

We the undersigned, as legal academics, practitioners, and members of the legal profession, write to demonstrate our solidarity for the trans community in the wake of the UK Supreme Court ruling in *For Women Scotland v The Scottish Ministers*¹, of April 16th 2025.

We believe that transgender people, be they men, women, or non-binary people, deserve the human right to private and family life which was affirmed under Article 8 ECHR in *Goodwin v United Kingdom*² and which has been repeatedly reaffirmed by the European Court of Human Rights in numerous decisions in the past twenty years.

We believe that the law in the United Kingdom lags behind that of other jurisdictions in the recognition of transgender people, in that it forces trans men and women through arduous processes to gain a Gender Recognition Certificate (GRC)³, and does not grant recognition to non-binary people at all.⁴ Nevertheless, we believe that the rights that it does grant to trans persons were hard-won and should not be lightly undermined.

We find that the judgment in *Scottish Ministers* positions trans people in an indeterminate space when it comes to equalities law. The judgment defines a person's sex under the Equality Act 2010 as 'biological sex,' reaching back to the Sex Discrimination Act 1975.⁵ However, for all other purposes, the acquisition of a Gender Recognition Certificate changes the legal sex of its holder to that which is stated on the GRC. The *Scottish Ministers* decision therefore leaves GRC holders in a legal paradox where they are of one sex for the purposes of everything except equalities law, where they remain of the other - hardly the clarity the Supreme Court purported to enact.

We believe that the Supreme Court, in deciding *Scottish Ministers*, failed to consider several important points of law, including:

- The UK's obligations under the Human Rights Act 1998, which incorporates the rights under the European Convention on Human Rights into UK law;
- The decision in *Chief Constable of West Yorkshire v A (No 2)*⁶ wherein the House of Lords held that "the SDA 1975 used a trans-inclusive definition of sex by virtue of the Equal Treatment Directive"⁷;

¹ [2025] UKSC 16.

² (2002) 35 EHRR 18.

³ GRA 2004 ss. 1-4.

⁴ *Castellucci v Gender Recognition Panel* [2025] EWCA Civ 167.

⁵ Using the s 9(3) exemption in the GRA 2004.

⁶ [2004] UKHL 21.

⁷ C. Wigley, 'For Women Scotland: A Case of Significant Silences', U.K. Const. L. Blog (6th May 2025) (available at <https://ukconstitutionallaw.org/>)

- The meanings of ‘sex’ and ‘gender’ in the Equality and Human Rights Commission Statutory Code of Practice as explored in *AEA v EHRC*⁸

We further affirm that the EHRC ‘interim guidance,’ as issued on 25 April 2025, is merely an opinion and does not have the force of law.

We consider the ‘interim guidance’ to go much further than the *Scottish Ministers* ruling requires in its scope and its intent to ban trans people from using the services which correspond to their true gender. We believe this is discriminatory, marginalising, and hurtful to the community, and has already caused considerable fear and distress.

We believe that forcing trans people to use services according to their sex assigned at birth breaches their right to privacy under Article 8 ECHR, and exposes them to the potential of forced outing, shaming, and even violence.

Lastly, we affirm that the trans community is an important part of society and deserves to be treated equally. We uphold their human rights. We disavow transphobia in all its forms, and we promise to be active allies to community members, interrogating our own biases and calling out transphobia when we encounter it in our profession and otherwise.

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⁸ *R (Authentic Equity Alliance CIC) v Equality and Human Rights Commission* [2021] EWHC 1623 (Admin).

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