

2025 No. 058765/01
2025 No. 101415/01
2026 No. 5776/01

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

IN THE MATTER OF THE APPLICATIONS FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW

BY:

EQUALITY COMMISSION FOR NORTHERN IRELAND

And in the matter of the application of the judgment of the Supreme Court in *For Women Scotland Ltd v The Scottish Ministers* in Northern Ireland

AND

GOOD LAW PROJECT LIMITED

AND

[ANONYMOUS]

v.

EQUALITY COMMISSION FOR NORTHERN IRELAND

AND

WOMEN'S RIGHTS NETWORK LIMITED

v.

EQUALITY COMMISSION FOR NORTHERN IRELAND

And in the matter of the Equality Commission for Northern Ireland's Sex Equality
Guidance

ECNI NOTE FOR CASE MANAGEMENT HEARING

10.00am, 27th January 2026

1. On the 7th October 2025, the Court considered the case management of the application for leave to apply for judicial review of the Equality Commission for Northern Ireland ('ECNI', 'the Commission') by the Good Law Project and another applicant whose request for anonymity was granted by the Court ('the Good Law Project case'). Since then, the ECNI has separately applied for judicial review on a closely related, but broader, set of issues ('the ECNI case'), and Women's Rights Network Ltd is seeking leave to apply for judicial review of ECNI.
2. The case management of all three applications will be considered together by the Court on 27th January 2026. This Note seeks to assist the Court by setting out relevant developments since 7th October and suggests what the Commission submits is an appropriate litigation timetable.

ECNI application

3. In the Note for the Court submitted on 6th October 2025 by the ECNI, prior to the case management hearing of the Good Law Project case, ECNI had indicated that it was in the process of considering whether to apply to the Court separately for leave to apply for judicial review, seeking a Declaration clarifying the application in Northern Ireland of the judgment of the Supreme Court in *For Women Scotland v The Scottish Ministers* ('FWS').
4. ECNI had by that time published a consultative Legal Paper in June 2025 which outlined legal uncertainties it has identified concerning the application of *FWS* in Northern Ireland. It also provided a Roadmap by which it would seek to maximise legal clarity and enable the drafting of workable and accurate guidance for employers, service providers and public authorities. ECNI remains committed to providing such guidance.
5. A 12-week consultation was held (ending in September 2025) to ensure that if the Commission was to proceed to apply to the High Court for a Declaration, that it had identified the legal uncertainties so that questions to the Court would be appropriately framed to enable authoritative guidance to be provided. During the consultation period the Commission offered meetings with a range of stakeholders including government departments, other public authorities, private sector representative employer organisations and trade unions.

6. Pre-action protocol ('PAP') letters were also issued at that time to organisations that the Commission considered may have a direct interest in resolving the legal uncertainties identified. As part of this process, several additional organisations identified themselves as having an interest in this issue and requested a pre-action protocol letter from the Commission. Some parties indicated an intention to intervene in future proceedings. This process was completed early in October 2025.
7. Having considered the responses to the consultative Legal Paper and to the PAP letters, ECNI applied to the Court on 3rd December 2025 ('the ECNI case'), asking the Court to clarify how the Supreme Court's judgment in *FWS* should be applied in Northern Ireland, given its different equality law framework, and the implications of Article 2 WF for how that equality law should be interpreted. The Commission is seeking a Declaration to clarify how the terms 'sex', 'men' and 'women' should be interpreted under Northern Ireland's equality laws.
8. Following the ECNI's application, ECNI's attention was drawn by the Police Service of Northern Ireland to the omission of a reference to its response letter in its Order 53 Statement, and a revised Order 53 Statement remedying that oversight (together with an Affidavit explaining the circumstances) was lodged with the Court on 18th December 2025.

Women's Rights Network Ltd application

9. On the 23rd January 2026, the Commission was notified that the Women's Rights Network Limited had that day lodged an application for leave to seek judicial review on the ground of, in effect, the ECNI's alleged failure to publish guidance on the meaning of 'sex', etc in Northern Ireland equality legislation, and to withdraw guidance published prior to the *FWS* judgment on the scope of such legislation ('the WRN case'). WRN relied in part on Article 2 WF. The Court will note that the way in which the WRN case is formulated is in almost all respects precisely the opposite of the way in which the Good Law Project case is formulated.
10. ECNI was subsequently advised by the Judicial Review Office that the Court directed at the Applicant's request that this matter be listed for review on Tuesday 27th January 2026.

Issues before the Court at this review hearing

11. It is noteworthy that the primary purpose of the cases brought by Good Law Project and the Women's Rights Network, which as the ECNI understands it, is clarification of the implications of the *FWS* judgment in Northern Ireland in light of Article 2 WF, could equally well be met, in the Commission's submission, by the Good Law Project and WRN seeking to intervene in the Commission's case, rather than seeking judicial review of the Commission.
12. It is not at all clear to the Commission how the stated primary purpose is furthered by litigation against the Commission, and extra costs will be incurred, and the Court's time wasted, by litigating satellite issues that appear to be included as a makeweight. Both the Good Law Project and WRN cases are grounded on an argument that the Commission (in opposite ways) is acting or failing to act in ways that are to the disadvantage of the interests that these bodies represent, whereas the reality is that the purpose of the Commission's case is to attempt to secure the legal clarification that both organisations seek.
13. However, the Commission does not seek any order from the Court disposing of any of these cases on these or other grounds at this time; these are issues for this leave hearing. The Court is asked, however, to address two procedural aspects of the three cases.
14. **First**, the Court will wish to consider when the ECNI's case will be considered, and WRN has applied for its case to be expedited and submits that the case be heard '*alongside or instead of*' the ECNI's case. At the previous case management hearing on 7th October 2025, the Court agreed to an application by the ECNI (supported by the Good Law Project) to hold back the Good Law Project case until after the Supreme Court had decided the *Dillon* case, given that one of the central issues in the Good Law Project case involved the application of Article 2 of the Windsor Framework ('WF'), the scope of which the Supreme Court is considering in *Dillon*.
15. ECNI now submits that both the ECNI's case and the WRN's leave application should be heard together with the Good Law Project case, and that all three should be held back until the *Dillon* case is decided; WRN's application for expedition be dismissed. ECNI understands that the Supreme Court has not yet indicated when the handing down of its judgment will take place.
16. The **second** issue which ECNI respectfully submits that the Court may wish to consider is WRN's application in its Order 53 Statement (without any supporting argument, it should be noted) for a Protective Costs Order. It proposes that '*the Applicant's costs recoverable against [ECNI] be no more than*

£60,000 plus VAT, and that [ECNI's] and all other Parties' costs recoverable against the Applicant be in total £1,000 plus VAT.'

17. ECNI will strongly resist this application and urges the Court not to consider any such application at this stage without appropriate written submissions supporting such an application, to which the Commission would wish to respond. The guiding principles for a Protective Costs Order as set out in *R (Corner House Research) v Secretary of State for Trade & Industry* [2005] EWCA Civ 192 and refined by *McHugh's application* [2007] NICA 26 are applicable in this case. Full and detailed submissions will be required.

Christopher McCrudden
Blackstone Chambers, London EC4
26th January 2026