

The Trade Unions Council (TUC) recently organised their first [Trade Unions For Trans Rights Network](#) event (held 29th April 2023). The goal was to draw out areas of concern for trans union members, and think about ways that branches could best get involved in supporting their trans members. The group has acknowledged that trans people are fearful of a major roll-back of their rights in the workplace and that this is a significant and real concern.

However, what can be done about this remains more slippery. At national level, UCU has had a clear, consistent and outspoken [position on trans inclusion](#), and [resolves](#) “to strengthen solidarity with trans and nonbinary members to examine practices in our union and work to make them more trans-inclusive”, and we want this position to be embedded through to branch level, so that, as a Branch are representing all members, including our trans and nonbinary colleagues. Below are some of the concerns raised through the TUC event and through conversations with trans and nonbinary members in our branch.

Since the government’s consultation on gender self-identification in 2018, multiple well funded organisations, including the *LGB Alliance* and *Sex Matters* have campaigned against trans rights.

Anti trans groups are actively engaging in misinformation campaigns that wrongly present trans people as a threat while also misrepresenting the legal protections that are and are not afforded to gender critical and trans people respectively. In order to lawfully and meaningfully support branch members, we need to be properly informed and equipped to navigate these issues.

Freedom of Belief

A major case in this area was that of Maya Forstater. The Employment Appeal Tribunal ruled in 2021 that so-called “gender critical beliefs” are protected under the Equality Act as philosophical beliefs. These views may include the belief that trans people cannot change sex, that trans people should not be allowed to achieve legal recognition via self-identification, and that trans rights pose a threat to the rights of other groups. The judgment in favour of Forstater overruled a previous court decision that stated gender critical beliefs were not worthy of respect in a democratic society. The basis of this decision was that only views such as “Nazism or totalitarianism” could be ruled unworthy of respect in a democratic society.

However, even the second [ruling](#) made it clear that the judgement does **not** mean that:

- the court was expressing “any view on the merits of either side of the transgender debate”. This means that any protections afforded to gender critical people also apply to any other comparably coherent and significant views on or beliefs about gender, including pro-trans views

- “[t]hose with gender-critical beliefs can ‘misgender’ trans persons with impunity”.- Prohibitions on harassment and discrimination continue to apply to everyone, including in the workplace.
- trans people’s rights at work have been reduced. Trans people are still protected by the Equality Act.

In essence, this means that employees have a right to work without being harassed, whatever their views are. In some areas, this seems pretty clear: think whatever you like but treat people with respect. The recent 2022 Mackereth versus Department for Work and Pensions (DWP) case showed that an employer **can** compel their employees to refer to colleagues by the gender pronouns the person asks for, but cannot punish an employee for what they think about this privately.

At the same time, the Forstater judgement made it clear that “[m]ocking or satirising the opposing view is part of the common currency of debate”, and there is no clarity on when this becomes harassment. It is likely we will see more legal cases to clarify this. For example: if an employee has the right to share information saying a trans woman does not have the right to use the female staff toilets, when does this result in a specific trans woman feeling harassed? Would it be harassment for a trans woman to exclude a colleague from out-of-work social events on the basis that this colleague would be offended and potentially aggressive if the trans person needs to use the toilet?

Freedom of Speech

Issues around Freedom of Speech, Academic Freedom and “chilled speech” are common and fervent across the sector, and work to maintain these freedoms and try to curate academic spaces in which rigorous and enriching dialogues can be held with appropriate levels of respect and care is vital. In the context of trans equality, however, these conversations often follow a predictable and one-sided pattern: suggesting that only gender critical views are being silenced and gender critical speech is being chilled. In practice, this is not so clear-cut. Trans and nonbinary colleagues, and colleagues who have either in their work or personal life taken a vocally trans inclusive position also report harassment, intimidation, chilling effect, fear of weaponised complaint, and other such repercussions, beyond the level of respectful disagreement expected in academic contexts. We are seeing more broadly a backdrop in which broad areas of research and study, most particularly around specific theoretical frameworks (including but not limited to such as queer theories, or trans studies, though not necessarily) are being accused of being a form of grooming, or posing some ideological danger to students., and Researchers in these and other areas are also becoming subject to the same, or a similar, moral panic as faces our trans and nonbinary colleagues. This may be particularly impacting colleagues who are themselves LGBTQ+, where there are pre-existing biases around these notions of grooming, or ‘corrupting’ students. Union branches should be supporting members in these instances and within the context of this fraught background, and engaging where relevant in broader dialogues about freedom of speech and academic freedoms.

Sex in the Equality Act

On 21 February 2023, the Minister for Women and Equalities asked the Equality and Human Rights Commission's (EHRC) advice on the definition of the protected characteristic of sex in the Equality Act (2010). This was done in response to a petition asking for the definition of

'sex' in the Equality Act to be redefined expressly as 'biological sex'. ([Petition here](#), and [opposing petition here](#), though in January 2023, the Government responded to both petitions stating that such a change was not necessary).

On the 3rd April 2023, the EHRC returned guidance, [viewable in full here](#), explaining they "have come to the view that if 'sex' is defined as biological sex for the purposes of EqA, this would bring greater legal clarity in eight areas".

It is important to note that this is **not** law, just guidance at this stage, and applying this guidance would create several problems for anyone who attempted to do so.

For instance, the Guidance argues that defining sex as "biological sex", and therefore making it impossible for trans people to change sex according to the Equality Act, would provide "clarity" in areas like single sex spaces, sport, and social settings. At present, to exclude trans people from these areas of life, one would have to prove that doing so is "a proportionate means to a legitimate aim". However, the EHRC argues, if the proposed changes were brought in, trans people could be banned from sports, hospitals, book groups, toilets, etc even where this is neither proportionate nor a legitimate aim. They consider this to be progress.

The EHRC also claims that a change in law would lead to greater "freedom of association for lesbians and gay men", because it would prevent trans women with a GRC from becoming "legally lesbian". However "lesbian" is not currently a legal title - under the present law, a woman who is attacked because she is perceived as a lesbian would be protected under the Equality Act whether she is a lesbian or not, and also, whether she has legal standing as a woman or not.

This debate operates as a two-step argument:

First, to insist on the importance of GRCs by wrongly claiming that a GRC is currently required or should be required to enter all manner of spaces (bathrooms, book groups, etc.), which trans people are perfectly entitled to use with or without a GRC. Insisting on the need of GRCs ignores that there has not, so far, been any legal success in doing so, nor in most cases, can one legally insist on seeing evidence of someone's GRC.

Secondly, to undermine the impact of having a GRC by mobilising a narrow definition of biological sex to exclude trans people from a large number of potential spaces. Given that the majority of trans people do not report having a GRC, the first step is likely to have the most immediate impact on membership, especially if their branch is not able to advise and support them adequately should issues arise. In conjunction with the second point, however, it increasingly seems like sustained efforts are made to legislate trans people out of public life and spaces.

The [2023 Westminster Hall Debate](#) on 'The Legislative Definition of Sex' was deeply unedifying and disturbing with some MPs suggesting trans people are de facto abnormal sexual predators who pose a direct threat to women and to children. For example, Miriam Cates MP argued that "ordinary children are subjected to a psychological experiment in which they are told they can choose their gender, and ordinary toddlers are used to satisfy the sexual fetish of adult men dressed as eroticised women". Moreover, MPs Joanna Cherry and Rosie Duffield were filmed rolling their eyes and laughing while a letter was read out from a transgender constituent expressing their suicidal feelings.

The chair thanked everyone for the “respectful manner” and “respectful and thoughtful way” in which the debate had been handled, concluding that “people feel strongly about this issue, but it is no reason to be abusive, and I do not think that people have been”. To see this degree of vitriolic and unfounded allegation be labelled as “respectful” parliamentary debate highlights a shift in the baselines of what constitutes “respectful” disagreement and opens the door for increasingly hostile engagement with this issue. This social context raises major concerns for the wellbeing of trans colleagues, particularly in conjunction with the freedom of belief points above, which may increase this hostility in day-to-day conversations in and around the workplace.

The Trans Safety Network [discussed the debate more fully here](#). At national level, UCU has already [spoken out against this proposed change](#) to the Equality Act.

Conclusion

Trans people are at risk of losing the protections and rights we have. Pragmatically, this does not even require a change of law. If a majority of people think we cannot access the toilet of our choosing, or use our names, etc. we lose those rights. It is hard to fight back in the moment when you need to access a toilet and someone tries to prevent you from doing so, or when experiencing other forms of bullying. And it is even harder if unions are not well informed enough to protect trans people and make it clear what our rights are.

It is tempting to believe that “educated” or “progressive” spaces will not have an issue with transphobia, but harassment can occur in any environment. Unions need to be conscious of the risks of transphobia within their organisations, and seek actively to challenge it. The so-called ‘trans debate’ rages on in HE, and is increasingly hostile and vocal. [UCU’s Vision For Trans and Non-Binary Members Equality and Inclusion](#) can provide a good starting place for members looking to educate themselves further on these conversations, how and when to engage with them productively.

Beyond this, Union branches can strengthen their protections for trans people by taking a visible and informed position on these matters, being clear that they have the knowledge and skills to represent and support all members across a wide range of issues they may experience in the workplace. By making a visible commitment to trans rights we send the message that the Union will protect its transgender members as strongly as all others.

If members of the branch would be interested in a meeting/session to discuss these or adjacent issues and how we might best engage at branch level, please let us know.

For this, or other queries please email President.EUCU@exeter.ac.uk

Also, our current, brilliant Equality and Diversity Officer João Florêncio has left Exeter for bigger and better things, and so his role will be vacant. If you think you would be interested in taking on this role, please get in touch with the branch President who can talk you through what involvement would look like: President.EUCU@exeter.ac.uk

If you are interested in joining the [Trade Unions For Trans Rights Network](#), launched April 2023 you can [sign up to the mailing list](#) to be kept up to date with future events, campaigns and activities.

The network “has trans and non-binary people in the driving seat but is open to all trade

unionists who want to campaign for trans and non-binary equality and liberation”.

It outlines its aims as:

1. Connect trade unions to organise together for trans and non-binary rights at work and in wider society. This includes challenging the proposed threats to the equality act and campaigning for employment rights.
2. Expose the far-right narratives and links that underpin modern transphobia in the UK, and build intersectional alliances.
3. Ensure that the trade union movement walks the walk. Share materials such as template policies, trainings and toolkits, and other good practice examples from the trade union movement, across the network.