

Briefing for MPs Ahead of Judicial Review of the Equality and Human Rights Commission

Key Updates

- Following the [Supreme Court judgment in For Women Scotland](#) (FWS), the [Good Law Project](#) and three anonymous claimants brought a judicial review against the EHRC's **rushed** and now withdrawn '[interim update](#)'.
- Following a **rolled-up hearing in November 2025**, the High Court is **expected to hand down its judgment in the coming weeks**.
- The outcome of the judicial review is likely to have **far-reaching implications for the interpretation of the FWS judgment**, in particular for **trans people's continued ability to use facilities and services that align with their lived gender**. Any decision may be subject to further appeal.
- [Research](#) from [TransActual shows](#) the FWS judgment and EHRC interim update have already led to a surge in trans people being **challenged and expelled from gendered spaces**, being **publicly outed**, and **experiencing misgendering and harassment**.
- At present, there is a **complete lack of clarity for service providers** - demonstrated by **contradictory outcomes from [recent employment tribunals](#)** (the majority of which have found that trans-inclusion is lawful) and unanswered questions around **upholding privacy and legal protections for the [confidentiality of trans status](#)** in the Gender Recognition Act (GRA) if the Government approves a "[bathroom ban](#)" in the proposed Code of Practice.
- Regardless of the court's decision, **the government is legally bound to uphold trans people's human rights** under the European Convention on Human Rights and Human Rights Act. The **Equality Act and GRA must continue to operate as originally intended by parliament**, allowing service providers to be trans-inclusive unless there is a legitimate reason not to be.

Case Summary

- See the [recent update from Good Law Project](#) and [TransActual's briefing](#) from October 2025 for more detailed background on the FWS judgment and the EHRC interim update / draft Code of Practice.
- The Good Law Project's case challenges the EHRC's interim guidance on three grounds: that the guidance was **legally flawed**, that it was **not compatible with trans people's human rights**, and also that the **EHRC unlawfully acted in breach of its statutory duties** under the Equality Act 2006.

- The Minister for Women and Equalities also intervened in the case, making submissions in which she challenged the EHRC's sweeping '**trans-exclusive interpretation**' and appeared to advocate for a **case-by-case approach that allows for trans-inclusive policies**.
- For its part, the EHRC argued its update was **legally sound** and **never intended as formal guidance**. They also claimed that, as the text has since been removed from their website, the Good Law Project's claim is '**academic**', in spite of its well-evidenced immediate, material impact on the lives of many trans people.
- To date, the new Chair of the EHRC Mary Ann Stephenson, has not deviated from the legal reasoning of her predecessors, [continuing to advocate](#) for blanket exclusion.

Key Points for MPs

- The outcome of this Judicial Review could have **major implications** for the legality of the proposed EHRC Code of Practice, currently awaiting Ministerial approval.
- Following Good Law Project's challenge, the EHRC may be required to **significantly change its Code of Practice** to ensure that providers who wish to include trans people in facilities in line with their gender can legally do so and that **exclusion can only occur where there is a legitimate reason**. This would bring an end to impossible situations like that faced by [Girlguiding](#) and the [Women's Institute UK](#) in late 2025, where trans-exclusion seems to be 'the only choice'.
- Regardless of outcome, it is for the government to address the continued uncertainty around **how trans people's human rights can be upheld** if they are excluded from gendered spaces, and the major practical and political implications of **introducing a Trump-style bathroom ban** in the UK.
- Once the judgment is public, **be prepared to quickly receive information on the judgment and how it affects your constituents**. To ensure you stay up to date, please **get in touch with Good Law Project and TransActual**.

For more information

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