



GMcG/3

2025 No. 101415/01

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**KING'S BENCH DIVISION (JUDICIAL REVIEW)**

**In the Matter of an Application for Leave to Apply for**

**Judicial Review by:**

**EQUALITY COMMISSION FOR NORTHERN IRELAND**

**(the Applicant)**

**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 and another (1)**

**Women's Rights Network (2)**

**Secretary of State for Northern Ireland (3)**

**Police Service of Northern Ireland (4)**

**Department of Education (5)**

**(the Proposed Notice Parties)**

**-and-**

**Sex Matters (1)**

**The Rainbow Project (2)**

**Northern Ireland Commissioner for Children and Young People (3)**

**██████████ (4)**

**The Northern Ireland Prison Service (5)**

**(the Intervenors)**

**-and-**

**Children's Law Centre (1)**

**For Women Scotland (2)**

**Countess Advocacy Company Limited (3)**

**████ (4)**

**(the Proposed Intervenors)**

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**AFFIDAVIT OF GERALDINE MCGAHEY, ON BEHALF OF THE EQUALITY  
COMMISSION FOR NORTHERN IRELAND**

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I, Geraldine McGahey, Chief Commissioner of the Equality Commission for Northern Ireland, aged 18 years and upwards, make oath and say as follows:

1. This is the third affidavit I have made in this application and it should be read together with my two earlier affidavits. It is provided to inform the Court of the Commission's review of its approach to this application following the decision handed down by the United Kingdom Supreme Court *In the matter of an application by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus for Judicial Review* [2026] UKSC 15 ('the *Dillon* judgment') on 7 May 2026, as well as relevant CJEU judgments that have been handed down since the Commission's original Order 53 Statement was issued.

*Dillon Judgment*

2. The Commission has considered the implications of the *Dillon* judgment in general and in terms of its implications for this application specifically. On the one hand, the Commission considers that the Supreme Court has concluded that Article 2(1) WF is capable of having 'direct effect', i.e. it may be enforced in domestic law, in the appropriate circumstances. On the other hand, the Commission considers that *Dillon* has not provided the hoped for clarity in other significant respects that are both relevant to the Commission's application and also have much wider implications for equality law in Northern Ireland that go beyond the Commission's application in this case, in particular the application of the Annex 1 EU equality Directives. In other words, in the Commission's view, the *Dillon* judgment does not preclude an argument that EU law is relevant to what 'sex' etc means in Northern Ireland, but it does create new uncertainties as to when European law will apply.

*ECNI's reconsideration of its application in light of the judgment in Dillon*

3. The Commission has taken account of the uncertainties concerning the implications of the *Dillon* judgment in respect of the operation of the Annex 1 Directives. Following this reconsideration, the Commission has reaffirmed its

decision to pursue its application in this case, albeit with a refined approach as set out in the revised Order 53 Statement.

4. The Commission's decision to continue with this application remains, in the Commission's view, firmly within its statutory remit under equality law and the Northern Ireland Act 1998. It reflects the Commission's statutory functions to promote equality of opportunity and to work for the elimination of unlawful discrimination, and to monitor, advise and report on the UK Government's commitment to ensure that certain rights, safeguards and equality of opportunity protections in Northern Ireland are not diminished after the United Kingdom left the EU.

#### *Specific questions regarding Annex 1 Directives*

5. It is the Commission's view that the *Dillon* judgment gives rise to three legal questions pertaining to the Annex 1 Directives which are pertinent to the Commission's application. These are set out at paragraphs 5.22 – 5.32 of the further amended Order 53 Statement and now form part of the legal issues before the Court. These are:

*(1) What is the relationship between the bullet point rights in paragraph 1 of the RSEO chapter and the Annex 1 Directives?*

*(2) If the Annex 1 Directives must fall within the ambit of one of the bullet point rights, what is their scope and in particular do the bullet point rights extend beyond biological sex? and*

*(3) If the Annex 1 Directives must fall within the ambit of one of the bullet point rights, can they only have direct effect if they are concerned with ending sectarian conflict?*

#### *Sequencing*

6. The Commission has considered, in light of this complexity, what to recommend to the Court as to the appropriate way forward regarding this application. We consider that the Court may find it appropriate to approach this application in a cascading manner such that the relevant legal issues are answered sequentially. As will be clear from what follows, the Commission considers that the Court's consideration of the implications of the *Dillon* judgment in this application will be dependent on the Court deciding in the first instance that it can issue an advisory declaration. The Commission considers that this is the most logical order for the legal issues to be determined, but also to ensure that judicial resources are expended as

efficiently as possible in order to minimise costs. We consider that the appropriate sequencing of decisions should be as follows:

- (i) Does the Court have jurisdiction to grant an advisory declaration, and if it does would it consider that it is arguable that the Court would exercise its discretion to grant such a declaration? If the answer is 'no' to either of these questions, then the further questions proposed below become otiose. If the answer to both these questions is 'yes', then the Commission proposes that the Court should consider whether the test for granting leave should be applied. This sequence would also be followed in determining the merits of the application if leave is granted.
- (ii) Does Article 2 WF, taken together with the Annex 1 Directives, apply to legal issues concerning the meaning of 'women' etc in Northern Ireland Equality Legislation in so far as it is underpinned by these directives and so must be interpreted in light of the CJEU's interpretation of these directives? If the answer is 'no' to (ii), then the analysis moves to (iv). If the answer is 'yes' to (ii), then Court must consider (iii):
- (iii) What is the effect of the CJEU's interpretation of the Annex 1 Directives on the meaning of 'women' etc in Northern Ireland Equality Legislation?
- (iv) In light of the answers to (ii) and (iii) (if it arises): What is the impact on the meaning of 'women' etc in the Relevant Allied Legislation? At this stage, the Court will be determining whether or not there is a presumption that 'women' etc means the same in this legislation as in the Northern Ireland Equality Legislation.

#### *Consideration of Alternative Courses of Action*

7. The Commission has also considered alternative courses of action that might be taken to resolving the issues at the heart of this application. As a result of these considerations, the Commission wrote to the Secretary of State for Northern Ireland on 12<sup>th</sup> June 2026 setting out that the Commission considers that it has a responsibility to explore other avenues by which legal clarification could be obtained without the costs to the Commission of taking a judicial review to achieve this clarification, particularly in a context where the Supreme Court may be asked to consider these issues.
8. The correspondence drew attention to the provisions of section 4 of the Judicial Committee Act 1833, which provides for His Majesty to seek advice from the Judicial Committee of the Privy Council ('JCPC') on '*any ... matters*' and setting

out that as the representative of the Crown in Northern Ireland, it would seem possible for the Secretary of State to seek the advice of the Privy Council regarding the matters currently before the High Court in the Commission's application and inquiring whether such a course of action has been considered. On 16<sup>th</sup> June 2026 the Secretary of State responded to advise that the Government does not intend to seek the view of the Privy Council.

9. This correspondence is exhibited with this affidavit. This has been done by adding the letters to and from the Secretary of State to the exhibits marked 'GMcG 1' at pages 348-350.

#### *Amended Order 53 Statement*

10. Developments since the amended Order 53 Statement was submitted to the Court in December 2025 have necessitated extensive revisions of that Statement and a further revised version is now submitted to accompany this affidavit.

11. I consider that it may be useful for me to identify, without being comprehensive, the main differences between the amended (December 2025 version) and the re-amended (June 2026) version of the Order 53 Statement submitted by the ECNI. These are as follows:

*Incorporation of the Dillon Judgment:* The most significant legal difference is how the two versions treat the *Dillon* case.

- 2025 Version: This version views *Dillon* as a pending case, noting that oral submissions took place in October 2025 and a judgment was expected later that year or in 2026.
- 2026 Version: This version discusses the final Supreme Court judgment in *Dillon* ([2026] UKSC 15) in detail. It provides a new, extensive analysis of the judgment's ratio decidendi regarding the direct effect of Article 2 of the Windsor Framework and identifies several legal issues stemming from that decision.

*Updated CJEU Jurisprudence:* The 2026 version includes finalized outcomes for European cases that were only preliminary or "forthcoming" in the 2025 version:

- *Commission v Hungary:* The 2025 version refers to the Advocate General's Opinion from June 2025. The 2026 version incorporates the final judgment delivered in April 2026, using it to analyse the role of the Charter of Fundamental Rights.

- *Shipova*: The 2025 version describes this as a 'forthcoming judgment'. The 2026 version cites the final judgment handed down on March 12, 2026.

*Parties and Intervenors*: The 2026 version reflects a much more advanced stage of the proceedings regarding participants:

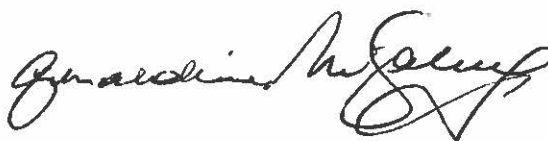
- *Parties*: The 2026 version explicitly lists Proposed Notice Parties (such as the Good Law Project and the PSNI) and Intervenors who have already been granted permission (such as Sex Matters and The Rainbow Project) directly in the Statement.
- *2025 Status*: The 2025 version had listed these organizations only as "Potential Intervenors" at the end of the document.

*New 'Sequencing' Section*: The 2026 version adds a new section (paragraph 5.106) titled 'Sequencing'. It proposes that the Court answer the legal questions in a 'cascading manner,' starting with the Court's jurisdiction to grant an advisory declaration before moving to the substantive impact of Article 2 of the Windsor Framework and CJEU interpretations, as set out above.

*Expanded Consideration of Advisory Declarations*: The 2026 version has an expanded discussion of the jurisdiction of the High Court to grant advisory Declarations.

*Legal Representation*: The responsible solicitor of the ECNI has changed from Eoin O'Neill in the 2025 version to Patricia Cosgrove in the 2026 version.

12. Save as otherwise appears I depose the foregoing from my own personal knowledge and belief.



SWORN at *Lewis Silkin (NS) LLP,*  
*LINEN HALL STREET,*  
 in the City of Belfast

this 30 June 2026

before me, a solicitor



empowered to administer oaths

This affidavit is filed on behalf of the Applicant by their Solicitor, Patricia Cosgrove, of the Equality Commission for Northern Ireland of Equality House, 7-9 Shaftesbury Square, Belfast, BT2 7DP.