

EHRC Guidance on Single-Sex Spaces is Lawful (GLP v EHRC)

Mini-summary

The High Court has dismissed a judicial review brought by the Good Law Project and three individuals challenging the Interim Update issued by the Equality and Human Rights Commission in the aftermath of the Supreme Court decision in *For Women Scotland v The Scottish Ministers* [2025] UKSC 16. The Interim Update warned that the provision of multi-user single-sex facilities and services on anything other than a biological sex basis could amount to direct and indirect discrimination and was likely unlawful. The Update also warned that failure to provide suitable alternative accommodation for transgender people could amount to unlawful discrimination and encouraged service providers and employers to, where possible, provide an alternative mixed-sex option. The Good Law Project challenged this guidance on the grounds that it misstated the law and would give rise to breaches of the Article 8 rights of transgender people. Swift J dismissed the challenge, upholding the Interim Update in its entirety.

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R (Good Law Project) v Equality and Human Rights Commission [2026] EWHC 279 (Admin)

What are the practical implications of this case?

The High Court has confirmed that to meet the requirement to provide suitable and sufficient sanitary facilities in the workplace, employers must either provide single-user facilities or single-sex multi-user facilities on a biological sex basis. For those providing services to the public, there is no requirement to provide single-sex lavatories. However, if multi-user lavatories are provided, failure to provide a female-only lavatory could comprise indirect sex discrimination against women. For both workplaces and services, single-sex facilities will cease to be single-sex if transsexual persons are permitted to use them other than in accordance with their biological sex. If trans women are permitted to use a single-sex female lavatory, all biological males must be permitted to use that lavatory to avoid a direct sex discrimination claim brought by an excluded man. Additionally, failure to make provision for trans people could amount to unlawful gender reassignment discrimination.

Practitioners advising employers or service providers should therefore be cautious about the provision of 'trans-inclusive' sanitary, changing, or showering facilities which, for example, are open to women and trans women but not to men who do not identify as women. Read in conjunction with recent employment tribunal cases such as *Peggie v NHS Fife* [2026] ET 4104864/2024 and *Hutchinson v Durham and Darlington NHS Foundation Trust* [2026] ET 2501192/2024, there is significant liability risk for unlawful harassment and discrimination arising from the provision of such facilities. In contrast, the provision of single-sex facilities of this kind will almost certainly not give rise to liability.

What was the background?

In April 2025, the Supreme Court delivered judgment in *For Women Scotland v The Scottish Ministers* [2025] UKSC 16, concluding that, for the purposes of the Equality Act 2010, references to sex were references to biological sex. In so doing, the Court confirmed that the default position in UK law is that sex means biological sex unless s.9(1) of the Gender Recognition Act 2004 applies. The Court also set out a test for when s.9(1) would not apply.

The Equality and Human Rights Commission's Interim Update provided guidance on the implications of the judgment as set out above. The Good Law Project and three individuals challenged this guidance on the basis that it misstated the law and was unlawful. In the alternative, they argued that if the guidance was lawful, this would give rise to breaches of the Article 8 rights of transgender people.

What did the court decide?

Swift J concluded that nothing in the Interim Update gave rise to a legal error and that there was no breach of the ECHR.

Workplaces

The Claimants argued that the EHRC had misunderstood the obligations on employers arising from the Workplace (Health, Safety and Welfare) Regulations 1992 which, read together with the Building Regulations 2010, require employers to provide single-sex facilities (for which sufficient single-occupancy facilities may be substituted if necessary for reasons of space). The Claimants argued that this could be met "if an employer provided conveniences in separate rooms for men and women but then, for example, made it clear that any person could use either room" [35]. Swift J rejected this, concluding that 'the obvious albeit unspoken premise of regulation 20 is the provision of private space for each sex for reasons of conventional decency' [36]. The rule in *For Women Scotland* applied to the 1992 Regulations, meaning a biological sex reading was required. The Claimant argued that a biological sex reading would place too great a burden on employers by requiring them to 'police' the use of lavatories. Swift J made short work of this: 'the employees concerned would know what was expected of them' [40].

Public Services

Service providers are not required across the board to provide lavatories. However, Swift J concluded that it was accurate for the EHRC to warn that a trans-inclusive women-only policy for multi-user facilities could comprise indirect sex discrimination against women and direct sex discrimination against men. On the latter, Swift J was more cautious, noting that there was potentially a strong argument in response to a sex discrimination claim brought by a man that his exclusion from a service amounted to different but not disadvantageous treatment, depending on the facts [61]. Nevertheless, he concluded that the guidance contained no error of law [77]. It is worth stressing that a successful defence to claim brought by an excluded man does not negate the liability risks arising from indirect sex discrimination and harassment claims brought by female service-users if biological men are permitted to use female-only facilities.

Alternative Facilities

The Court was clear that employers and service providers should make appropriate provision for trans people. If single-sex facilities are provided, where possible a duty-bearer should also provide a mixed-sex facility. At [72]-[73], Swift J rejected the contention that providing alternative facilities for trans people or providing mixed-sex facilities alongside single-sex facilities would amount to unlawful discrimination because of gender reassignment.

Human Rights

Finally, Swift J rejected the claim that, if the guidance was legally accurate, this would give rise to a breach of Convention rights. By arguing that there was a Convention right to access single-sex spaces in accordance with one's gender identity, the Claimants had interpreted the scope of the Article 8 right to gender recognition far beyond what has been established in the Strasbourg jurisprudence.

Nevertheless, Swift J addressed this issue on the presumption that a prohibition on the provision of a trans-inclusive lavatory is capable of interfering with Article 8, noting at [98] that this is open to doubt. He stressed that 'the absence of a trans-inclusive lavatory is not the same as no lavatory at all. Even assuming interfere with article 8 right the interference would be less significant than considered by courts so far' [98].

Swift J then held that neither the Equality Act 2010 nor the 1992 Regulations give rise to any interference with Article 8. This is because (a) subject to the point on whether the provision of a trans-inclusive women's lavatory might amount to discrimination against men, trans-inclusive lavatories could be provided consistently with the requirements of the Equality Act 2010; and (b) an employer could provide a trans-inclusive lavatory as an additional provision in conjunction with suitable and sufficient single-sex facilities.

Two points should be made here. First, for (a) it was likely an oversight not to mention the liability risks of indirect sex discrimination and harassment claims from women accepted by the Court earlier in the judgment. Second, where an employer provides additional trans-inclusive lavatories in addition to single-sex lavatories, each should be clearly labeled as such.

Swift J also noted that, even if that analysis was incorrect, the Claimants would still fail because the putative interference with the Article 8 rights of trans people would be justified as proportionate to protect the rights and freedoms of others.

Taking all of this together, it is clear that there is significant liability risk involved in the provision of trans-inclusive facilities, arising from potential claims in direct sex discrimination, indirect discrimination, and harassment. The least risky approach is to follow the guidance in the Interim Update: where facilities are provided, they should either be single-user or single-sex with suitable alternative provision made for transgender people where possible.

Case details

- Court: Administrative Court
- Judge: Swift J
- Date of judgment: 13/2/2026