

## Sex Matters—written evidence (FE00054)

### House of Lords Communications and Digital Committee inquiry into Freedom of Expression Online

#### Introduction

1. Sex Matters is a not-for-profit organisation that campaigns and advocates for clarity about sex in language, policy and law, in order to safeguard everybody's human rights, health, safety and dignity.<sup>1</sup>
2. This viewpoint - that sex matters, and that it should not be over-ruled in language, policy and law by gender identity - is termed "gender critical".

#### Summary

3. In recent years there have been strong pressures across many areas of life - online, and in the workplace to suppress this view, although previously it has been thought of as quite unremarkable expression of "the facts of life". People have been called "hateful" simply for making ordinary, everyday statements about the material reality of people being male or female. Complaints about statements such as "men are not women" and "lesbians do not have a penis" have led to people losing their social media accounts, losing work and even being arrested. This has resulted in a chilling effect on learning and debate, which comes at great cost to democratic society and its institutions.<sup>2</sup> Our submission concerns this particular topic in relation to freedom of expression.

#### **Question: Is freedom of expression under threat online? If so, how does this impact individuals differently, and why?**

4. Freedom of expression online depends firstly on **access to platforms** (regulated by social media companies), secondly on not facing **disproportionate consequences** from disagreement such as loss of employment, and thirdly on freedom from the threat of **criminal prosecution**. On each of these three levels the freedom to speak freely about the sexes, and about the distinction between sex and gender identity, is under threat, with women in particular being targeted.

---

<sup>1</sup> For example sex matters in areas of life, including in relation to single sex services, healthcare, relationships, sexual orientation, religion, sexual consent, data and statistics and the protection of human rights and non-discrimination.

<sup>2</sup> Stock, K (2021) The sinister attempts to silence gender critical academics, 13 January 2021, The Spectator  
<https://www.spectator.co.uk/article/the-sinister-attempts-to-silence-gender-critical-academics>

## **Talking about the two sexes can lead to loss of social media accounts**

5. Rules and terms of service on hateful conduct such as Twitter's rules on hateful conduct:

"You may not promote violence against, threaten, or harass other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease."

are routinely used by activists to report women talking about the material reality of sex in order to silence them.

6. The list of grounds on which harassment etc will not be tolerated does not entirely mirror the Equality Act 2010, even though the Equality Act undoubtedly applies to Twitter as a service provider in relation to UK users. Notably the list does not include the protected characteristic of "sex" ("gender" is not necessarily the same thing, especially as interpreted by Twitter) and it does not include the protected characteristic of belief. Women, and feminists in particular, are routinely harassed for their beliefs both on Twitter and *by* Twitter, in that Twitter applies its rules to suspend and even permanently ban them for expressing their beliefs.
7. Examples of statements that have seen gender critical people (mainly women) removed temporarily or permanently from twitter for example include:
- @MeghanEMurphy "Men aren't women tho", "how are transwomen not men? What is the difference between a transwoman and a man?"<sup>3</sup>
  - @Ellierestless "you are one unpleasant bloke"
  - @helensaxby "in the last decade in the UK a male transgender person was more likely to murder someone than be murdered"<sup>4</sup>
  - @bejaspert "We need to talk about male violence. Males kill trans women. Males kill women. Males kill men. Most killers are male - vastly, disproportionately. Very, very few killers are female. Lets take action together to #stopmale violence."<sup>5</sup>
  - @angels\_ackiz "All rapists are men. In UK law, rape is a crime only committed by a person with a penis. Twitter ban"<sup>6</sup>
  - @havkom "Men are not women. Women don't have penises. Lesbians

---

<sup>3</sup> <https://twitter.com/transwomyn/status/1064144550279749632/photo/1>

<sup>4</sup> <https://twitter.com/helensaxby11/status/1063553671575887872>

<sup>5</sup> <https://twitter.com/hogotheforsaken/status/1063915224846295040>

<sup>6</sup> <https://twitter.com/fairplaywomen/status/1064108471526875137>

are female homosexuals.”<sup>7</sup>

□ @renee\_jg “Believe what you want dude”.<sup>8</sup>

8. Other sites such as Facebook, Medium, Wordpress and Reddit have also removed gender critical users, blogs and forums after targeted reporting by trans rights activists.
9. For example GenderTrender was an investigative reporting outlet which highlighted women’s rights and children’s rights issues in relation to gender identity laws. After GenderTrender broke the full story of Jonathan/ Jessica Yaniv a Canadian “male to female” trans activist who launched “human rights” complaints against 16 different women’s salon workers who were unwilling to touch and wax male genitalia, WordPress.com summarily deleted the website citing “malicious publication of private details of a person’s gender identity”. It says that any reference to the legal or former name of any individual who declares a transgender identity can be reason for losing a site. The terms of service allow for the sudden removal of a blog (and any other unrelated blogs by the same author) from the platform, without prior notification or opportunity for appeal.<sup>9</sup>
10. The case of Jonathan/Jessica Yaniv (JY) demonstrates how the complaints processes of social media companies can be weaponised by motivated individuals. Journalists investigating JY collected stories of Twitter users suspended temporarily, or banned outright, because of interactions with JY . Their initial request for stories yielded 40 accounts. They note that JY has boasted about getting “hundreds” of feminists banned from Twitter. <sup>10</sup>

### **Talking about the material reality of sex online can lead to people being targeted at work**

11. We have also seen hundreds of examples of women facing economic, social and institutional pressures to recant views on sex and gender, often after expressing these views on social media. They are termed “transphobic”, with transphobia defined broadly to include “misgendering”, claiming there is any conflict or debate between trans people’s human rights and those of any other group, using the term “man” and “woman” for biological sex, or expressing concern about the medicalisation of gender non-conforming children.<sup>11</sup>

---

<sup>7</sup> <https://twitter.com/havkom/status/1063268761837424640>

<sup>8</sup> <https://twitter.com/aniobrien/status/1071006421838254080>

<sup>9</sup> Gallus Mag (2018) WordPress censors GenderTrender; Gallus Mag responds, December 6 2018. <https://4thwavenow.com/2018/11/17/wordpress-dumps-gendertrender-gallus-mag-responds/>

<sup>10</sup> Shepherd, L and Kay, J (2019)

Yaniv’s Other Racket: How a Single Gender Troll Managed to Get ‘Hundreds’ of Women Thrown Off Twitter, August 31, 2019, Quillette. <https://quillette.com/2019/08/31/yanivs-other-racket-how-a-single-gender-troll-managed-to-get-hundreds-of-women-thrown-off-twitter/>

<sup>11</sup> <https://www.transactual.org.uk/transphobia>

12. To give just a few examples:

- **Dr Eva Poen** of the University of Exeter was accused of “abhorrent bigotry” after she posted on social media that only women can have periods. In response to a post on Twitter calling for a fitness app to change its wording from “female health” to “menstrual health”, she said: “Only female people menstruate. Only female people go through menopause. ‘Female health’ is exactly what this is about.” A student complained to the university, claiming that her comments were making transgender people “live in fear” and demanding that she “stop spreading vitriol”.<sup>12</sup>
- **Selina Todd**, a professor of modern history at Oxford, has been accused by students of being “transphobic” on the basis of her tweets and speeches. The students claimed that: “The power dynamics of providing a platform to Selina Todd in the name of ‘academic free speech’ means putting trans and non-binary members of our community into the position of having to defend their right to exist. Her views refuse to acknowledge that trans women ARE women, that trans women’s rights ARE women’s rights.”<sup>13</sup>
- **Allison Bailey**, a criminal defence barrister; feminist; lesbian; lifelong campaigner for racial equality, lesbian, gay and bisexual rights; and survivor of child sexual abuse, opened a crowdfunder to finance the legal costs in a discrimination case that she is pursuing against her chambers and Stonewall. After receiving complaints, the platform she was using to raise funds to support her case, CrowdJustice, closed her crowdfunder, saying that her background information breached its policy against “discriminatory or hateful content”, with “gratuitously violent language and accusations regarding trans people”. In fact, it consisted of careful, factual statements citing government statistics and an account of her own experience of sexual abuse as a child.<sup>14</sup>
- **Maya Forstater**, a researcher, lost her job at the Centre for Global Development after colleagues expressed concern about her writing and tweeting about gender identity and sex. She is pursuing a belief discrimination case in the employment tribunal. An appeal on the question of whether her belief is a protected belief is due to be heard in the Employment Appeal Tribunal in April.<sup>15</sup>

---

<sup>12</sup> <https://www.dailymail.co.uk/news/article-8083431/Exeter-University-economics-lecturer-branded-transphobic-LGBT-feminist-students.html>

<sup>13</sup> <https://www.inquiremedia.co.uk/single-post/2020/03/10/University-under-fire-for-planned-talk-by-anti-transgender-feminist>

<sup>14</sup> <https://www.legalfutures.co.uk/latest-news/censored-or-offensive-crowdjustice-trans-row-rumbles-on>

<sup>15</sup> Karon Monaghan (2020) The Forstater Employment Tribunal judgment: a critical appraisal in light of Miller, UK Labour Law Blog <https://uklabourlawblog.com/2020/02/19/the-forstater-employment-tribunal-judgment-a-critical-appraisal-in-light-of-miller-by-karon-monaghan/>

13. Those cases are the tip of an iceberg.
14. Professor Michael Biggs maintains a list of academics targeted for their views on sex and gender whose stories have made it into the public domain.<sup>16</sup>
15. Professor Kathleen Stock has collected additional testimonies from academics and others working in universities.<sup>17</sup> They include managers demanding that staff defend their Twitter histories; institutions failing to protect staff from student and public harassment; staff facing complaints for signing letters to newspapers about academic freedom; a lost editorship of an academic journal and a lost membership of an editorial board; research rejected from publications on vague suspicions of transphobia; no-platforming; and researchers being warned by managers not to pursue gender-critical research in the first place.
16. The Feminist blogger Wild Woman Writing Club has collected testimonies from artists and writers hounded out of commissions and publications after expressing gender critical views online.<sup>18</sup>
17. Over 700 people shared their concerns about sex and gender in a survey of "Gender Dissidents" in 2020. These included parents, teachers, social workers, lawyers and healthcare workers. Many highlighted that they remain publicly anonymous online because of fear of consequences at work.<sup>19</sup> Nine out of 10 of those who responded were women.

### **Saying something mildly offensive can lead to criminal investigation**

18. We have also seen several cases already of oppressive application of the law by the police and the CPS to shut down gender critical speech:
  - **Harry Miller** posted a number of tweets between November 2018 and January 2019 about transgender issues as part of the debate about reforming the Gender Recognition Act 2004. In one tweet Mr Miller wrote: "I was assigned mammal at birth, but my orientation is fish. Don't mis-species me." This tweet was among several reported to Humberside Police as "transphobic" by a Mrs B. Humberside Police told Mr Miller that although the tweets were not criminal, "they were upsetting many members of the transgender community who were upset enough to report them to the police". It later turned out that this was not true. There was only one report. <sup>20</sup>

---

<sup>16</sup> Academics and others at British universities targeted for questioning transgender orthodoxy

<http://users.ox.ac.uk/~sfos0060/GCtargets.shtml>

<sup>17</sup> Are academics freely able to criticise the idea of 'gender identity' in UK Universities?

<https://medium.com/@kathleenstock/are-academics-freely-able-to-criticise-the-idea-of-gender-identity-in-uk-universities-67b97c6e04be>

<sup>18</sup> [https://wildwomanwritingclub.wordpress.com/2020/06/10/what-it-costs-women\\_speak-out/](https://wildwomanwritingclub.wordpress.com/2020/06/10/what-it-costs-women_speak-out/)

<sup>19</sup> Gender Dissidents <https://gender-dissidents.net/tag/work/>

- **Sarah Phillimore** is a barrister and a campaigner on sex and gender issues. She was contacted by an account on Twitter informing her that she had a “record for life” of “hate”, as her tweets had been reported and recorded by the police under “Hate Crimes Operational Guidance”. She requested information from the police and received 12 pages of tweets they had recorded as a transphobic and religiously aggravated “non-crime hate incident”. Phillimore says: “The tweets I posted contained nothing that any reasonable person could describe as 'hatred' - for example one is discussing that my dog likes to eat cheese!”<sup>21</sup>
- **Miranda Yardley**, a transsexual, was prosecuted for a transgender hate crime after a complainant, who worked on behalf of the charity Mermaids, alleged harassment. Helen Islan frequently campaigns on transgender issues via social media on the basis that she is the mother of a transgender child. Yardley had posted a tweet linking Islan’s full name to her Twitter handle and stating that the “self-interest of Helen Islan is in justifying to herself her decisions to trans her daughter”. The information was contained in a screenshot of a Google search which had also brought up an image of Helen Islan and her children. The CPS unsuccessfully applied for reporting restrictions to prevent Islan’s full name being published (on the basis that this was necessary to send a message to future victims of “transgender hate crime” that the courts would protect them by granting anonymity). The judge stated that there was no evidence of harassment, that issues of freedom of speech, as enshrined in Article 10 of the ECHR, were clearly engaged and that it was a case that the CPS should never have brought.<sup>22</sup>
- **Caroline Farrow** was reported to police after she referred in a tweet to the child of Mermaid’s CEO Susie Green, who was taken to Thailand at the age of 16 to have sex reassignment surgery. Farrow wrote: “Susie Green is in breach of Samaritans policy about how suicide should be discussed and broached in the media. What she did to her own son is illegal. She mutilated him by having him castrated and rendered sterile while still a child”.<sup>23</sup> Farrow said she was told by police that the complaint was about misgendering. Susie Green later withdrew the complaint and Mermaids issued a statement: “The tweets are a lot more serious than about misgendering. They were allegations of serious misconduct and vile and spiteful personal attacks.”<sup>24</sup> Sex

---

20 <https://judicialcat.blogspot.com/2020/02/harry-miller-judicial-review-mrs-b.html>

21 <https://www.crowdjustice.com/case/the-police-recorded-me-as-hate/>

22 <https://www.2harecourt.com/2019/03/04/gudrun-young-secures-no-case-to-answer-in-controversial-first-prosecution-for-transgender-hate-crime/>

23 <https://www.dailymail.co.uk/news/article-6846643/Devout-Catholic-mother-44-reported-police.html>

24 <https://www.theguardian.com/society/2019/mar/20/catholic-journalist-investigated-by-police->

reassignment surgery on under-18s was already illegal in the UK, and was subsequently made illegal in Thailand.

- **Linda Bellos OBE**, a leading feminist and campaigner for racial equality, was prosecuted for an offence of using threatening, abusive or insulting words or behaviour contrary to section 5 of the Public Order Act 1986. The alleged offence arose out of a public event where Bellos stated that “if any one of those bastards comes anywhere near me I will take my glasses off and clock ‘em”. She has said she was referring to the attack on Maria MacLachlan at Speakers’ Corner. The event was live-streamed on Facebook by Venice Allan. Giuliana Kendal, a trans woman who had watched the live-streaming of the debate, complained to South Yorkshire Police that she found the remarks threatening as a trans woman. South Yorkshire Police launched a full investigation, including interviewing Bellos under caution. In May 2018 the CPS decided there was no realistic prospect of conviction, taking into account the context in which the words were uttered and the fact that Bellos would have a defence of freedom of speech under Article 10 of the ECHR. Kendal then embarked on a private prosecution of both Bellos (under section 5 Public Order Act) and Allen (under section 127 of the Communications Act 2003.) Eventually, in November 2018, the case was dropped after the CPS exercised its statutory powers to take over the prosecution and then discontinued it.<sup>25</sup> Bellos and Allen had to instruct criminal defence lawyers and attend court on three occasions.
- **Kate Scottow** was prosecuted under s.127 Communications Act 2003 and was found guilty of using a public communications network to “cause annoyance, inconvenience and anxiety”. Her crime was to write some tweets referring to a person called Stephanie Hayden. In court it was revealed that Hayden, under previous names, had been before criminal courts on 11 occasions for 21 offences and had spent six months in prison for obtaining property by deception.<sup>26</sup> Hayden had obtained an interim injunction, prohibiting Ms Scottow from publishing “any personal information relating to” Ms Hayden “on any social media platform” in either male or female identity. Ms Scottow’s tweets included describing Hayden as “a pig in a wig” and referring to Hayden as “he” or “him”. In court the judge told Scottow that “we teach our children to be kind”. As Kim Thomas wrote in *The Spectator*:

“Scottow’s tweets were, admittedly, uncivil. But nothing she wrote was worse than what can be seen every day on Twitter and other

---

<sup>25</sup> <https://www.dailymail.co.uk/news/article-7978797/amp/Mother-two-called-transgender-woman-man-racist-series-offensive-tweets.html>  
<https://www.2harecourt.com/2018/11/30/gudrun-young-successfully-defends-leading-feminist-anti-racist-campaigner-linda-bellos-obe/>

<sup>26</sup>

social media platforms, where thousands of cruel insults and threats are regularly posted without any comeback at all. Hayden herself has referred to people as 'nutters' on Twitter. She has also referred to social media site Mumsnet as 'Nuttersnet'... In 2018, Hayden launched civil proceedings against 'Father Ted' writer Graham Linehan for harassment after he allegedly published tweets with her previous male name. The case was later dropped. Scottow was not so lucky. She was arrested and held in a cell for seven hours, and her computer and phone were impounded as evidence for months." <sup>27</sup>

Hayden admitted during the trial to being a serial litigant in the civil courts. "I am litigious, I put my hands up. I use the law if I feel I have to use the law," Hayden told the court. Scottow's conviction was overturned on appeal almost two years after her arrest.<sup>28</sup>

19. Although these cases ultimately did not result in criminal convictions, the impact on those arrested and tried for causing offense on Twitter is immense: months and years of anxiety, publicity, costs and harm to their reputation and employability. The threat of arrest, questioning and prosecution, and the cost and time that it takes to clear your name, and the impact meanwhile on your reputation and employment, can make speaking up in public a dangerous proposition.
20. We are concerned that the Government's upcoming Online Harms Bill, and proposals on Hate Crimes and Online Communications by the Law Commission, would further encourage such investigations and prosecutions, and that the threat of them would also have a chilling effect.

### **Conclusion**

21. As a matter of principle, there should not be less protection for freedom of expression online than face-to-face or in print or broadcast. This should be true both of regulation and criminal offences.
22. While the issues of sex and gender are just one area where freedom of expression is under threat, we believe that they are a "canary in the coalmine" for the dangers to free speech from policies for protection against offence. The extent to which it has become dangerous and difficult to state material reality about sex demonstrates that mechanisms protecting freedom of speech and online harms are already out of balance. These same pressures can be used to shut down debate by other political movements and identity groups.
23. For individuals, access to social media is increasingly essential for social life, education and economic participation. People should be able to use everyday

---

<sup>27</sup> Thomas, Kim (2020) I stand with Kate Scottow <https://www.spectator.co.uk/article/i-stand-with-kate-scottow>

<sup>28</sup> <https://www.judiciary.uk/wp-content/uploads/2020/12/Scottow-v-CPS-judgment-161220.pdf>

words for the sexes, including man and woman, male and female, and the pronouns “he” and “she” and other associated terms such as “same sex” and “opposite sex”, without fear of losing access to social media, losing their job or being criminalised.

24. The ability of motivated activists to weaponise automated complaints moderation in order to shut down or punish a particular group highlights the need for accessible and responsive appeal processes, and monitoring, transparency and oversight of patterns of people losing their accounts.
25. Anonymity online is an important freedom. Anonymity can be important for people who are unable to express political or other opinions in their own name for fear of consequences at work, or because political expression is legitimately constrained in their profession. Anonymity can also be particularly important for survivors of domestic violence, and those wishing to discuss sensitive issues in their private life.

*15 January 2020*