



2025 No: [REDACTED]

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY GOOD LAW PROJECT LIMITED AND ANOTHER

FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE EQUALITY COMMISSION FOR NORTHERN IRELAND

EX-PARTE DOCKET

[REDACTED] and Good Law Project Limited, an application for an Order for the following relief in respect of the decision of the Proposed Respondent on 14 April 2025.

- a) A declaration to the effect that the impugned decision is unlawful and that the Applicant and other trans women are permitted to use workplace toilets and other sanitary facilities designated for women whether or not they hold a GRC;
- b) An order of certiorari to bring the impugned decision into the King's Bench Division to be quashed;
- c) Damages pursuant to the Human Rights Act 1998;
- d) Any such other relief as this Court deems appropriate; and
- e) Costs.

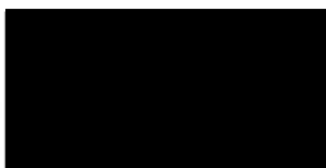
Readings:

- 1. Sworn Affidavit of [REDACTED]
- 2. Final Affidavit of Jolyon Maugham; and
- 3. Order 53 Statement.

Dated this 11th July 2025.

Signed [REDACTED]

A&L Goodbody Northern Ireland LLP





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ORDER 53 STATEMENT

1. **The Applicants**

1.1 The Applicants are:

1.1.1 [REDACTED] and

1.1.2 Good Law Project Limited, 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG.

i.2 The First Applicant applies for anonymity for the reasons set out in the affidavit of [REDACTED]

2. **The Proposed Respondent**

2.1 The proposed Respondent is the Equality Commission of Northern Ireland ("ECNI").

3. **The Impugned Decision**

3.1 The impugned decision is the decision of the ECNI to provide advice to employers regarding their obligations to provide workplace toilets and other sanitary facilities to the effect that:

3.1.1 Transgender persons who do not possess a GRC must be excluded from using toilet facilities corresponding to their gender identity; and

3.1.2 Where an employer provides separate male and female toilet facilities, these must exclude trans women from the female toilets save unless they hold a GRC. Other trans women must be excluded from using facilities corresponding to their acquired gender; and

3.1.3 The ECNI is considering whether trans women holding a GRC should also be excluded from female toilet facilities in light of the recent United Kingdom ("UK") Supreme Court judgment in *For Women Scotland Limited v The Scottish Ministers* [2025] UKSC 16 ("FWS Judgment").

3.2 Hence, on 14 April 2025, ECNI provided the First Applicant's employer with advice that "*a trans woman was not legally allowed to use a female toilet until a Gender Recognition Certificate was issued*". Further, on 30 April 2025, [REDACTED] conveyed to the First Applicant via email that ECNI's policy, even prior to the FWS Judgment was that: "*An employer must provide toilets and facilities separately for the use of women and for which men, including a trans woman without gender recognition certificates (GRCs) must be excluded*" ("**the Unlawful Advice**").

3.3 On 10 July 2025, in response to a Pre Action Protocol Letter issued by the Applicants, ECNI indicated that it had written to the First Applicant's employer withdrawing the advice given to it in April 2025. A copy of that communication was provided. [REDACTED] of ECNI had referred to a paper published by ECNI on 27 June 2025 entitled "Legal paper and information: The meanings of "sex", "men", "women" and "gender reassignment" in equality and allied legislation in Northern Ireland and interim information for employers, service providers and public authorities" ("the June 2025 Legal Paper"). He stated: "Given the publication of this paper and the Commission's intention to apply to the High Court for a declaration as to the correct approach to take on the various legal uncertainties, the Commission withdraws the advice it gave you in April and draws your attention to the section in the paper on single sex spaces at Annex 2".

3.4 **The Relief Sought**

3.5 The Applicants seeks the following relief:

- a) A declaration to the effect that the impugned decision is unlawful and that the First-Named Applicant and other trans women are permitted to use workplace toilets and other sanitary facilities designated for women whether or not they hold a GRC;
- b) An order of certiorari to bring the impugned decision into the King's Bench Division to be quashed;
- c) Damages pursuant to the Human Rights Act 1998;
- d) Any such other relief as this Court deems appropriate; and
- e) Costs.

4. **Grounds of Challenge**

4.1 The Applicants' grounds of challenge are:

4.1.1 The unlawful Advice appears to have been founded upon Regulation 20 of the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993 (SR 1993/37, "the Workplace Regulations"), which requires employers to provide separate facilities for "men" and "women", save where a unisex facility is

provided for use by a single person. Regulation 20(1) imposes a requirement upon employers that "[s]uitable and sufficient sanitary conveniences shall be provided at readily accessible places". Regulation 20(2)(c) provides that sanitary conveniences shall not be suitable unless "separate rooms containing conveniences are provided for men and women, except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside".

- 4.1.2 The Workplace Regulations give effect to the EU Workplace Health and Safety Directive (Directive 1989/654; "the Directive") and, as such, must be interpreted consistently with the requirements and principles of EU law. Any alternative interpretation that deviates from this position and the intention of the Directive, read in light of the EU Charter of Fundamental Rights ("CFR"), is incompatible with the UK and Northern Ireland's obligations under assimilated EU legislation, including pursuant to Article 2(1) of the Protocol on Ireland/Northern Ireland ("the Protocol"). In particular, Regulation 20 of the Workplace Regulations must be interpreted consistently with §18.3 of Annex 1 to the Directive, which states that: "Provision must be made for separate lavatories or separate use of lavatories for men and women".
- 4.1.3 EU legislation requires the recognition of an individual's acquired gender, and such recognition is not contingent upon the individual obtained a GRC or undergone surgery or taken any other particular steps towards obtaining a GRC. The right to such recognition falls within the scope of the right to respect for private life in Article 7 of the CFR and Article 8 of the European Convention of Human Rights ("ECHR"). See, for example, *Deldits* (C-247/23), §47-49.
- 4.1.4 The meaning of the term "women" for the purposes of the Directive should be interpreted to include all individuals who identify as being of the female gender. This interpretation is necessary to protect the private life of transgender women, in particular when it comes to the provision and use of toilet facilities, which falls squarely within the private sphere. It is therefore the interpretation which is required by the CFR and the ECHR. Otherwise, and as occurred in the case of the First Applicant, a trans woman could be required to use men's toilets, and so to "out" herself as transgender and put herself at risk of abuse and harassment.
- 4.1.5 Further, it is discriminatory on grounds of gender reassignment, contrary to Directive 2006/54, Article 21 CFR and Article 8 read with Article 14 ECHR to require transgender women who have not acquired a GRC to use what are for them manifestly unsuitable (male) toilet facilities. In that situation, a person who does not have the protected characteristic of gender reassignment will be more favourably treated by being permitted to use facilities which are suitable to their gender. Transgender staff must be treated with fairness and dignity and afforded the rights to which they are entitled under law, free from any form of harassment or inappropriate behaviour. Transgender staff should be free to use the restrooms and facilities belonging to the gender with which they identify, and certainly from the point at which the individual begins to present permanently in the gender with which they identify.
- 4.1.6 For like reasons, Articles 4A and 8 of the Sex Discrimination (Northern Ireland) Order 1976 (SI 1976/1042 (N.I. 15)) should also be interpreted as prohibiting a requirement by an employer that a transgender woman must use the men's toilets in the workplace.
- 4.1.7. The FWS Judgment does not compel any different conclusion. The Supreme Court in that case held that terms including "man" and "woman" in the Equality Act 2010 should be interpreted to refer to the biological sex of the individual and not to their acquired gender following the issue of a GRC. The Supreme Court

was only concerned with the Equality Act 2010 (see §§1-2 of the judgment) and was not concerned with the interpretation of the Workplace Regulations, nor with the principles and provisions of EU law and the Protocol on Ireland/Northern Ireland which underpin them. Further, and in any event, the FWS Judgment could not be applied in Northern Ireland so as to diminish the rights which would otherwise be enjoyed by transgender persons as that would conflict with the "standstill" clause in Article 2(1) of the Protocol.

4.1.8 The ECNI's purported withdrawal of the Unlawful Advice to the First Applicant's employer does not satisfy the claim outlined above. First, the Unlawful Advice had serious consequences for the First Applicant, including for her mental health, as set out in her affidavit herein. It resulted in her employer excluding her from the women's toilets in her workplace, in the First Applicant suffering a significant mental health episode and then in being unable to return to work until the issue of her access to toilets had been resolved. She maintains a claim for damages pursuant to s. 8 of the Human Rights Act 1998.

4.1.9 Second, in withdrawing the Unlawful Advice, the ECNI referred the First Applicant's employer to advice given in the June 2025 Legal Paper. That advice fails to reflect the correct legal position regarding access to workplace toilets by transgender persons. In particular:

- (i) The June 2025 Legal Paper proposes that employers, amongst others, resolve the issue of access to toilets by either (a) providing universal (i.e. unisex) facilities or (b) providing separate and universal facilities, where separate facilities are segregated according to biological sex (p. 46).
- (ii) The June 2025 Legal Paper then asserts that "*the existence of a Gender Recognition Certificate and / or a transgender identity is irrelevant*" (p. 47).
- (iii) The June 2025 Legal Paper does not advise employers of the right of transgender employees to access toilets which are appropriate to their gender.
- (iv) The overall message conveyed by the June 2025 Legal Paper is that employers will act lawfully if – save where unisex facilities are provided - they segregate workplace toilets according to biological sex, taking no account of transgender identity or even of a GRC.
- (v) The advice that even the issue of a GRC is irrelevant to access to workplace toilets is more extreme than that contained in the Unlawful Advice, and contravenes s. 9 of the Gender Recognition Act 2004, as applied to Regulation 20 of the Workplace Regulations.

5. Interim relief

6. The Applicants do not seek interim relief.

7. Notice Party

7.1 The following parties have been placed on notice of these proceedings:

7.1.1 The Executive Office, SD03 Stormont Castle, Stormont Estate, Belfast, BT4 3TT

8. **Human rights: declaration of incompatibility**

8.1 Not applicable.

9. **Devolution issues**

9.1 It is not considered that a devolution issue arises.

10. **Legal Aid**

10.1 The Applicants are not legally assisted persons.

11. **Protective Costs Order**

11.1 The Applicants will seek a protective costs order.

12. **PAP Requirements**

12.1 The protocol set out in Practice Direction No 3 of 2018 in respect of pre-action protocol correspondence has been adhered to. The Pre-Action Protocol Letter was issued on 7 July 2025 and a response was received on 10 July 2025.

13. **JR Practice Note**

13.1 I, the solicitor whose signature appears at the end of this document, certify that, save the issue identified above with the pre-action correspondence, there has been compliance with the JR Practice Direction

14. **Proposed Litigation Timetable**

15. The Applicants respectfully requests the following timetable:

- (i) A leave hearing during October 2025. The application remains relatively urgent because of the extant advice of the ECNI which is misleading for employers and impacts daily upon access to workplace toilets by transgender employees.
- (ii) Skeleton arguments to be timetabled based on the hearing date set.

16. **Legal Representation**

Name of Applicants' Solicitors:

[REDACTED] of A&L Goodbody Northern Ireland LLP

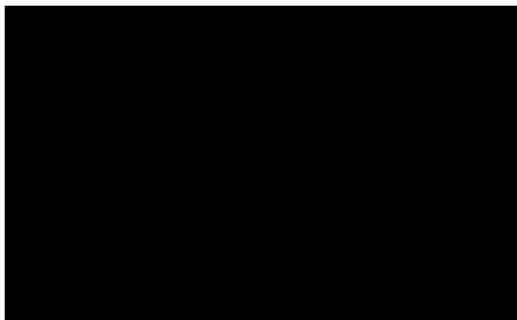
Name of Applicants' Counsel:

[REDACTED]

Name of legal representative of Proposed Respondent:

Unknown

Signed:



Applicant's Solicitor's email address: 

Dated this 11 day of July 2025

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AFFIDAVIT OF [REDACTED]

1 INTRODUCTION

- 1.1 I make this affidavit from the facts and matters within my own knowledge. Where I refer to facts and matters outside my own knowledge, I identify the source of those facts and matters and I confirm that such facts and matters are true to the best of my knowledge and belief.
- 1.2 This affidavit is made in support of my application for:-
- 1.2.1 Leave to apply for judicial review; and
- 1.2.2 An anonymity order.
- 1.3 I refer to a bundle of documents relevant to this application marked [REDACTED] (the **Bundle**) upon which I have signed my name at the date of swearing hereof. References to page numbers in this affidavit are references to paginated pages (located in the bottom right of each page) in [REDACTED]
- 1.4 I understand that this Affidavit should not include legal argument and therefore I shall only set out the background evidence that is relevant to the case (though this necessarily may involve referencing legislation and long-founded principles). The legal arguments relied upon have been set out in a Pre-Action Protocol Letter dated 7 July 2025 at Tab 1 of the Bundle. Good Law Project Limited (GLP) has been included in these proceedings as an Applicant due to their interest in the issues raised and their eagerness to help me and others in the trans community.
- 1.5 As at the date of this Affidavit, the Equality Commission for Northern Ireland (ECNI) has withdrawn its advice to my employer. However, in doing so, ECNI has referred to advice contained in its most recent publication "*The meanings of "sex", "men", "women" and "gender reassignment" in equality and allied legislation in Northern Ireland and interim information for employers, service providers and public authorities*". This response does not resolve all issues between the parties, and still fails to adequately reflect the existing law. Therefore, owing to the timeframes, we have proceeded to file this judicial review. I refer to a copy of this correspondence at Tab 2 of the Bundle.

2 THE PARTIES

2.1

[REDACTED]

I believe I have suffered detriment due to advice given by ECNI to my employer.

2.2 GLP is a not-for-profit organisation which is respected in the trans community for its mission and commitment to represent the voices of trans community through campaigns and litigation. I was directed to GLP through my mental health counsellor in the hope they could provide me with some guidance. Therefore, I reached out to GLP on 17 June 2025, with the hope that they could assist and support me with the issues I had been experiencing.

3 THE ECNI

3.1 I understand that the ECNI is a non-departmental public body established to promote equality and eliminate unlawful discrimination in Northern Ireland.

4 BACKGROUND

4.1

[REDACTED]

4.2

[REDACTED]

4.3 One of the aspects accepted with my employer during this meeting was that I would continue to use the men's toilets for a short period until my colleagues became more accustomed to me presenting as female. [REDACTED]

[REDACTED] I believed this to be a short-term solution and that continuing use of the men's toilets would not be required.

4.4

[REDACTED]

4.5

[REDACTED]

4.6

4.7

[REDACTED] began to use the women's toilets [REDACTED]
[REDACTED] I did not inform my employer that I was making this change, as it was not formally required [REDACTED]
[REDACTED] and I understood that it had only been suggested that I continue to use the men's toilets until people became accustomed to my transition. Thus far, my colleagues had been extremely supportive of my transition, and I considered it to be in the best interests of my safety to transition to use of the women's toilets. [REDACTED]
[REDACTED]

4.8

[REDACTED]
[REDACTED] felt that I had no viable alternative but to agree and, under this pressure, reluctantly stated that I would revert to using the men's toilet facilities, despite the personal distress that this caused me.

4.9

4.10

4.11 My emotional state on that evening was a direct response to the distressing developments at work, which had a deep emotional impact on me and caused extreme distress. I sought immediate help from my doctor and support from my family. [REDACTED]
[REDACTED]

4.12 In the following week, I contacted Citizen's Advice Northern Ireland, joined a union, and began to research my rights as a transgender woman in the workplace.

4.13

[REDACTED]
[REDACTED] responded to me stating that he had received advice from an external English Human Resources Company that toilet facilities were exempt from the Equality Act. I was not sure what this meant but was informed that my employer was relying on this advice, and I would not be able to use the women's toilet facilities. [REDACTED]
[REDACTED] also stated that my employer was reviewing its position and considering building a separate universal toilet facility, but that this would take time and expense.

4.14

- 4.15 Following the advice from the English Human Resources Company, I understand that my employer contacted the ECNI, who advised that a GRC was required for use of the women's toilets (and hence that I should be excluded from them until such times as I had obtained a GRC). I refer to Tab 3 of the Bundle for attendance notes of this conversation.
- 4.16 In parallel, I sought advice regarding my situation. I contacted ECNI on 16 April 2025 and a member of staff informed me that my rights were being infringed by not being permitted to use the women's toilets in my workplace. I subsequently informed [REDACTED] of this, but he stated that he had been informed of the contrary on 14 April 2025 and that my rights had not been violated.
- 4.17 This conflicting information was extremely confusing. I escalated the query to [REDACTED] ECNI. Unfortunately, rather than clarifying or resolving the matter, I was again told, via email on 30 April, exhibited at Tab 4 of the Bundle, that a GRC was required for use of the women's toilets. Since that time, I had not received any further communication from ECNI or response from 30 April 2025. However, following a Pre-Action Protocol Letter issued by my solicitors, I received a response from ECNI on 10 July 2025, withdrawing the advice given to my employer.
- 4.18 I then reached out to a local LGBTQIA+ organisation known as the Rainbow Project Belfast, for further guidance on my situation. The Rainbow Project Belfast advised me that the advice I was receiving was incorrect and advised that I raise a formal grievance with my employer. This reaffirmed the advice I had been given by Citizen's Advice Northern Ireland.
- 4.19 [REDACTED]
- 4.20 [REDACTED]
- 4.21 [REDACTED]
- 4.22 [REDACTED]
- 4.23 This whole process has left me emotionally and mentally exhausted, experiencing daily breakdowns and impacting my mental health. I have expressed a clear desire to bring the matter to a close, but in a manner that upholds my fundamental rights and preserves my dignity.
- 4.24 [REDACTED] I have discussed the situation with my employer who has been deeply sympathetic to the issues I have faced and has liaised closely with me to reach an appropriate solution, to allow me to return to work in a manner that preserves my dignity. My employer explained to me that they did not know how best to assist me, and my colleagues, in my transition and relied heavily on external advice. My employer has now gone to great expense and effort to design and build gender-neutral toilet facilities. It is deeply frustrating that this was not my employer's initial reaction to my case and that the situation was exacerbated by my employer not receiving the correct legal advice.

5 **ANONYMITY**

- 5.1 Given the overwhelmingly negative attention that can surround transgender rights, together with my genuine fears in respect of safety, I would ask the Court to grant an order removing my name from these proceedings. I believe it is prudent and warranted for such an order to be made.
- 5.2 The release of my name through these proceedings would amount to a breach of my Article 8 rights to a private and family life but also has potential to prejudice my employer, who has worked closely over recent weeks to provide me with support and assistance.
- 5.3 Adverse publicity from the release of my personal details in the context of these proceedings is likely to cause prejudice to these proceedings and potentially risk the safety of both me and my family.

6 **GROUND OF CHALLENGE**

- 6.1 The decision by the ECNI to provide advice to my employer, which is incorrect, is challenged by the Applicants on the bases set out in the Order 53 Statement and the Pre-Action Protocol Letter.
- 6.2 ECNI has written to A&L Goodbody Northern Ireland LLP to withdraw their advice to my employer and instead refers to their most recent publication "*The meanings of "sex", "men", "women" and "gender reassignment" in equality and allied legislation in Northern Ireland and interim information for employers, service providers and public authorities*". I believe that the position stated in that publication is also incorrect. Therefore, we are left with no other choice but to issue proceedings in order to protect our position.

7 **CONCLUSION**

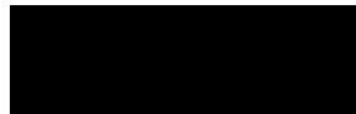
- 7.1 In light of the foregoing and the matters to be advanced in written and oral argument, I respectfully ask this Court to grant the relief sought in the Order 53 Statement on the basis of the grounds pleaded therein.

SAVE AND EXCEPT where stated or otherwise appearing I depose to the foregoing from facts within my own personal knowledge, information and belief.

Sworn at *14-18 GREAT VICTORIA STREET*
In the County of the City of Belfast
This *11* day of July 2025
Before me a Solicitor empowered to
Administer Oaths for the
Court of Judicature for Northern Ireland



Deponent



Solicitor

This Affidavit is filed on behalf of the Applicant by:

A&L Goodbody Northern Ireland LLP, 

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IRELAND

EXHIBIT [REDACTED]

I hereby confirm that this is the exhibit referred to in the affidavit of [REDACTED] also known as [REDACTED]
[REDACTED] dated this 11 day of July 2025 and marked [REDACTED]

[REDACTED]
Deponent

[REDACTED]
Solicitor

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INDEX TO EXHIBIT [REDACTED]

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3.	<u>Attendance Note from Client's Employer of ECNI Call</u>	10
4.	<u>Email from ECNI to [REDACTED]</u>	11

Date | 7 July 2025

Our ref | [REDACTED]

Your ref |

By First Class Post and By Hand

Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

CONFIDENTIAL, SUBJECT TO AN ANONYMITY APPLICATION

Our Client: [REDACTED]

Proposed judicial review regarding advice provided by the Equality Commission for Northern Ireland to [REDACTED]
[REDACTED]

Dear Colleague

We act on behalf of the Applicant, [REDACTED] in relation to the above proposed proceedings and write this Pre-Action Protocol letter in accordance with the Judicial Review Practice Direction No. 03/2018.

Please note, details contained within this Pre-Action Protocol Letter should remain confidential, pending an anonymity application.

1 To:

1.1 The Equality Commission for Northern Ireland (ECNI), Equality House, 7-9 Shaftesbury Square, Belfast, BT2 7DP.

2 The Applicants:

2.1 [REDACTED]

2.2 Good Law Project Limited, 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG, as interested party.

3 Reference Details:

3.1 Applicant's Solicitor's Reference: [REDACTED]

3.2 Proposed Respondent's Reference: Unknown

4 The Details of the Matter being challenged:

A&L Goodbody

4.1 This letter is intended to set out the factual and legal basis upon which our client intends to challenge the advice and guidance issued by ECNI to our client's employer regarding the use of toilet facilities by transgender persons who do not hold a Gender Recognition Certificate (GRC).

4.2 Our client seeks to resolve this matter without recourse to litigation if possible. However, in the absence of a satisfactory response, our client will have no alternative but to issue proceedings for judicial review in the High Court of Justice in Northern Ireland.

Background

4.3



4.4 Our client has been directly affected by the ECNI's advice given to her employer, as her employer has relied upon it to restrict her access to female toilet facilities, causing her distress, humiliation and detriment.

4.5 The ECNI's advice has been communicated to our client's employer verbally on 14 April 2025. Our client has sought clarification and reconsideration from the ECNI, but ECNI has maintained its position, via email correspondence to our client on 30 April 2025.

4.6 The impugned act is the advice and guidance to employers issued and/or maintained by the ECNI, including but not limited to, verbal advice and email correspondence to the effect that:

- (a) Transgender persons who do not possess a GRC must be excluded from using toilet facilities corresponding to their gender identity,
- (b) Where an employer provides separate male and female toilet facilities, these must exclude trans women from the female toilets save unless they hold a GRC. Other trans women must be excluded from using facilities corresponding to their acquired gender, and
- (c) The ECNI is reconsidering whether trans women holding a GRC should also be excluded from female toilet facilities in light of the recent United Kingdom (UK) Supreme Court case of *For Women Scotland Limited v The Scottish Ministers* [2025] UKSC 16 (FWS Judgment).

4.7 This advice is exemplified below from ECNI officers.

4.7.1 On 14 April 2025, ECNI provided [REDACTED] (Our Client's Employers) with incorrect advice that "a trans woman was not legally allowed to use a female toilet until a Gender Recognition Certificate was issued".

4.7.2 On 30 April 2025, [REDACTED] conveyed the following via email to [REDACTED] that ECNI's policy, even prior to the FWS Judgment was that:

"An employer must provide toilets and facilities separately for the use of women and for which men, including a trans woman without gender recognition certificates (GRCs) must be excluded."

4.8 It appears that the ECNI is relying upon Regulation 20 of the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993 (the **Workplace Regulations**) to advise that employers must provide separate facilities for "men" and "women", save where a unisex facility is provided for use by a single person. Regulation 20(1) imposes a requirement upon employers that "[s]uitable and sufficient sanitary conveniences shall be provided at readily accessible places". Regulation 20(2)(c) provides that sanitary conveniences shall

not be suitable unless "separate rooms containing conveniences are provided for men and women, except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside".

The Unlawful Act

- 4.9 The position adopted by the ECNI is incorrect and does not align with the applicable legislation. Northern Ireland legislation, prior to the FWS Judgment, does not impose a requirement for a GRC for a transgender woman to access and use separate facilities designated for women. The legal framework in Northern Ireland, consistent with both domestic and EU law, recognises the right of a transgender person to live in accordance with their gender identity. As such, a GRC is not a prerequisite for our client to access the toilet facilities in her workplace which correspond to her gender identity.
- 4.10 Additionally, the FWS Judgment, does not establish or determine the meaning of the terms "men" and "women" in the relevant legislation in Northern Ireland. This distinction between law in Great Britain and Northern Ireland has been appropriately acknowledged by the ECNI in your most recent publication "*The meanings of "sex", "men", "women" and "gender reassignment" in equality and allied legislation in Northern Ireland and interim information for employers, service providers and public authorities*". In this publication, the ECNI expressly recognises the complexity of this area of law and confirms your intention to seek a declaratory ruling from the High Court of Northern Ireland to clarify the matter. On any view, the FWS Judgment does not purport to determine the meaning of "men" and "women" in the Workplace Regulations.
- 4.11 Therefore, it is extremely concerning that the ECNI, given the complexity and unsettled position in Northern Ireland, has provided such prejudicial advice to our client's employer. Our client's employer has relied upon this advice, to the detriment of our client.
- 4.12 In this context, it is important to emphasise that the Workplace Regulations give effect to the EU Workplace Health and Safety Directive (the Directive) and, as such, must be interpreted consistently with the requirements and principles of EU law. Any alternative interpretation that deviates from this position and the intention of the Directive, is incompatible with the UK and Northern Ireland's obligations under retained EU legislation, including under Article 2 of the Windsor Framework.
- 4.13 EU legislation requires the recognition of an individual's acquired gender, and such recognition is not contingent upon the individual having obtained a GRC. This recognition falls within the scope of the Article 7 of the EU Charter of Fundamental Rights (CFR) and Article 8 of the European Convention of Human Rights (ECHR) right to respect for private life.
- 4.14 The meaning of the term "women" within the scope of the Directive should be interpreted to include all individuals who identify as being of the female gender. This interpretation is necessary to protect the private life of transgender women, in particular when it comes to the provision and use of toilet facilities which falls squarely within the private sphere. Further, it is discriminatory on grounds of gender reassignment to require transgender women who have not acquired a GRC to use what are for them manifestly unsuitable (male) toilet facilities.
- 4.15 In Northern Ireland, transgender people are legally protected against discrimination in employment, goods facilities, services and premises by the Sex Discrimination (Northern Ireland) Order 1976 (*as amended*) (the 1976 Order). This prohibits discrimination based on gender reassignment or against an individual because they are planning to undergo, are undergoing or have undergone gender reassignment.
- 4.16 Transgender staff must be treated with fairness and dignity and afforded the rights to which they are entitled under law, free from any form of harassment or inappropriate behaviour. Transgender staff should be free to

use the restrooms and facilities belonging to the gender with which they identify, and certainly from the point at which the individual begins to present permanently in the gender with which they identify.

- 4.17 ECNI has a duty to promote equality of opportunity between *"men and women generally"* and *"for persons who intend to undergo, are undergoing or have undergone gender reassignment"*. It is extremely concerning that, notwithstanding these responsibilities, ECNI has now advised [REDACTED] employers that she must be excluded from women's toilet facilities on the basis that she does not have a GRC.

5 The Parties

5.1 [REDACTED]

- 5.2 Good Law Project Limited, 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG, as interested party. Good Law Project is a non-profit campaign organisation with a mission to achieve change through the law.

- 5.3 The Equality Commission for Northern Ireland, Equality House, 7-9 Shaftesbury Square, Belfast, BT2 7DP, being an independent statutory body established with the primary function of promoting equality of opportunity and challenging discrimination in Northern Ireland.

6 Notice Party

- 6.1 In the event that this matter proceeds to judicial review, it may become apparent that the Executive Office for Northern Ireland, SD03 Stormont Castle, Stormont Estate, Belfast, BT4 3TT may be a Notice Party.

7 Decision under challenge

- 7.1 The decision under challenge pertains to the advice provided and maintained to our client's employers, that transgender women who do not possess a GRC should be excluded from accessing toilets corresponding to the gender with which they identify. This is particularly oppressive for our client given that no separate, universal facilities could at the time be provided by our client's employers, preventing her from returning to work.

8 Grounds of Challenge

- 8.1 The position adopted by the ECNI is legally incorrect and incompatible with Northern Ireland legislation and retained EU law as set out in detail at Section 4 above. If ECNI continue to maintain this position, our client will be left with no choice but to issue judicial review proceedings on the grounds of illegality.

9 The details of the action that the Respondent is expected to take

- 9.1 Given the clear legal inconsistencies, we respectfully request that the ECNI's position is reviewed and withdrawn as a matter of urgency, pending clarification from the High Court of Northern Ireland. We trust that the ECNI will take the necessary steps to ensure compliance with domestic and EU legislation, and promptly provide a revised position to our client's employers in accordance with the correct legal interpretation.

10 The details of the legal advisers dealing with this claim

11 The details of information sought

N/A

- 12 The details of any documents that are considered relevant and necessary
- 12.1 Confirmation of a revised position in accordance with correct legal interpretations, pending clarifications from the High Court.
- 13 The address for reply and service of court documents,
[REDACTED]
- 14 Proposed reply date
- 14.1 4pm on Thursday 10 July 2025. We look forward to hearing from you as a matter of urgency. In the event that we do not receive a response from you by 4pm on Thursday 10 July 2025, our client will have no choice but to issue judicial review proceedings to protect her position.

Yours sincerely

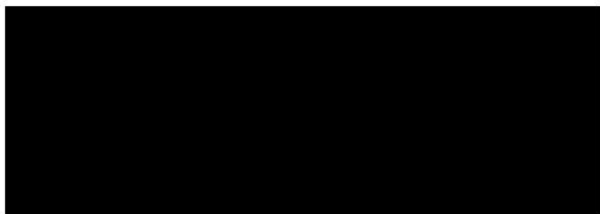
[REDACTED]

A&L Goodbody Northern Ireland LLP

Copy to:
The Executive Office
SD03 Stormont Castle
Stormont Estate
Belfast
BT4 3TT

[REDACTED]

10 July 2025



Your Client: [REDACTED] – Proposed Judicial Review

Dear [REDACTED]

I refer to your Pre-Action Protocol letter served on the Equality Commission on 7 July 2025 and send this response in accordance with the Judicial Review Practice Direction No 03/2018.

The Applicants:



Good Law Project Limited, 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG as interested party.

From:

Equality Commission for Northern Ireland, Equality House, 7 – 9 Shaftesbury Square, Belfast, BT2 7DP

Reference Details:

Applicant's Solicitor's Reference: [REDACTED]

Respondent's Solicitor's Reference: [REDACTED]

The details of the matter being challenged:

The advice and guidance issued by ECNI to [REDACTED] employer regarding the use of toilet facilities by transgender persons who do not hold a Gender Recognition Certificate (GRC).

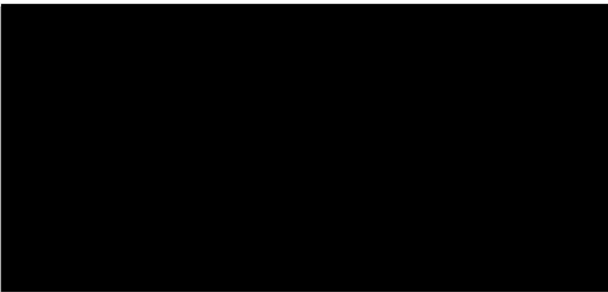
Response to the proposed application:

After due consideration and having regard to the Paper published by the Commission in June, setting out how it proposes to address legal uncertainties regarding the rights of transgender persons in Northern Ireland, including its proposed application to the Northern Ireland High Court for clarification of the law in this regard, the Commission has written to the applicant's employer withdrawing the advice given in April 2025. A copy of that correspondence is attached to this response. The Commission believes that this satisfies the applicant's request at para 9.1 of the applicant's PAP letter.

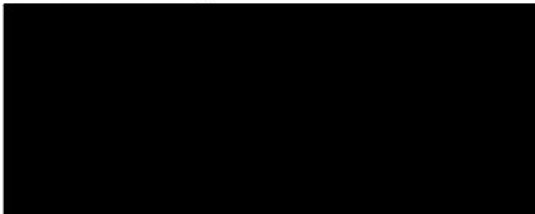
Details of other interested parties:

N/A

Address for further correspondence and service of court documents:



Yours faithfully



📞 Direct line: 
✉ Email: 

Copy to:
The Executive Office
SD03 Stormont Castle
Stormont Estate
Belfast
BT4 3TT

From: [REDACTED]
Sent: 10 July 2025 11:38
To: [REDACTED]
Subject: FW: Advice on trans women's rights

Dear [REDACTED]

I am forwarding you the email below as I received an automated response from [REDACTED] email address advising that he is on leave until 29 July and in his absence to contact you.

Yours faithfully

[REDACTED]

From: [REDACTED]
Sent: 10 July 2025 11:29
To: [REDACTED]
Subject: Advice on trans women's rights

Dear [REDACTED]

I refer to advice provided to you by the Commission in April in relation to a trans woman's legal rights to access female toilets.

The Commission has reviewed its advice generally following the Supreme Court judgment in the 'For Women Scotland – v – The Scottish Ministers' case and has published a paper.

Given the publication of this paper and the Commission's intention to apply to the High Court for a declaration as to the correct legal approach to take on the various legal uncertainties, the Commission withdraws the advice it gave you in April and draws your attention to the section in the paper on single sex spaces at Annex 2.

Regards

Yours faithfully

[REDACTED]

[REDACTED]

Direct line:
: Email:

[REDACTED]

Equality Commission
14/04/25

Spoke to [REDACTED]

Toilet use is not a day one right. He mentioned a case in Jaguar around 8 years ago. He remembers that the outcome was as above.

He will call me around Wednesday after some research.

H+S requires bathroom facilities

- Required separate
- Under law, trans person still "male" until GRC issued
 - Changed with SC ruling

Advice is trans man>woman not allowed to use female facilities

Judgement yesterday relates to Equality Act which is not in NI, but legally unlikely not to be affected

Trans still has rights against discrimination

[REDACTED] can't use female toilets at present, and potentially can NEVER use them, post SC ruling.

ECNI got a legal position

- Trans woman cannot use a womens until GRC.
- Further logic - what grounds to force use of toilet
- May not agree as perceived as not male
 - Perception is not "legally" upheld, so still "male"

[REDACTED]
apply for my GRC.

I apologise if this comes across as argumentative, I just don't understand where this requirement for a GRC is coming from when it appears to go against guidance from ECNI literature and other legitimate sources.

I understand you're busy with the Supreme Court ruling, but would it be possible to get back to me today as I would like to move forward with conciliation and have all my information in order.

Kind Regards,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
From: [REDACTED]
Sent: Wednesday, April 30, 2025 8:29 AM
To: [REDACTED]
Subject: [REDACTED]

Dear [REDACTED]

I refer to your correspondence with [REDACTED] and her email to you advising that she had passed your query to me. I was on leave last week and was not in a position to respond until today.

As you are aware there has been a recent Supreme Court judgement handed down in the 'For Women Scotland' case which the Commission is considering and we are currently reviewing our advice. Prior to that judgement our advice to employers was that that they must provide and maintain separate toilet and changing room facilities for their male and female employees, except where a suitable, sufficient, and secure facility can be provided that is for use by a single person. That exception apart, this meant that an employer must provide toilets and facilities separately for the use of women and for which men, including trans women without gender recognition certificates (GRCs) must be excluded. As the law then stood, it would not have been open for an employer to exclude from those separate female facilities a trans woman whose acquired gender is affirmed by a GRC (i.e. a trans woman who is now recognised in law as being a man). In all cases, the toilets and changing facilities provided to all employees must be of a similar standard in terms of cleanliness, accessibility, security, and privacy.

When providing advice to employers on their policies regarding the use of their facilities, including toilets, washing and changing facilities, the Commission advises that they should aim to protect all employees from unlawful discrimination, and to do this by ensuring that privacy and propriety are at the forefront of consideration, and to look for practical solutions that add choices rather than remove them. It is recognised that this is likely to be easier for larger employers. As with other workplace policies, employers are likely to be assisted in meeting their obligations by listening carefully to their employees.

If you believe that you may have been unlawfully discriminated against and wish to apply to the Commission for assistance, please contact [REDACTED] who will send you an application for assistance form.



2025 No:



IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY GOOD LAW PROJECT LIMITED AND ANOTHER
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE EQUALITY COMMISSION FOR NORTHERN IRELAND

AFFIDAVIT OF JOLYON MAUGHAM

I, Jolyon Maugham, Executive Director of the Good Law Project Limited (the **Applicant**), 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG, being aged 18 years and upwards make oath and say as follows:

1 INTRODUCTION

- 1.1 I am the Executive Director of Good Law Project Limited (**GLP**), a not-for-profit organisation, which I founded in 2017, with the aim of holding power to account and to bring together legal action, investigations and campaigning to fight for a fairer future. I confirm that I have the Applicant's authority to make this affidavit on its behalf. This affidavit is made from facts and matters within my own knowledge which are true or from information provided to me by others. Where any fact or matter is not within my knowledge, I identify the source and confirm that it is true to the best of my knowledge, information and belief.
- 1.2 I refer to a bundle of documents which are exhibited hereto marked "JM1" by me at the date of swearing hereof (the **Bundle**).
- 1.3 I understand that this Affidavit should not include legal argument and therefore I shall only set out the background evidence that is relevant to the Applicant's case (though this may necessarily involve referring to legislation, and long-founded principles). The legal arguments relied upon by the Applicants were set out in the Pre-Action Protocol Letter of 7 July 2025 at Tab 1 of the Bundle.
- 1.4 As at the date of this Affidavit, the Equality Commission for Northern Ireland (**ECNI**) has withdrawn its advice to the First Applicant's employer. However, in doing so, ECNI has referred to advice contained in its most recent publication "*The meanings of "sex", "men", "women" and "gender reassignment" in equality and allied legislation in Northern Ireland and interim information for employers, service providers and public authorities*". This response does not resolve all issues between the parties, and still does not reflect the correct legal position. Therefore, owing to the timeframes, we have proceeded to file this judicial review. I refer to a copy of this correspondence at Tab 2 of the Bundle.

2 THE PARTIES

- 2.1 The First Applicant, who wishes to remain anonymous in these proceedings, is a transgender woman. Since September 2023, she has been microdosing Hormone Replacement Therapy (HRT) in order to transition and publicly came out as a transgender woman in December 2024. I believe she has suffered detriment due to advice given by ECNI to her employer.
- 2.2 As part of its mission to which I refer above, GLP has a longstanding commitment to representing the trans community through campaigns and litigation. GLP is a very well-respected voice in the trans community and a trusted source of support for trans people. Therefore, the First Applicant reached out to GLP on 17 June 2025, with the hope that GLP could assist and support her with the issues she had been experiencing.

3 THE ECNI

- 3.1 I understand that the ECNI is a non-departmental public body established to promote equality and eliminate unlawful discrimination in Northern Ireland.

4 BACKGROUND

- 4.1 The purpose of this affidavit is to explain the background to GLP's longstanding commitment to the trans community, including through regular legal action and strategic interventions where we feel we can assist the court on a particular issue.
- 4.2 In order to fund this work, GLP has raised around £1 million from over 26,000 donors across a variety of trans specific campaigns over the course of the last five years. GLP has a loyal and engaged supporter base, including a mailing list of 45,700 people who have shown a direct interest in our trans work either by donating to our trans rights fundraisers, reading our emails on trans topics, or indicating their interest in trans issues in GLP supporter surveys.
- 4.3 I regularly receive feedback that GLP is a very well-respected voice in the trans community and a trusted source of support for trans people. GLP is regularly contacted by trans individuals wishing to access legal support in relation to a wide range of cases. This is how we have become involved in this particular issue. We were contacted by the First Applicant, who was aware of our work and our commitment to trans rights and hoped that we could provide advice and guidance on the advice her employer had received from ECNI.
- 4.4 GLP have provided guidance and legal advice to the First Applicant, and referred her to external Northern Ireland solicitors, A&L Goodbody Northern Ireland LLP to progress her case forward. In progressing her case, GLP will fund her litigation, in the hope that the case will help not only her but also others in the trans community in Northern Ireland (and potentially more widely).

5 STANDING AND SUFFICIENT INTEREST

- 5.1 In November 2020, GLP set up the Legal Defence Fund for Transgender Lives (the **Fund**) with the intention that any funds raised were to be used to "*work in partnership with others where litigation can protect and defend the rights of transgender people to live as themselves.*" An Advisory Group was established to facilitate the administration of the Fund.
- 5.2 In January 2021, GLP instigated a successful intervention in the Tavistock and Portman NHS Foundation Trust's appeal in *Bell v Tavistock [2021] EWCA Civ 1363*, ensuring that the voices of young trans people and the experts who prescribe puberty blockers to them were heard. The Fund was also used to finance the appeal.

- 5.3 In June 2021, GLP supported the charity *Mermaids* in launching its appeal of the Charity Commission's decision to grant *LGB Alliance UK* charitable status. GLP funded the costs of Mermaids' challenge using contributions from the Fund and money raised through donations from 3,100 people.
- 5.4 In October 2021, GLP was one of five Applicants with standing who issued proceedings against NHS England to challenge the extremely long waiting times faced by trans people trying to access specialised healthcare. The claim was dismissed in January 2023; GLP dedicated over 2 years of time and resources campaigning on the issue, made a substantial contribution to the costs from its own resources and raised funds from over 1200 donors.
- 5.5 In June 2024, GLP supported a challenge by the charity Trans Actual to former health secretary Victoria Atkins' regulations introducing an immediate ban on young trans people obtaining puberty blockers prescribed by regulated prescribers throughout Europe. A crowdfunder raised donations from over 1700 donors and GLP also made a substantial contribution to the costs from its own resources.
- 5.6 In September 2024, GLP supported Professor Stephen Whittle and Dr Victoria McCloud to file a joint application to intervene in *For Women Scotland Limited v The Scottish Ministers* [2025] UKSC 16 (**FWS Judgment**). Following the FWS Judgment in April 2025, GLP established two trans fighting funds to fight the rollback in rights experienced by the trans community as a result of the judgment. At the time of writing, over 14,600 people have donated to supporting GLP to bring legal challenges to properly confine the impact of the FWS Judgment. In GLP's view, the FWS Judgment has been misinterpreted and relied upon unjustifiably as a means of attacking the trans community, including in the area of workplace toilet provision, which is the subject matter of the present application.
- 5.7 Following the FWS Judgment, GLP has invested considerable resources to ensure that trans voices are heard. Our work includes considering how, with GLP's support, people and organisations might mitigate some of the worst impacts of the Supreme Court's ruling on trans people's lives. Last month, we successfully challenged an application for a so-called persons unknown injunction by the landlord of the Equality and Human Rights Commission following a protest outside its offices by the group Trans Kids Deserve Better. Our challenge in *The Office Group Properties Limited v Persons Unknown* [2025] EWHC 1438 succeeded and the High Court held:
- 5.7.1 *"I allowed Good Law Project to intervene in this case. Good Law Project is a not-for-profit campaigning organisation which has been involved in various legal proceedings. I considered that they had a sufficient interest in the issues arising given that they are a non-profit organisation which has campaigned and litigated in the trans-rights space and for the rights of protesters. Further, this was a case in which the Defendants would not be represented and I considered that it would be of real assistance to the Court to hear the types of arguments that the Defendants would have made had they been present. This would meet the procedural fairness requirements for Persons Unknown, including newcomer, injunction applications identified by the Supreme Court in *Wolverhampton City Council v London Gypsies & Travellers* [2023] UKSC 47. At [226], it was stated that reasonable steps should be taken to draw the application to the attention of persons I s likely to be affected by the injunction or with some other genuine and proper interest in the application so as to allow those persons 'or those representing them or their interests' to make focused submissions with respect to the application."*
- 5.8 GLP is both willing and able to litigate in this space, as can be seen from its resilience and its support for some of the most significant cases seeking to defend trans rights. GLP is willing to assist the First Applicant.

6 THE APPLICATION IN OUTLINE

6.1 This application concerns the advice given by the ECNI to the First Applicant's employers that transgender women were not allowed to use the women's facilities, unless they held a Gender Recognition Certificate (GRC). I refer to Tabs 3 and 4 of the Bundle for the relevant correspondence.

6.2

6.3 I confirm that I have read the affidavit of the First Applicant, which sets out her factual account of the events in question. My understanding of the factual circumstances is based on her account as outlined in her affidavit, together with documentation provided.

6.4 It is apparent from the First Applicant's affidavit that the events described have had a profoundly negative impact on her wellbeing. She reports that being required to revert to using the men's toilets, following complaints about her use of the women's facilities, caused her significant distress, humiliation, and a sense of being unwelcome in her workplace. This situation led to her being unable to return to work from 4 April 2025, as the ongoing distress adversely affected her mental health.

6.5 Furthermore, the lack of alternative facilities and the employer's reliance on, what is understood to be, incorrect legal advice compounded the harm suffered by the First Applicant, leaving her without a practical or dignified solution and exacerbating her sense of exclusion and detriment. The cumulative effect of these events has been to cause her considerable personal distress and to prevent her from participating fully in her employment

6.6 GLP therefore believes that the ECNI has delivered incorrect advice to employers which has resulted in the humiliation of and detriment to the First Applicant.

7 ANONYMITY

7.1 Given the overwhelmingly negative attention that can surround transgender rights, together with genuine fears in respect of her safety, the First Applicant has requested the Court to grant an order removing her name from these proceedings. I believe it is prudent and warranted for such an order to be made to protect her and her Article 8 rights under the European Convention of Human Rights.

7.2 Adverse publicity from the release of her personal details in the context of these proceedings is also likely to cause prejudice to these proceedings.

8 GROUNDS OF CHALLENGE

8.1 The decision by the ECNI to provide advice to the First Applicant's employer which is incorrect is challenged by the Applicants on the bases set out in the Order 53 Statement and the Pre-Action Protocol Letter.

8.2 ECNI has written to A&L Goodbody Northern Ireland LLP to withdraw their advice to OS's employer and instead refers to their most recent publication "*The meanings of "sex", "men", "women" and "gender reassignment" in equality and allied legislation in Northern Ireland and interim information for employers, service providers and public authorities*". It is my view that this publication also fails adequately to reflect the existing law. Therefore, we are left with no other choice but to issue proceedings in order to protect our position.

9 **CONCLUSION**

- 9.1 In light of the foregoing and the matters to be advanced in written and oral argument, I respectfully ask this Court to grant the relief sought in the Order 53 Statement on the basis of the grounds pleaded therein.

SAVE AND EXCEPT where stated or otherwise appearing I depose to the foregoing from facts within my own personal knowledge, information and belief.

Sworn at
In the County of the City of
This day of July 2025
Before me a Solicitor empowered to
Administer Oaths for the
Court of Judicature for England and Wales

Deponent

Solicitor

This Affidavit is filed on behalf of the Applicant by:

A&L Goodbody Northern Ireland LLP, [REDACTED]

2025 No:

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY GOOD LAW PROJECT LIMITED AND ANOTHER

FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE EQUALITY COMMISSION FOR NORTHERN IRELAND

EXHIBIT 'JM1'

I hereby confirm that this is the exhibit referred to in the affidavit of Jolyon Maugham dated this day
of July 2025 and marked "JM1".

Deponent

Solicitor

2025 No:

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
KING'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY GOOD LAW PROJECT LIMITED
AND ANOTHER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
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INDEX TO EXHIBIT "JM1"

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4.		11

Date | 7 July 2025
Our ref | [REDACTED]
Your ref | [REDACTED]

By First Class Post and By Hand

Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

CONFIDENTIAL, SUBJECT TO AN ANONYMITY APPLICATION

Our Client: [REDACTED]
Proposed judicial review regarding advice provided by the Equality Commission for Northern Ireland to [REDACTED]
[REDACTED] employer, [REDACTED]

Dear Colleague

We act on behalf of the Applicant, [REDACTED] in relation to the above proposed proceedings and write this Pre-Action Protocol letter in accordance with the Judicial Review Practice Direction No. 03/2018.

Please note, details contained within this Pre-Action Protocol Letter should remain confidential, pending an anonymity application.

- 1 **To:**
 - 1.1 The Equality Commission for Northern Ireland (ECNI), Equality House, 7-9 Shaftesbury Square, Belfast, BT2 7DP.
- 2 **The Applicants:**
 - 2.1 [REDACTED]
 - 2.2 Good Law Project Limited, 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG, as interested party.
- 3 **Reference Details:**
 - 3.1 Applicant's Solicitor's Reference: [REDACTED]
 - 3.2 Proposed Respondent's Reference: Unknown
- 4 **The Details of the Matter being challenged:**

A&L Goodbody

- 4.1 This letter is intended to set out the factual and legal basis upon which our client intends to challenge the advice and guidance issued by ECNI to our client's employer regarding the use of toilet facilities by transgender persons who do not hold a Gender Recognition Certificate (GRC).
- 4.2 Our client seeks to resolve this matter without recourse to litigation if possible. However, in the absence of a satisfactory response, our client will have no alternative but to issue proceedings for judicial review in the High Court of Justice in Northern Ireland.

Background

- 4.3 [REDACTED]
- 4.4 Our client has been directly affected by the ECNI's advice given to her employer, as her employer has relied upon it to restrict her access to female toilet facilities, causing her distress, humiliation and detriment.
- 4.5 The ECNI's advice has been communicated to our client's employer verbally on 14 April 2025. Our client has sought clarification and reconsideration from the ECNI, but ECNI has maintained its position, via email correspondence to our client on 30 April 2025.
- 4.6 The impugned act is the advice and guidance to employers issued and/or maintained by the ECNI, including but not limited to, verbal advice and email correspondence to the effect that:
- (a) Transgender persons who do not possess a GRC must be excluded from using toilet facilities corresponding to their gender identity,
 - (b) Where an employer provides separate male and female toilet facilities, these must exclude trans women from the female toilets save unless they hold a GRC. Other trans women must be excluded from using facilities corresponding to their acquired gender, and
 - (c) The ECNI is reconsidering whether trans women holding a GRC should also be excluded from female toilet facilities in light of the recent United Kingdom (UK) Supreme Court case of *For Women Scotland Limited v The Scottish Ministers* [2025] UKSC 16 (FWS Judgment).
- 4.7 This advice is exemplified below from ECNI officers.
- 4.7.1 On 14 April 2025, ECNI provided [REDACTED] (Our Client's Employers) with incorrect advice that "a trans woman was not legally allowed to use a female toilet until a Gender Recognition Certificate was issued".
- 4.7.2 On 30 April 2025, [REDACTED] conveyed the following via email to [REDACTED] that ECNI's policy, even prior to the FWS Judgment was that:
- "An employer must provide toilets and facilities separately for the use of women and for which men, including a trans woman without gender recognition certificates (GRCs) must be excluded."*
- 4.8 It appears that the ECNI is relying upon Regulation 20 of the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993 (the **Workplace Regulations**) to advise that employers must provide separate facilities for "men" and "women", save where a unisex facility is provided for use by a single person. Regulation 20(1) imposes a requirement upon employers that "[s]uitable and sufficient sanitary conveniences shall be provided at readily accessible places". Regulation 20(2)(c) provides that sanitary conveniences shall

not be suitable unless "separate rooms containing conveniences are provided for men and women, except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside".

The Unlawful Act

- 4.9 The position adopted by the ECNI is incorrect and does not align with the applicable legislation. Northern Ireland legislation, prior to the FWS Judgment, does not impose a requirement for a GRC for a transgender woman to access and use separate facilities designated for women. The legal framework in Northern Ireland, consistent with both domestic and EU law, recognises the right of a transgender person to live in accordance with their gender identity. As such, a GRC is not a prerequisite for our client to access the toilet facilities in her workplace which correspond to her gender identity.
- 4.10 Additionally, the FWS Judgment, does not establish or determine the meaning of the terms "men" and "women" in the relevant legislation in Northern Ireland. This distinction between law in Great Britain and Northern Ireland has been appropriately acknowledged by the ECNI in your most recent publication "*The meanings of "sex", "men", "women" and "gender reassignment" in equality and allied legislation in Northern Ireland and interim information for employers, service providers and public authorities*". In this publication, the ECNI expressly recognises the complexity of this area of law and confirms your intention to seek a declaratory ruling from the High Court of Northern Ireland to clarify the matter. On any view, the FWS Judgment does not purport to determine the meaning of "men" and "women" in the Workplace Regulations.
- 4.11 Therefore, it is extremely concerning that the ECNI, given the complexity and unsettled position in Northern Ireland, has provided such prejudicial advice to our client's employer. Our client's employer has relied upon this advice, to the detriment of our client.
- 4.12 In this context, it is important to emphasise that the Workplace Regulations give effect to the EU Workplace Health and Safety Directive (the Directive) and, as such, must be interpreted consistently with the requirements and principles of EU law. Any alternative interpretation that deviates from this position and the intention of the Directive, is incompatible with the UK and Northern Ireland's obligations under retained EU legislation, including under Article 2 of the Windsor Framework.
- 4.13 EU legislation requires the recognition of an individual's acquired gender, and such recognition is not contingent upon the individual having obtained a GRC. This recognition falls within the scope of the Article 7 of the EU Charter of Fundamental Rights (CFR) and Article 8 of the European Convention of Human Rights (ECHR) right to respect for private life.
- 4.14 The meaning of the term "women" within the scope of the Directive should be interpreted to include all individuals who identify as being of the female gender. This interpretation is necessary to protect the private life of transgender women, in particular when it comes to the provision and use of toilet facilities which falls squarely within the private sphere. Further, it is discriminatory on grounds of gender reassignment to require transgender women who have not acquired a GRC to use what are for them manifestly unsuitable (male) toilet facilities.
- 4.15 In Northern Ireland, transgender people are legally protected against discrimination in employment, goods facilities, services and premises by the Sex Discrimination (Northern Ireland) Order 1976 (as amended) (the 1976 Order). This prohibits discrimination based on gender reassignment or against an individual because they are planning to undergo, are undergoing or have undergone gender reassignment.
- 4.16 Transgender staff must be treated with fairness and dignity and afforded the rights to which they are entitled under law, free from any form of harassment or inappropriate behaviour. Transgender staff should be free to

use the restrooms and facilities belonging to the gender with which they identify, and certainly from the point at which the individual begins to present permanently in the gender with which they identify.

- 4.17 ECNI has a duty to promote equality of opportunity between *"men and women generally"* and *"for persons who intend to undergo, are undergoing or have undergone gender reassignment"*. It is extremely concerning that, notwithstanding these responsibilities, ECNI has now advised [REDACTED] employers that she must be excluded from women's toilet facilities on the basis that she does not have a GRC.

5 The Parties

5.1 [REDACTED]

- 5.2 Good Law Project Limited, 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG, as interested party. Good Law Project is a non-profit campaign organisation with a mission to achieve change through the law.

- 5.3 The Equality Commission for Northern Ireland, Equality House, 7-9 Shaftesbury Square, Belfast, BT2 7DP, being an independent statutory body established with the primary function of promoting equality of opportunity and challenging discrimination in Northern Ireland.

6 Notice Party

- 6.1 In the event that this matter proceeds to judicial review, it may become apparent that the Executive Office for Northern Ireland, SD03 Stormont Castle, Stormont Estate, Belfast, BT4 3TT may be a Notice Party.

7 Decision under challenge

- 7.1 The decision under challenge pertains to the advice provided and maintained to our client's employers, that transgender women who do not possess a GRC should be excluded from accessing toilets corresponding to the gender with which they identify. This is particularly oppressive for our client given that no separate, universal facilities could at the time be provided by our client's employers, preventing her from returning to work.

8 Grounds of Challenge

- 8.1 The position adopted by the ECNI is legally incorrect and incompatible with Northern Ireland legislation and retained EU law as set out in detail at Section 4 above. If ECNI continue to maintain this position, our client will be left with no choice but to issue judicial review proceedings on the grounds of illegality.

9 The details of the action that the Respondent is expected to take

- 9.1 Given the clear legal inconsistencies, we respectfully request that the ECNI's position is reviewed and withdrawn as a matter of urgency, pending clarification from the High Court of Northern Ireland. We trust that the ECNI will take the necessary steps to ensure compliance with domestic and EU legislation, and promptly provide a revised position to our client's employers in accordance with the correct legal interpretation.

10 The details of the legal advisers dealing with this claim

11 The details of information sought

N/A

12 The details of any documents that are considered relevant and necessary

12.1 Confirmation of a revised position in accordance with correct legal interpretations, pending clarifications from the High Court.

13 The address for reply and service of court documents,

[REDACTED]

14 Proposed reply date

14.1 4pm on Thursday 10 July 2025. We look forward to hearing from you as a matter of urgency. In the event that we do not receive a response from you by 4pm on Thursday 10 July 2025, our client will have no choice but to issue judicial review proceedings to protect her position.

Yours sincerely

[REDACTED]

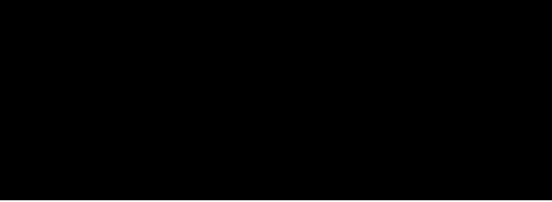
A&L Goodbody Northern Ireland LLP

Copy to:

The Executive Office
SD03 Stormont Castle
Stormont Estate
Belfast
BT4 3TT

[REDACTED]

10 July 2025



Your Client:



Dear



I refer to your Pre-Action Protocol letter served on the Equality Commission on 7 July 2025 and send this response in accordance with the Judicial Review Practice Direction No 03/2018.

The Applicants:



Good Law Project Limited, 3 East Point, High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG as interested party.

From:

Equality Commission for Northern Ireland, Equality House, 7 – 9 Shaftesbury Square, Belfast, BT2 7DP

Reference Details:

Applicant's Solicitor's Reference:



Respondent's Solicitor's Reference:



The details of the matter being challenged:

The advice and guidance issued by ECNI to [REDACTED] employer regarding the use of toilet facilities by transgender persons who do not hold a Gender Recognition Certificate (GRC).

Response to the proposed application:

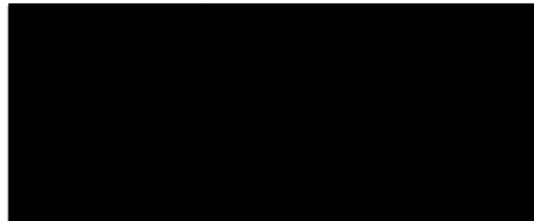
After due consideration and having regard to the Paper published by the Commission in June, setting out how it proposes to address legal uncertainties regarding the rights of transgender persons in Northern Ireland, including its proposed application to the Northern Ireland High Court for clarification of the law in this regard, the Commission has written to the applicant's employer withdrawing the advice given in April 2025. A copy of that correspondence is attached to this response. The Commission believes that this satisfies the applicant's request at para 9.1 of the applicant's PAP letter.

Details of other interested parties:

N/A

Address for further correspondence and service of court documents:

Yours faithfully



① Direct line:

✉ Email:



Copy to:
The Executive Office
SD03 Stormont Castle
Stormont Estate
Belfast
BT4 3TT

From: [REDACTED]
Sent: 10 July 2025 11:38
To: [REDACTED]
Subject: FW: Advice on trans women's rights

Dear [REDACTED]

I am forwarding you the email below as I received an automated response from [REDACTED] email address advising that he is on leave until 29 July and in his absence to contact you.

Yours faithfully

[REDACTED]

From: [REDACTED]
Sent: 10 July 2025 11:29
To: [REDACTED]
Subject: Advice on trans women's rights

Dear [REDACTED]

I refer to advice provided to you by the Commission in April in relation to a trans woman's legal rights to access female toilets.

The Commission has reviewed its advice generally following the Supreme Court judgment in the 'For Women Scotland – v – The Scottish Ministers' case and has published a paper.

Given the publication of this paper and the Commission's intention to apply to the High Court for a declaration as to the correct legal approach to take on the various legal uncertainties, the Commission withdraws the advice it gave you in April and draws your attention to the section in the paper on single sex spaces at Annex 2.

Regards

Yours faithfully

[REDACTED]

Direct line:
: Email:

[REDACTED]

Equality Commission
14/04/25

Spoke to [REDACTED]

Toilet use is not a day one right. He mentioned a case in Jaguar around 8 years ago. He remembers that the outcome was as above.

He will call me around Wednesday after some research.

H+S requires bathroom facilities

- Required separate
- Under law, trans person still "male" until GRC issued
 - Changed with SC ruling

Advice is trans man > woman not allowed to use female facilities

Judgement yesterday relates to Equality Act which is not in NI, but legally unlikely not to be affected

Trans still has rights against discrimination

[REDACTED] can't use female toilets at present, and potentially can NEVER use them, post SC ruling.

ECNI got a legal position

- Trans woman cannot use a women's until GRC.
- Further logic - what grounds to force use of toilet
- May not agree as perceived as not male
 - Perception is not "legally" upheld, so still "male"

[REDACTED]
apply for my GRC.

I apologise if this comes across as argumentative, I just don't understand where this requirement for a GRC is coming from when it appears to go against guidance from ECNI literature and other legitimate sources.

I understand you're busy with the Supreme Court ruling, but would it be possible to get back to me today as I would like to move forward with conciliation and have all my information in order.

Kind Regards,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Wednesday, April 30, 2025 8:29 AM
To: [REDACTED]
Subject: [REDACTED]

Dear [REDACTED]

I refer to your correspondence with [REDACTED] and her email to you advising that she had passed your query to me. I was on leave last week and was not in a position to respond until today.

As you are aware there has been a recent Supreme Court judgement handed down in the 'For Women Scotland' case which the Commission is considering and we are currently reviewing our advice. Prior to that judgement our advice to employers was that they must provide and maintain separate toilet and changing room facilities for their male and female employees, except where a suitable, sufficient, and secure facility can be provided that is for use by a single person. That exception apart, this meant that an employer must provide toilets and facilities separately for the use of women and for which men, including trans women without gender recognition certificates (GRCs) must be excluded. As the law then stood, it would not have been open for an employer to exclude from those separate female facilities a trans woman whose acquired gender is affirmed by a GRC (i.e. a trans woman who is now recognised in law as being a man). In all cases, the toilets and changing facilities provided to all employees must be of a similar standard in terms of cleanliness, accessibility, security, and privacy.

When providing advice to employers on their policies regarding the use of their facilities, including toilets, washing and changing facilities, the Commission advises that they should aim to protect all employees from unlawful discrimination, and to do this by ensuring that privacy and propriety are at the forefront of consideration, and to look for practical solutions that add choices rather than remove them. It is recognised that this is likely to be easier for larger employers. As with other workplace policies, employers are likely to be assisted in meeting their obligations by listening carefully to their employees.

If you believe that you may have been unlawfully discriminated against and wish to apply to the Commission for assistance, please contact [REDACTED] who will send you an application for assistance form.