IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM [2026] EWHC 279 (Admin)
B E T W E E N:

THE KING
on the application of
(1) BOT
(2) BNW
(3) BBS

Claimants/Appellants

- and -

COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Defendant/Respondent

(1) HEALTH AND SAFETY EXECUTIVE
(2) SECRETARY OF STATE FOR WORK AND PENSIONS
(3) MINISTER FOR WOMEN AND EQUALITIES
(4) WELSH MINISTERS
(5) SCOTTISH MINISTERS

Interested Parties

GROUNDS OF APPEAL

Ground 1: The Court erred in finding that the Guidance was accurate and contained no material omissions, when this was unsupported by its own findings as to the law

Ground 1A: **The Court erred in finding that Paragraph [3a] was Category (ii) lawful**

1.1. First, the Guidance stated in absolute terms that trans people should not be permitted to use the toilets designated for their lived gender, because this would mean they are no longer single-sex facilities and must be open to all users of the opposite sex. The Court held that this was based on the "legal premise" that the provision of men's and women's toilets on a trans-inclusive basis would give rise to direct sex discrimination (J/57). The Court found that this premise would sometimes be wrong (J/61), and yet held the unequivocal statement in the Guidance to be accurate and contain no material omissions (J/76-77).

1.2. Secondly, the Court erred in finding that the "legal premise" of paragraph [3a] would ever be correct. It would always be wrong in such a case because the treatment would not be "because of" sex, applying the two limbs in ***R (Coll) v SSJ*** [2017] 1 WLR 2093 at [28]-[30] per Lady Hale (Cf. J/58).

1.3. Thirdly, the Court erred in declining to consider separately whether paragraph [3a] would in at least some circumstances be wrong due to the application of s.158 Equality Act 2010 (J/62).

Ground 1B: The Court erred in finding that the Guidance was Category (ii) lawful, despite its omission of any warning about the risks of gender reassignment discrimination

1.4. The Court acknowledged that duty-bearers faced risk of committing gender reassignment discrimination in operating toilets on a "biological sex" basis (J/71). Yet it found no material omission in the Guidance, despite it failing to include any express warning to duty-bearers of this obviously material risk (J/88).

Ground 2: **The Court failed to construe the Guidance in accordance with its natural and ordinary meaning**

2. First, properly construed, for the reasons set out above under Ground 1A, the natural and ordinary meaning of the mandatory statement in **[3a]** was that, where men's and women's toilets are provided, trans people should <u>always</u> be excluded from the toilets of their lived gender.

3. Secondly, the natural and ordinary meaning of the Guidance, read as a whole, is that an employer or service-provider can require a trans person to use the facilities designated for their "biological sex" (cf. J/70).

4. Thirdly, **[1]** and **[3e]** of the Guidance, as originally published, stated in mandatory terms that it is "compulsory" to provide sufficient single-sex toilets in workplaces, when this is not the case (cf. J/76).

Ground 3: The Court misconstrued the 1992 Regs

5. Properly construed, the duty on employers to provide separate facilities "*for men and women*" under reg.20 is consistent with provision on a trans-inclusive basis, and does not mandate strict segregation by "biological sex".

5.1. First, because reg.20 is a duty relating to provision of facilities. It is not a duty regarding management of access (cf. J/35-37).

5.2. Secondly, alternatively, if reg.20 does impose a duty to manage individual access to toilets, the references to "men" and "women" should be interpreted by reference to certificated sex pursuant to s.9(1) GRA 2004.

5.3. Thirdly, none of these submissions are undermined by the matters referred to in J/45.

5.4. Fourthly, in any event, legislation must be read compatibly with rights under the ECHR: s.3 HRA 1998. For the reasons set out under Ground 4, the exclusion of trans people from using toilets of their lived gender would be incompatible with their rights under Article 8.

Ground 4: **The Court erred in its approach to Article 8 of the ECHR**

6. First, the Court failed to ask whether the legislation complies with the UK's positive obligations under Article 8 and strikes a fair balance between the competing interests of the individuals concerned and the community as a whole (J/100).

7. Secondly, the Court erred in concluding that any interference in the present scenario would be "less significant" than those which had been considered by the ECtHR previously (J/98-99).

8. Thirdly, the Court failed to recognise that there is a narrow margin of appreciation in this context (J/96-100).

9. Fourthly, the Court erred in concluding that any interference would be "capable of being justified", that "justification is possible" and "on many scenarios highly likely to be present": J/100. In fact, the Minister had not advanced any case for justification at all, and the Court did not provide any explanation for this conclusion.

Ground 5: **The Court erred in failing to identify a breach of the Respondent's specific mandatory duties under ss. 8 and 9 of the Equality Act 2006 (the "EA 2006")**

10. The Court erred in treating these duties as merely general or aspirational (J/82).

11. Further, the Court failed to address the argument that the EHRC did not take account of trans people's Articles 8 and 14 ECHR rights when publishing the Guidance, contrary to the express duty to do so under s.9(4) of the EA 2006.

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