



Good Law Project
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Dear Karen,

Supreme Court Judgement For Women Scotland Ltd vs The Scottish Ministers

We write to you in your role as Chair of The Equalities, Human Rights and Civil Justice Committee in The Scottish Parliament, regarding the recent Supreme Court Judgment For Women Scotland Ltd vs The Scottish Ministers and the impact on the LGBTQIA+ community. In particular the Trans, Non-binary and Intersex community in Scotland and beyond.

Following the decision of the UK Supreme Court in April, the Equality and Human Rights Commission – the UK's National Human Rights Institution – has issued an interim update which encourages and in some cases mandates the exclusion of trans people from single-sex spaces and services, in violation of their human rights. This has been followed by draft guidance which seeks to make such an approach statutory. The EHRC has made clear that it is not seeking input on its legal approach, only on how this approach is best communicated.

Given the decision emanated from Scotland it seems prudent and sensible that the committee hear evidence from those affected by this decision - and the subsequent interpretation.

You will have noted that the current chair of the Equality and Human Rights Commission Baroness Kishwer Falkner recently appeared in front of the UK Parliament's Women & Equalities committee and was unable to answer very many of the questions or give clarity on their 'interim update'.

You will also have seen the letter that the Good Law Project created and gathered signatures for regarding the Scottish Parliament's decision to implement to the Chief Executive and Presiding Officer of the Scottish Parliament regarding the interim decision of the Corporate Body on the use of toilet facilities.

The draft guidance, if it were to become law, would impose an obligation on employers and service providers to implement a bathroom ban on trans people using toilet and changing facilities in line with their acquired sex, instead requiring in practice that they use only gender neutral facilities. Such gender neutral facilities are frequently unavailable, and mandating their usage may require trans people to out themselves. The guidance would also prohibit associations for women and lesbians operating on a basis which would allow trans women to participate, even if the association desires to do so. This would also be true for men's organisations wanting to include trans men.

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This draft guidance is being consulted on in the wider context following For Women Scotland, in which government ministers and public bodies have made comments about trans people's rights. The UK Minister for Women and Equalities has stated that trans people are required to use the toilets associated with their sex as recorded at birth, even where their change in sex is recognised by a Gender Recognition Certificate. The National Police Chiefs' Council have announced that male officers should now conduct intimate searches of trans women.

In *Christine Goodwin v UK*, the European Court of Human Rights held that refusing to legally recognise the lived sex on trans people – and placing them into an 'intermediate zone' where they are not quite one sex or the other – was a violation of their right to respect for private life under Article 8 of the Convention. This protection was reaffirmed by the Court in the very recent decision of *T.H.* It is a core principle of the Convention that rights must be practical and effective, not theoretical and illusory.

We believe that in Scotland and across the UK, Trans, Non Binary & Intersex people are being returned to this 'intermediate zone', placing the State – once again – in violation of its positive obligations under the Convention. The legal recognition afforded by Gender Recognition Certificates is now illusory, and inapplicable to practical lived realities of trans people in this country.

Scotland has a long and proud history of inclusion so we ask that your committee takes immediate action to protect the human rights of trans people in Scotland and hears evidence from The Good Law Project and other organisations and groups involved in protecting the rights of Trans people. We note that the situation is urgent and that without intervention, it seems likely to further deteriorate.

Yours faithfully,

Jolyon Maugham
Executive Director