**THIRD PARTY SUBMISSION TO THE GANHRI SUB-COMMITTEE ON ACCREDITATION REGARDING UK EQUALITY AND HUMAN RIGHTS COMMISSION**

**23rd October 2025**

## I. Name of the submitting entity

This submission is on behalf of Equality Network. Equality Network is a national civil society organisation working to improve the lives of LGBTI+ people through extensive engagement with, and empowerment of, LGBTI+ people in Scotland. Since 1997, we have achieved real and lasting change for LGBTI+ people in Scotland, including: the repeal of 'section 28', equal marriage, hate crime legislation and the introduction of the NHS gender reassignment protocol. Scottish Trans is the trans specific project of Equality Network and together, we are established on the ground policy experts working on the protection and promotion of LGBTI+ people's human rights.

## II. Contact information

[redacted]

## III. Relationship with the NHRI concerned, if any

As an organisation working to improve the lives of LGBTI+ people in Scotland, particularly through changing policy and the law, we engage with the Equality and Human Rights Commission (EHRC) as part of our work.

This has become increasingly challenging in recent years due to the EHRC's position on trans people's equality and human rights. This is why in 2022 we were signatories to a submission made to GANHRI regarding the EHRC's accreditation that was coordinated by Stonewall and signed by 26 organisations working on LGBTI+ equality and human rights in the UK. That submission detailed significant concerns about the EHRC, including how it was not only failing in its duty to protect trans people's human rights, but was acting in a way that was directly harmful to trans people and their rights.

However, given the significant role they play in equality and human rights progression (or regression) in the UK, we have persevered with engagement with them to a degree since being part of that joint submission. We felt that this was important as we consider it the role of our organisation to make the case for a society, legal framework and services that properly meet the needs of LGBTI+ people. This engagement has included responding to consultations run by the EHRC and meeting with staff and commissioners of the EHRC to inform them of our views on the needs of LGBTI+ people. We also received funding from the EHRC to attend the ICESCR Committee's review of the UK in February 2025, where we were able to speak to the Committee about our recommendations for improving LGBTI+ people's human rights in the UK – something that we felt was extremely important given the

ongoing lack of progression and regression of those rights, as demonstrated by the UK falling significantly in ILGA Europe's Rainbow Index.

Recently, we declined an invitation to meet with the Commission to discuss their proposed Code of Practice following the UK Supreme Court decision in For Women Scotland Ltd vs. Scottish Ministers. This is because we felt the invitation was not made in good faith, and that we would not be listened to.

## IV. Information on the NHRI's compliance with the Paris Principles

We are writing to you to raise several concerns regarding the EHRC. We seek to provide you with an update and further information following your report and recommendations made to the EHRC in October 2022 and the conclusion of your special review in 2024.

The SCA's review in 2022 detailed a list of steps and recommendations for the EHRC to adopt to enhance its effectiveness and independence in line with the Paris Principles, including recommendations concerning LGBTI+ people. However, it is our view that the EHRC has not only failed to meet these recommendations, but that the situation has significantly worsened since 2022, most recently due to their actions since the UK Supreme Court judgment in For Women Scotland Ltd v Scottish Ministers in April 2025.

**The EHRC's actions following the recent UK Supreme Court Judgment**

On 16th April, the UK Supreme Court (UKSC) ruled in the judgment of For Women Scotland Ltd v Scottish Ministers, that the protected characteristic of "sex" in the Equality Act 2010 always means "biological sex" irrespective of whether a trans person has legally changed their gender in accordance with the Gender Recognition Act 2004.

Shortly after the judgment the EHRC produced an "interim update" (although this has since been removed from their website, potentially in light of a legal challenge brought against it by the Good Law Project) which stated that trans people should now be excluded by default from any spaces and services provided separately for women and men with which their gender identity aligns. Subsequently, the EHRC launched a public consultation on proposals to update the statutory guidance for the Equality Act 2010, known as the Code of Practice (CoP) for services, public functions and associations. In their view, these updates were required because of the judgment. Our full submission to that consultation is available on our website.

The proposed Code consulted on by the EHRC focused almost entirely on the *exclusion* of trans people from spaces and services provided separately for men and women that align with their gender identity. It provides no information on how such spaces and services could continue to lawfully *include* trans people in line with their gender identity following the UKSC's ruling. It also outlines situations where trans men and women could be excluded from both services that align with their gender identity and those that align with their "biological sex". It says that this will be justified if trans people's inclusion in those services that align with their "biological sex" would cause "alarm and distress" to others. In our view, advising that trans people can be excluded and segregated from others due to their appearance is clearly incompatible with the EHRC's statutory duties that there is "respect for the dignity and worth of each individual" and to "promote the importance of diversity".

While we are aware that it is the EHRC's role to produce guidance on the law, if they believe that the only lawful interpretation of the Supreme Court ruling is for trans people to be excluded from services that align with their gender identity in all circumstances, and to sometimes be excluded and segregated from others entirely, we would expect them to raise this as an urgent equality and human rights issue with the UK Government. It is clearly unacceptable for trans people to face this level of exclusion and segregation in daily life. Issuing guidance that perpetuates this exclusion without raising immediate concerns about the effects this will have, in line with their duty to monitor and advise on the effectiveness of equality and human rights law, is completely out-of-step with the practice expected of an "A-status" NHRI.

If there are other interpretations of how services can lawfully operate following the judgment, then this would mean that the EHRC has chosen to provide an incomplete description of the law focusing only on the exclusion and segregation of trans people in their proposed CoP. This would be an even more serious failure of the EHRC to fulfil its statutory duties to promote equality and diversity.

Trans people have already reported facing harassment, discrimination and abuse as the result of changes that some organisations have made following the ruling and the EHRC's interim update. Some of these experiences in the UK have been highlighted by TransActual in their report, 'Trans Segregation in Practice'.

The EHRC submitted their updated version of the CoP to the UK Government on 4th September, just 2 months after their consultation on their draft proposals closed despite it receiving over 50,000 responses. We have little confidence that these responses have been thoughtfully considered by the EHRC, especially those that disagreed with their proposals or highlighted a lack of trans inclusion, as they have confirmed that they have used AI to analyse responses and leaks suggest this may have excluded as many as 50% of responses. As the EHRC have not published the updated version of the CoP that they have submitted, there is no way of knowing if these responses have been considered, and if any positive changes have been made. On 15th October the EHRC's chair wrote to the UK Government urging them to "act at speed" to approve the code. As of 23rd October, the UK Minister for Women and Equalities has neither approved the CoP and laid it at the UK Parliament, nor sent it back to EHRC with suggestions for changes.

**Failure to meet human rights obligations**

We are firmly of the view that if the updated Code of Practice consulted on by the EHRC is what they believe is required in light of the Supreme Court judgement, that this will violate both trans and non-trans people's human rights in both domestic and international human rights law. If this is the case, then we believe that EHRC has a statutory duty to highlight to the UK Government that this ruling has placed human rights in the UK at significant risk. If the interpretation adopted by the EHRC in their draft CoP is not a complete reflection of the ability of services to include trans people in line with their gender identity following the ruling, then we believe the EHRC would be clearly acting against its statutory duties as outlined in the Equality Act 2006 to promote understanding of the importance of equality and diversity and to promote understanding of the importance of human rights, encourage good practice in relation to human rights, promote awareness, understanding and protection of

human rights, and encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights).

The approach taken by the EHRC in the draft version of their updated CoP — to only provide guidance on when trans people can be excluded from services — poses several threats to rights that are enshrined in UK law by the Human Rights Act 1998, including:

- Bullying, harassment and inhuman and degrading treatment (Article 3 ECHR);
- Legal gender recognition (Article 8 ECHR);
- Privacy (Article 8 ECHR);
- Freedom of assembly and association (Article 11 ECHR).

However, the human rights implications extend beyond the civil and political rights contained in the ECHR. The CoP also impacts on the rights contained in the UN International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All forms of Discrimination Against Women. We have provided an extensive account of the various human rights that are at risk since the judgment and the EHRC's proposed CoP in our recent report, 'The Erosion of Trans Rights in the UK'.

Following a country visit to the UK, the Council of Europe Commissioner for Human Rights issued a statement that there is, "a tendency to see the human rights of different groups as a zero-sum game, when in reality any tensions will likely be exceptional; nuanced, reasonable and balanced accommodations can be found." The Commissioner reiterated that "all relevant legal or policy developments must be human rights-compliant, including in view of the case law of the European Court of Human Rights and other international instruments." This has since been reiterated in a letter from the Commissioner to the UK Parliament.

It is clear to us that the EHRC have adopted an interpretation of the judgment, as reflected in the draft CoP consulted on, which has failed to balance the requirements of the Equality Act 2010 with existing duties under the Human Rights Act 1998. The Scottish Human Rights Commission have highlighted concern over this, stating:

"The Equality Act 2010 does not exist in isolation, and it must be applied in line with the requirements of the Human Rights Act 1998 and the international human rights framework. Taking a narrow lens to compliance with only one piece of legislation may risk non-compliance with human rights standards. A holistic approach to human rights compliance often requires striking an appropriate balance between different rights, needs and protections and is a normal part of a human-rights based approach."

It is our view that the EHRC is not taking the approach advocated for by the Commissioner for Human Rights, or the Scottish Human Rights Commission, and is out-of-step with international and domestic human rights common practice.

The EHRC's draft CoP would need to be accepted by the UK Minister for Equalities and laid before the UK Parliament if it is to become statutory guidance that carries legal weight in legal proceedings. If it is approved, the risks to the human rights of trans and non-trans people are significant. As a public

body and duty-bearer, the EHRC must ensure that the human rights of all in Great Britain are protected, respected and fulfilled. It has a duty to ensure that the CoP must be human rights compliant or it risks breaching domestic and international obligations.

In sum, it is clear to us that the EHRC has not taken on board the recommendations issued by the SCA but has instead taken steps to worsen the protection of trans people's human rights. As our NHRI, this is causing grave concern for the LGBTI+ community, LGBTI+ civil society organisations, LGBTI+ allies and other human rights defenders working on the ground in the UK.

## V. Additional comments and recommendations

The UK Government have appointed a new chair to the EHRC, against the advice and opinion of both the UK Parliament's Joint Committee on Human Rights and the Women and Equalities Committee. Both committees wrote to the UK Minister for Equalities and highlighted concerns over her vision and leadership, breadth of expertise across the wide remit of the EHRC, and ability to rebuild trust in the EHRC. They detailed "concerns over her ability to enforce the rights of everyone", especially relating to disability and race. Despite this she was appointed.

While those Committees specifically highlighted their concerns around her appointment relating to her experience and knowledge of disability and race, this simply compounds our worries that a change in leadership of the EHRC will not be able to address our significant concerns with its ability to protect and promote the rights of all. We are of course acutely aware that many LGBTI+ people are also racialised and/or disabled and sit at the crux of several different anti-equality and anti-rights narratives that are currently prominent in UK media and political culture.

## VI. Consent to share the submission with the NHRI concerned

We consent to our submission being shared with the EHRC.