.

The "adverse effect" of this on lesbians (and on everyone who values single-sex association) has now been recognised by the government in the reasons for its s.35 Order in relation to the GRR (Scotland) Bill. But it has been missed by every equality impact assessment considering these policies of "trans inclusion", because the recognition of sex as a protected characteristic in relation to the public sector equality duty has been lost.

²³ Sex Matters (2022). *Response to the Crown Prosecution Service's consultation on deception as to sex*.

²⁴ The same logic applies to the autonomy, freedom of association and freedom from humiliating and degrading treatment of other women and men.

The EHRC, although it is slowly acting to try to regain a balance between trans people's rights and other people's rights, remains fixed on the idea that a GRC changes a person's sex in relation to the Equality Act. Although it has spoken up about the interpretation of the Gender Recognition Act with respect to sport,²⁵ it has not spoken up against the abuse of lesbians' rights. No mainstream organisation has.

²⁵ Equality and Human Rights Commission (2023). *Statement on UK Athletics' position on trans people's participation in athletics*.



What should be done?

Human-rights organisations and LGBT organisations in the UK and internationally must recognise that destroying freedom of association for lesbians and gay men is an abuse of human rights.

The government and the EHRC should urgently revisit their interpretation of the Equality Act and recognise that biological sex, and thus sexual orientation on the basis of biological sex, remains a protected characteristic.

Lesbians are at the sharp end of the misinterpretation of the Equality Act. However, the arguments made here also apply to gay men, and to men and women in general who recognise that sex matters. All these groups have rights to freedom of association, personal autonomy, consent and bodily privacy.

The Gender Recognition Act includes a power (under Section 23) to amend other acts to clarify whether it modifies the meaning of sex in those acts. Sex Matters is calling on the government to use this power to amend the Equality Act to make clear that the protected characteristic of sex relates to its common-law meaning, and is not modified by a GRC.

This change would not prevent groups of lesbians who believe that “trans women are women” being free to associate “as lesbians” with men who identify as lesbians (setting up a group for homosexual female people and heterosexual male people with the protected characteristic of gender reassignment) if they wanted to.

But it would restore the rights of lesbians, and of others who recognise that sex matters.²⁶

²⁶ Sex Matters (2022). *Why Sex Matters is calling for clarification of the Equality Act 2010*.

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

Contact us at info@sex-matters.org

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