2025 No. 101415/01
2025 No. 058765/01
2025 No. 005776/01

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

In the Matter of Application 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

In the Matter of Application for Leave to Apply for Judicial Review by:

GOOD LAW PROJECT LIMITED AND ANOTHER

AND

In the Matter of Application for Leave to Apply for Judicial Review by:

WOMEN'S RIGHTS NETWORK LIMITED

NOTE FOR COURT

Introduction

1. At the previous case review hearing, the Court stayed the application by the Equality Commission for Northern Ireland '(ECNI', 'the Commission')) for leave to apply for an advisory Declaration regarding the application of the judgment of the Supreme Court in *For Women Scotland Ltd v The Scottish Ministers* in Northern Ireland. Separate applications for leave to apply for judicial review against the Commission

have been made by the Good Law Project Limited and another, and by the Women's Rights Network and these were also stayed.

2. These applications were stayed by this Court pending the Supreme Court's judgment in the case of *In the matter of an application by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus for Judicial Review (the 'Dillon'* case), given its undoubted importance in addressing the scope of Article 2(1) of the Windsor Framework ('WF'), which in the Commission's submission is of importance to the Commission's application. When this Court stayed these applications, it indicated that it would consider how best to proceed, after the Supreme Court's judgment was handed down. The judgment of the Supreme Court was handed down on the 7 May 2026 ([2026] UKSC 15). A review hearing is now scheduled for 1 June 2026.

3. This brief Note is intended to (i) update the Court on the *Dillon* judgment, (ii) set out some of the implications of that judgment for the Commission's application, and (iii) set out how the Commission proposes that the Court should now proceed regarding the Commission's application, and the other applications before the Court.

The Commission's original application for leave

4. The Court will no doubt remember that, prior to the Supreme Court's decision in *Dillon*, ECNI sought an advisory declaration from the High Court regarding the legal meaning of 'sex' and related terms, particularly in light of the UK Supreme Court's judgment in *For Women Scotland Ltd v The Scottish Ministers* (*FWS*) [2025] UKSC 16 which considered the interpretation of the Equality Act 2010, which does not apply in Northern Ireland.

5. As a result, the Commission submitted that there is significant uncertainty regarding whether, and if so how far, Article 2(1) of the Windsor Framework (WF) might require the application of European Union law, and what the implications are, if that is the case. In time, the Commission wishes to issue high-level guidance on how

Northern Ireland equality law should be interpreted, and in order to do so its strategy has been to seek an advisory declaration from the High Court to clarify whether the use of the term 'sex' and associated terms like 'woman' and 'man' in Northern Ireland equality law refers only to biological sex or goes beyond that.

6. This approach was adopted by the Commission because European Union law, potentially applicable *via* Article 2(1) WF, creates significant uncertainty that complicates the production of Commission guidance. This is the case given that, arguably, the CJEU has taken a broader understanding of 'sex' than 'biological sex'.

7. The Commission adopted – in essence – a position of 'neutrality': there were legal arguments both *for* and *against* 'sex' etc meaning biological sex for legal purposes in Northern Ireland. The Commission accepted that *FWS* would apply in Northern Ireland unless European law applies and requires a different outcome from that in *FWS*.

8. The Commission wishes to produce guidance, in due course, which is as legally coherent and defensible as possible and so a decision was taken by the Commission to seek the Court's interpretation of the legal position in Northern Ireland, so as to avoid as far as possible the Commission embarking on the complex process of producing guidance when the legal position is so significantly uncertain.

9. Moreover, the Commission also sought guidance from the Court on the meaning of 'sex' etc in allied legislation which has touchpoints with equality legislation, for example health and safety legislation concerning the provision of toilets and changing facilities. This also was not addressed in *FWS* and is now causing significant litigation in Great Britain (see, Annex). (In a separate development, the Equality and Human Rights Commission, whose mandate applies only in Great Britain, has now produced a draft Code of Practice for services, public functions and

associations, updated to take *FWS* into account, and this is currently awaiting Parliamentary approval.[1])

10. ECNI indicated that it supported organisations that have relevant legal submissions on these issues to be given leave to intervene in this case.

The Dillon judgment

11. Following the judgment of the Supreme Court in *Dillon*, the Commission has considered the implications of the *Dillon* judgment. On the one hand, 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, *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 EU equality Directives listed in Annex 1 of the Windsor Framework (see further below). In other words, the *Dillon* judgment does not 'shut the door' on 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

12. Following this detailed consideration of the implications of the judgment of the Supreme Court in *Dillon* in general, the Commission has also reconsidered the implications of the *Dillon* judgment for its application in this case specifically. In particular, 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, which potentially impacts Northern Ireland equality law across a wide range of grounds. Following this reconsideration, the Commission has reaffirmed its

[1] Available at: https://www.gov.uk/government/publications/equality-act-2010-draft-code-of-practice-for-services-public-functions-and-associations-2026.

decision to pursue its application in this case, albeit with a refined approach as set out in paragraph 18 of this Note and to be further outlined in a revised Order 53 Statement.

13. 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.

14. The Commission submits that there is now no reason why the Court should not schedule a leave hearing in this case and urges the Court to do so. Although, as the Court will be well aware, there will be further appellate judicial consideration of the meaning of *Dillon* and the scope of Article 2(1) WF in the appeal to the Northern Ireland Court of Appeal from the High Court judgment in *Northern Ireland Human Rights Commission's Application and JR295's Application and In the matter of The Illegal Migration Act 2023 [2024] NIKB 35 and [2024] NIKB 44*, the Commission understands that this appeal will not address the legal uncertainties that confront the Court in this application (not least the application of the Annex 1 Directives), and the Commission submits that this application should not be further stayed pending the NICA's judgment in that case.

15. In the remainer of this Note, the Commission addresses several issues that the Court may wish to bear in mind.

Revised Order 53 Statement

16. The Commission proposes to issue a revised Order 53 Statement taking the *Dillon* judgment into account, and also to update it to take into account relevant CJEU

judgments that have been handed down since the Commission's original Order 53 Statement was drafted. The Commission proposes to issue a Revised Order 53 Statement before the end of this judicial term.

Issues to be determined at the leave hearing and their sequencing

17. At the previous case review hearing, there was some preliminary discussion of the issues that the Court would need to consider at a future leave hearing and how these issues might best be sequenced.

18. The Commission considers that the following issues will be before the Court for consideration at the leave hearing:

(i) Does the Court have the power to issue an advisory Declaration, in its discretion? If so, what are the circumstances in which the Court's discretion would be exercised to issue such a Declaration?

(ii) If, but only if, the Court does have the power to issue an advisory Declaration, and the conditions for the exercise of any discretion to do so are arguably satisfied in this case, is there an arguable case that Article 2(1) WF, taken together with the Annex 1 Directives, applies, such that the term 'sex', and related terms in Annex 1 Directives and domestic Northern Ireland equality legislation underpinned by these Directives must be interpreted in light of the interpretation of these Directives by the CJEU?

The Commission submits that answering this question will require the Court to consider how the *Dillon* judgment affects the scope and applicability of the Annex 1 Directives in at least three respects: (a) whether the Annex 1 Directives operate only '*within the ambit*' of the 'bullet point' rights in the first paragraph of the RSEO section of the Belfast-Good Friday Agreement; and (b) if so, whether the *'equality of opportunity'* bullet point right is to be read as limited to the *'sectarian conflict'*; and (c) if so, what limits does that place on the application of the Annex 1 Directives?

(iii) If, but only if, there is such an arguable case, is there an arguable case that the effect of Article 2(1) WF is that the jurisprudence of the CJEU regarding the Annex 1 Directives requires a different interpretation of 'sex' and related terms, to be applied to Northern Ireland equality law than that adopted by the Supreme Court in *FWS*, and if so in what circumstances?

(iv) If the Court is minded to grant leave to apply for judicial review, should the applications for judicial review against the Commission be struck out, on the basis that, to the extent that they go beyond the Commission's application, they do not present arguable cases against the Commission, they are not likely to succeed at the merits stage, and the applicants in those cases could fully participate as interveners?

19. The Commission's strong preference is that the various legal issues to be determined by the Court at the leave hearing should be considered in the order set out in the previous paragraph. The Commission submits that this is the logical order in which to consider these issues, but also in recognition of the need for judicial resources to be expended as efficiently as possible, and in order to minimise costs.

20. In short, the Commission proposes that the Court should address the issues before the Court in a cascading order with a positive answer to question (i) being a necessary condition to engaging with question (ii), and with question (ii) serving the same role in respect of question (iii), etc.

Timetable for next steps

21. Given that those involved will need to have adequate time to consider fully the implications of the judgment in *Dillon*, the Commission proposes that the Leave Hearing should be scheduled in November/December, subject to the Court's and Counsels' availability, with the number of days allocated to be determined, taking into account the number of likely interveners in the case.

22. If leave is granted for the Commission's application to proceed, a full merits hearing would likely occur early in 2027.

Commission's submissions in brief

23. In brief, the Commission submits:

- that the Supreme Court in *Dillon* has clarified that Article 2(1) WF is capable of being 'directly effective' and therefore the Commission's application based on Article 2(1) presents a justiciable issue;

- that the Supreme Court's judgment has implications for its Order 53 Statement, which the Commission proposes to amend in light of the *Dillon* judgment;

- that the Court should now proceed with the leave application, and set a date for an oral hearing in November or December 2026, subject to availability;

- that at the leave hearing in this case, the separate applications for leave in the judicial reviews of the Commission by the Good Law project and Women's Rights Network should also be considered.

29 May 2026

Christopher McCrudden
Blackstone Chambers, London

Dee Masters
Cloisters Chambers, London

CASE	BRIEF SUMMARY OF CASE	APPEAL STATUS

R. (on the application of Good Law Project Ltd) v Equality and Human Rights Commission [2026] EWHC 279 (Admin)
 	
(High Court, London)
 	
13 Feb 2026
	The Claimants, the Good Law Project Limited and three individuals challenged the legality of guidance contained in a document issued by the Equality and Human Rights Commission (EHRC) first published on its website on 25 April 2025. In particular, the Claimants challenged the guidance in respect of toilets/facilities in the workplace, and the EHRC's interpretation of the Workplace (Health, Safety and Welfare) Regulations 1992.
	
	The High Court in London held:
	
	• The dispute had not become academic, even though the guidance had (by then) been removed from the EHRC website (at ¶13).
	• Good Law Project did not have standing (at ¶16). The other Claimants did have standing.
	• All three grounds failed (at ¶103); EHRC guidance was held not to be unlawful.
	• On the Workplace (Health, Safety and Welfare) Regulations 1992:
	  ○ *"It is wrong to believe that either the EA 2010 or the 1992 Workplace Regulations provides a comprehensive code on when or in what form lavatories or other facilities must be provided or who may or must use them"* (at ¶26).
	  ○ *"Each set of statutory provisions considered in the Interim Update provides a floor for provision of facilities. But neither provides a ceiling. It is fanciful to believe that these laws seek to regulate every possibility that can arise, day-to-day, and in circumstances that are too numerous to anticipate*" (at ¶27).
	  ○ Sex under the 1992 regulations should be the same as under the EA 2010 as interpreted by ***FWS*** (at ¶45).
		Permission to appeal refused by the High Court.
		
		Permission to appeal lodged by the Claimants in the Court of Appeal on 16 March 2026 (Grounds here). Outcome of the application is awaited.
		
		On or around 14 April 2026, the EHRC sent revised guidance to the government following feedback received, as announced here.
		
		On 21 May 2026, the Minister for Women and Equalities laid the EHRC's updated code of practice for services, public functions and associations in Parliament. Parliament has 40 days from the laying date to review the code. More information is here.

Sex Matters v City of London Corp [2026] EWHC 149 (Admin) **(High Court, London)** 29 Jan 2026	The Claimant, Sex Matters, sought permission to bring judicial review proceedings in respect of the current admission arrangements at two of the open-air swimming ponds on Hampstead Heath (the "ladies' pond" and the "men's pond"). The High Court in London held: • The challenge brought by the Claimant was premature (at ¶34-40). The Defendant had not yet completed its consultation/review of the admission arrangements following the decision in ***FWS.*** • The Claimant did not have standing (at ¶55-65).	Lady Justice Elisabeth Laing granted Sex Matters' request for permission for judicial review, and the matter is now progressing in the High Court.
LS v NHS England **(Employment Tribunal, – England and Wales)** 13 May 2026	The Claimant said, amongst other complaints, that she had experienced discrimination. The discrimination claim challenged a policy of allowing transwomen to access female only facilities. It was said that this was indirectly discriminatory against biological women and Muslim women. The Claimant succeeded in her sex claim essentially because transwomen could have been accommodated in different facilities. The Workplace (Health, Safety and Welfare) Regulations 1992 were considered. The ET based its analysis on the JR of the EHRC (now under appeal). It therefore concluded that sex in the 1992 regulations was the same as the EA 2010 i.e. sex means biological sex (¶148 onwards).	No public information regarding an appeal.

Hutchinson v Darlington NHS **(Employment Tribunal – England and Wales)** 12 Jan 2026	Claims brought by numerous individuals. A key issue was whether the Trust operating a policy allowing a biological male with a female gender identity to use the female changing rooms was discriminatory which included considering the meaning of sex in relevant allied legislation. The Tribunal held, amongst other matters that 'men' and 'women' in the Workplace (Health, Safety and Welfare) Regulations 1992 meant biological sex even if the Supreme Court did not consider this in ***FWS*** (¶373), stating that "*We are satisfied that, in keeping with the need for a coherent and workable structure, to enable those who have to regulate their conduct and comply with statutory duties, the meaning given to 'men' and 'woman' in those Regulations must logically be the same as under the Equality Act 2010*".	No public information regarding an appeal.
Peggie v Fife Health Board **(Employment Tribunal - Scotland)** 8 Dec 2025	Claim brought by a biological woman, partly in respect of a biological male with a female gender identity using the female changing rooms at work. A different approach was taken to that in *Hutchinson*: • "*In our view the claimant's attempts to persuade us that the Regulations required a single sex space from which all biological males required to be excluded because the definitions in **FWS** should be read across to the 1992 Regulations went beyond an issue we are able to determine, as it is a matter arising only under the criminal law*" (at ¶858) • "*The 1992 Regulations do not have a definition of men or women**. FWS** does not determine the meaning of words in the 1992 Regulations*" (at ¶859)	Appeal to the EAT is reportedly being/has been lodged by the Claimant (see BBC news coverage here).

Kelly v Leonardo UK Ltd ET Case No.8001497/2024 **(Employment Tribunal – Scotland)** 24 Nov 2025	The Claimant argued that permitting transgender women to access female toilets violated the requirement for separate facilities for men and women under the 1992 Regulations, in light of ***FWS***. However, the tribunal held that: • Applying a biological interpretation to any duty to control toilet access is unworkable (at ¶225). • The Respondent had not fallen foul of the Workplace Regulations, even though it had operated a policy of permitting access to toilet facilities based upon asserted gender identity rather than biological sex or established gender identity or certified gender because there were sufficient single occupancy toilets (at ¶233-245).	The Sex Matters website reports that *"Kelly [is] intending to appeal".*