



Public and  
Commercial  
Services Union

**Martin Kelsey**  
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30 March 2026

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**MOTION EXCLUDED FROM STANDING ORDERS COMMITTEE REPORT No.1  
UNDER SUPPLEMENTARY RULE 6.22(g)**

I am writing to advise you that, having received legal advice, and in accordance with Supplementary Rule 6.22(g) of the PCS Rules, Motion M259 (Motion ID 7058) on the subject of Transgender issues, and submitted by your branch, will not be printed in Standing Orders Committee Report No.1, and cannot be referenced-back and/or debated at conference. This is because to do so would place the union at risk of legal action.

In accordance with Rule 6.22(g), the text of the legal advice we have received from the union's solicitors, accompanies this letter.

Yours sincerely,

**Martin Kelsey**  
**Secretary**  
**National Standing Orders Committee**

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25 March 2026

Dear Martin,

**Re: Advice on Rule 6.22(g) – Motion M259 submitted for PCS Annual Delegate Conference**

We write in response to your request for legal advice in respect of Motion M259 (the "Motion").

In particular you have asked us to consider whether the Motion may provide grounds for legal proceedings against PCS or any of its officers, agents or printers. We understand that you have requested this advice to establish whether the SOC is required to exclude the Motion under Rule 6.22(g) of the PCS Rules.

**Relevant Background**

Rule 6.22(g) provides that the SOC shall, pursuant to the objectives in Principal Rule PR1:

*Exclude any motion which the Standing Orders Committee consider (after taking written legal advice) may provide grounds for any legal proceedings against the Union or any of its officers or agents or printers. A copy of the written legal advice shall be provided to the submitting Branch.*

We understand that this means if any part of a motion in our view transgresses Rule 6.22(g) it should be ruled out. I have therefore confined my advice to those applicable parts of the motion.

**The Law**

We thought it would be helpful if we set out the key aspects of the how the law stands as a result of the judgment of the Supreme Court in *For Women Scotland Ltd. v Scottish Ministers* [2025] UKSC 16 and the subsequent judgment of the the High Court in *R (Good Law Project) v Equality and Human Rights Commission* [2026] EWHC 279.

**The Supreme Court Judgment**

- i. The Court held on a statutory interpretation of the reference to "sex" in the Equality Act 2010 that the words sex, woman and man mean biological sex, biological woman and biological man. (see para 264 of the judgment). The Court uses biological sex to mean the sex of a person at birth (paragraph 7)
- ii. The Court noted that the protected characteristic of "gender reassignment" defined in section 7 is distinct and separate from the protected characteristic of sex. The fact that

section 7 refers to a process for reassigning sex does not lead to the conclusion that such a process results in a change in the protected characteristic of sex under the EA 2010 (para 200).

- iii. The Court reached its statutory interpretation having regard to the purpose of the Equality Act 2010 which is to provide protection for those who share a protected characteristic and who have common experiences of particular disadvantage because of the protected characteristic (as compared with those who do not share the protected characteristic and who do not experience the same particular disadvantage).
- iv. In respect of women (and men) the purpose of the Equality Act 2010 is to protect women (and men) against the discrimination they may experience because of being born female (or male) and in respect of transgender the different life experience and discrimination that they may face.
- v. The Court concluded that its biological interpretation of sex under the Equality Act 2010 does not remove important protections from discrimination for transgendered people with or without a gender recognition certificate. As well as some tailored protection against discrimination specifically related to gender reassignment, transgender people are also protected from direct discrimination, indirect discrimination, harassment and victimisation.
- vi. Schedule 3 of the Equality Act 2010 provides that the provision of separate services for persons of each sex will not constitute unlawful sex discrimination where (i) joint services for both sexes would be less effective and (ii) such provision is a proportionate means of achieving a legitimate aim. The legitimate aims identified in the judgment include the safety, security, dignity and privacy.
- vii. Based on its statutory interpretation the Court held that the Scottish Government was acting unlawfully in treating men, who identify as women and who have a gender recognition certificate (GRC), as women for the purpose of a government policy aimed at improving the representation of women on public boards.

### **The High Court Judgment**

In dismissing a judicial review and a breach of the article 8 right to respect for private and family life the *High Court in R (Good Law Project) v Equality and Human Rights Commission [2026] EWHC 279* confirmed that in order 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. As regards the provision of facilities to the public, while there is no requirement to provide single-sex lavatories, if multi-user lavatories are provided, a failure to provide a female-only lavatory could lead to claims by biological women of indirect sex discrimination.

### **First instance judgments**

While there have been conflicting judgments at first instance level these are not binding. The law on the interpretation of "sex" under the Equality Act 2010 remains that provided by the Supreme Court in *For Women Scotland Ltd. v Scottish Ministers [2025] UKSC 16* and as to claims for judicial review and a breach of the Article 8 right to respect for private and family life as interpreted by the High Court in *R (Good Law Project) v Equality and Human Rights Commission [2026] EWHC 279*.

### **Advice**

We are of the view that Motion M259 could present a legal risk for the Union. In particular, the motion instructs the NEC to “publicly commit to all trans people being able to use the facilities of their choice at all PCS events/buildings.”

In doing, so this is likely to encourage the use of single sex facilities designated for biological women by trans women and biological men by trans men where these are provided in the workplace and in public spaces on the basis of a person’s self-identified gender. This would have the result that single-sex facilities will cease to be single-sex if trans persons are permitted to use them other than in accordance with their biological sex.

This could lead to direct discrimination claims by (non-trans) members of the biological sex (i.e. biological men) who are mostly excluded from the service or facility. While the High Court considered this a low risk it recognised the greater risk was to claims of indirect discrimination against (non-trans) members of the biological sex for whom the services or facilities were provided (i.e. biological women), on the basis that using self-identification as the criterion for admission to a women-only facility would place women at a particular disadvantage that could not be justified. In particular, it would be likely to undermine women’s rights and interests as to safety, dignity and privacy which constitute the basis for operating a single sex facility. There is also a risk of claims of harassment related to sex if biological men have access to single sex biological women’s toilets.

It is also worth stressing:

1. A successful defence to a claim brought by an excluded biological man does not negate the liability risks arising from indirect sex discrimination and harassment claims brought by biological women service-users if biological men are permitted to use biological women only facilities.
2. While employers and service providers should make appropriate provision for trans people, the provision of alternative facilities for trans people or mixed-sex facilities alongside single-sex facilities would not amount to unlawful discrimination because of gender reassignment (see paragraphs 72 and 73 of the High Court Judgment).

### **Conclusion**

We consider that Motion M259 could reasonably be seen as likely to result in legal proceedings against PCS. We therefore consider that Rule 6.22(g) is engaged, and that the SOC is under a duty to exclude it pursuant to that Rule.