



Chief Constable  
British Transport Police

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and [REDACTED]

Dear Madam/Sir

### Judicial Review - Letter Before Claim

1. **To:** Chief Constable of British Transport Police (“BTP”)
2. **The Claimant:** Sex Matters
3. **Reference Details:** N/A
4. **Details of the Matter being Challenged:**
  - 4.1. BTP’s Guidance *Transgender and Non-Binary Search Position*, dated 12 September 2024.
5. **The Issue:**
  - 5.1. **Summary of factual background**

Our understanding of the factual background to this proposed claim is as follows:

- 5.1.1. The National Police Chiefs’ Council (“NPCC”), named as an Interested Party in this proposed claim, is a collaboration body which sets directions in policing. One of the ways this is achieved is through developing joint national approaches, including publishing policies and operational guidance on policing in wide a range of areas including staff and human resource issues.
- 5.1.2. At an NPCC Chief Constables’ meeting on 9 December 2021, an agenda item *Searching by Transgender Officers and Staff* was

considered, together with the *Recommended Guidance: Searching by Transgender Employees of the Police Service* (“the 2021 Guidance”). The agenda item provided background to the draft policy, and stated “*Chief Officers are advised to recognise the status of Transgender colleagues from the moment they transition, considered to be, the point at which they present in the gender with which they identify. Thus, once a Transgender colleague has transitioned, they will search persons of the same gender as their own lived gender*”.

5.1.3. The 2021 Guidance stated

*“Employers should treat people in accordance with their lived gender identity, whether or not they have a [gender recognition certificate<sup>1</sup> (“GRC”)], and should not ask Transgender colleagues if they have a GRC or new birth certificate.*

*Accordingly, with regards to the issue of searching, Chief Officers are advised to recognise the status of Transgender colleagues from the moment they transition, considered to be, the point at which they present in the gender with which they identify.*

...

***Thus, once a Transgender colleague has transitioned, they will search persons of the same gender as their own lived gender.”***

5.1.4. The meeting minutes noted “*Some forces still require people to have a gender recognition certificate, and this is out of date and no longer required*”.

5.1.5. The decision on this agenda item was recorded as “*Chiefs approved the recommendation to adopt a consistent searching policy for transgender officers and staff across all forces*”. In effect, the 2021 Guidance provided for male police officers to be treated as female from the moment they self-identified as female, and to be able to carry out strip searches on female detainees, and was approved.

5.1.6. On 19 July 2022, the NPCC LGBTQ+ portfolio lead stated that “*it would be reasonable to expect that all forces will have implemented a transgender search policy by 2 December 2022.*”

5.1.7. The 2021 policy was adopted by at least 34 police forces across the UK, including BTP.

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<sup>1</sup> Which modifies a person’s sex to that of the opposite sex pursuant to s9(1) Gender Recognition Act 2004.

- 5.1.8. On 10 January 2024, the Minister for Crime, Policing and Fire publicly criticised the 2021 Guidance at a House of Commons Home Affairs Committee meeting, so far as it allowed men who self-identified as women (and who did not hold a GRC) to carry out strip searches on female detainees.
- 5.1.9. On 11 January 2024, the NPCC withdrew the 2021 Guidance. The same day, Sex Matters<sup>2</sup> wrote to the Minister explaining why it is also unlawful for men who identify as women and who hold GRCs, to carry out strip searches on female detainees.
- 5.1.10. Later that month, the NPCC LGBTQ+ portfolio lead advised all Chief Constables
- “All searches are dealt with on a case-by-case basis after consideration by a custody sergeant based on the response of the detainee.*
- All searches are carried out in line with the officer or staff members training and legal authority, taking into account our responsibilities under both the Equality Act 2010 and Police and Criminal Evidence Act 1984.*
- A thorough review of the NPCC guidance is taking place. **Whilst this is being done, local forces will work from their own policies in this matter.**”* [emphasis added]
- 5.1.11. Sex Matters<sup>3</sup>, together with Women’s Rights Network and LGB Alliance, were invited by the NPCC to attend a meeting on 4 June 2024. This was part of as part of review being carried out, which was subsequently referred to by the NPCC as a consultation. Following that meeting, on 6 June 2024, they sent a joint letter to the NPCC setting out their concerns about the consultation process, on the basis that the NPCC appeared neutral whether a male officer or staff member (however they identify and whether or not they possess a GRC) may carry out a strip search of a female detainee. This concern was based on a failure to recognise that allowing such searches is in breach of the Police and Criminal Evidence Act 1983 (“PACE”) and articles 3 and 8 ECHR.
- 5.1.12. To date, the NPCC has not issued any further guidance on same sex strip searches.

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<sup>2</sup> Together with the Women’s Rights Network and Fair Play for Women.

<sup>3</sup> A human rights charity which promotes clarity about sex in law, policy and language in order to protect everybody’s rights.

5.1.13. BTP's *Transgender and Non-Binary Search Position*, dated 12 September 2024, was issued internally by BTP on 30 September 2024 ("BTP Guidance"). It was made publicly available on 30 October 2024 through a Freedom of Information Act 2000 request made on 3 October 2024. BTP's Guidance states:

*"2.1 Certain provisions in law explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search.*

*2.2 In law, the sex of an individual is their sex as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's sex is their acquired sex.*

...

*2.4 British Transport Police recognises the status of Transgender and Non-Binary detainees/staff from the moment they identify in that gender with or without a GRC. This does not supersede the requirements set by statute that provide a power of search.*

...

*3.1. This position covers More Thorough and EIP (Strip) searches<sup>4</sup> conducted outside of the custody environment and those conducted within British Transport Police Custody Suites.*

...

*3.3. More Thorough Searches (Strip) in the context of searches involve the removal of more than, jacket, outer coat, gloves, headwear, and footwear. EIP Searches are searches that expose buttocks, genitalia, and (female) breasts.*

...

*3.5. Statutory searches specifically Strip and EIP Searches under Sections 9 through to 12 within Code C, Annex A of The Police and Criminal Evidence act and Annex C of the Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland specifically require that the officer and the subject must be the same sex. **For searches conducted under these powers particularly the provisions set under for searches under Section***

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<sup>4</sup> Defined at 3.3 as searches involving the removal of more than, jacket, outer coat, gloves, headwear, and footwear (More Thorough Searches), and searches that expose buttocks, genitalia, and (female) breasts (EIP).

**54 and 55 of PACE 1984, BTP officers/Staff will only search persons of the same sex as either their Birth Certificate or GRC.**

5.3. However, where the relevant criteria are present in section 5.2 above the detained person can explicitly consent to a search outside of the requirements of the legal power (Consensual Search). Specifically, consenting to be searched outside the requirement made for the sex of the person searching, i.e where the detained person indicates a preference to be searched by an officer of a sex in contradiction of the requirements of statutory powers. The person must be capable of giving consent and should not be sought if the person is deemed unfit through drink or drugs and have the relevant mental capacity to decide this. For vulnerable individuals the consent of an appropriate adult will be required.

5.4. This means where an officer has the relevant power to search, the person may consent to a search outside of the compulsion of the statutory powers. i.e. a person who may present in a gender other than their birth gender or listed on their GRC they can explicitly consent to a consensual More Thorough or Exposing Intimate Parts Search outside of that power by an officer of a sex of their preference.

...

6.3. In law, a person must be searched as the sex stated on their birth certificate or as acquired under a gender recognition certificate when conducting More Thorough and EIP (Strip) searches under statutory powers. (Police and Criminal Evidence Act 1984 and Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland)

...

6.8. Where the detainee indicates a preference to be dealt with by officers of a different sex to them for More Thorough and EIP (Strip) searches, the detained person is to be informed that this can only be conducted as a consensual search (Section 5 of this guidance) with both the officers and detained person explicit consent. This consent can be removed at any time from either party and the search conducted under the statutory powers as per section 6.3. If the person is deemed as vulnerable, then an appropriate adult will be required, and their consent must be obtained in conjunction with the detainee.

6.9. If any officer conducting the search is not comfortable with the detained persons request, then that officer will notify the officer authorising the search so an alternative searching officer can be

*sought if practicable to accommodate the detainee's request subject to consent in 6.11.*

*7.3 The GRA section 22 defines any information relating to a person's application for a GRC or to a successful applicant's original gender as protected information. It is not authorised or permitted for any police officer or any member of police staff who has acquired information relating to this legal change (while performing their official duties) to disclose that information to any other person without legal exemption. To do so constitutes an offence in contravention of the GRA.*

*7.4. Disclosure occurs if a record of this protected information is read by others. For example, if the existence of a GRC (that states that the detainee is transgendered) is noted in the relevant custody record, and that custody record is later viewed by an independent custody visitor, this constitutes a disclosure and is an offence under the GRA section 22.*

5.1.14. In summary, the BTP Guidance provides that:

- i) trans people who hold a GRC are to be treated and recorded as being of the sex provided by a GRC, rather than their biological sex for the purposes of being searched and carrying out searches (2.2);
- ii) a biologically male officer with a GRC may search a female detainee as a female officer would (3.5);
- iii) a biologically male detainee with a GRC may be searched by a female officer as if the officer was male (5.2);
- iv) a detainee may request and consent to being searched by an officer of the opposite sex, including strip search (5.3, 6.3); and
- v) if any officer does not consent to participating in a consensual search of a member of the opposite sex, an alternative searching officer may be sought (6.8).
- vi) information that a trans person – whether detainee or officer - has a GRC (which would include information about their actual sex if they are recorded in their acquired gender) must not be recorded in the custody record of a search.

5.1.15. On 30 September 2024, BTP completed an Equality Impact Assessment ("EIA") of the BTP Guidance. We note the following from the EIA:

- i) The BTP Guidance is stated not to have any relevance to the protected characteristic of sex. It is stated to have relevance to the protected characteristics of gender identity/reassignment and religion or belief.
- ii) In respect of the religion or belief of detainees being searched, the EIA states that those who hold religious or gender critical / sex realist beliefs may be affected when being searched by a trans officer, and any objection to such a search will be accommodated. It is noted that all parties must agree to a consensual search.
- iii) In respect of employees with the power of search, those who hold religious or gender critical / sex realist beliefs may be affected when conducting a search on a trans detainee. It is similarly noted that all parties must agree to a consensual search, and any officer who does not wish to carry out the search is entitled to raise this.
- iv) The EIA *only* refers to the possibility of detainees or officers with religious or gender critical / sex realist beliefs being able to object to searches by or on people of the opposite sex. The BTP Guidance only envisages objections where there is no GRC, because where there is a GRC, the GRC holder is treated as having their sex modified.

5.1.16. It is well established that searches beyond jacket, outer garments, headwear and footwear must be carried out by officers of the same sex; s54(9) Police and Criminal Evidence Act 1984 (“PACE”). This is in line with case law and Guidance on article 3 ECHR from the European Court of Human Rights. This is to preserve the dignity and welfare of the detainee, for reasons including that it may be humiliating and frightening for a women to be strip searched by a male officer.

5.1.17. A recent Inquiry<sup>5</sup> clearly set out the character and impact of EIP/strip searches by police officers:

- i) *The impact of strip searches can be severe. They are a profound invasion of people’s privacy and bodily autonomy. They are often experienced as humiliating and degrading. Australian author Amanda George, writing in 1993 about their use on women in Australian prisons, likened strip searches to “sexual assault by the state” (George, 1993).*

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<sup>5</sup> *The Baird Inquiry*, July 2024, commissioned by the Mayor of Greater Manchester, for Dame Vera Baird KC to carry out an independent Inquiry into the treatment of women and girls who had been arrested and taken into police custody in Greater Manchester.

- ii) *Baroness Corston, in researching her seminal report on women with vulnerabilities in prison, described strip searching as making them feel embarrassed, invaded, degraded, uncomfortable, vulnerable, humiliated, ashamed, violated, and dirty (Corston, 2007).*
- iii) *Dr Koshka Duff, a distinguished academic at Nottingham University, to whose work I refer, was personally strip searched, having handed a card about legal advice to a young person being stopped and searched. She described it as “degrading and painful” and a “very violating and humiliating experience”. She said it left her with multiple injuries and post-traumatic stress disorder (PTSD), and she suffered from panic attacks for months following the experience (Duff and Kemp, 2024).*
- iv) *Jessica Hutchison interviewed five women about their experiences of being strip searched while imprisoned in Canada, concluding that strip searching is a form of sexual assault. Women were unable to say ‘no’ to being strip searched due to power imbalances and fear of serious consequences. Experiences of prior sexual victimisation made being strip searched particularly harmful (Hutchison, 2019).*
- v) *Barbara Bernath recognises this in considering the case law of the European Court of Human Rights (Bernath, 2023): “Body searches are inherently risky practices because they imply either physical contact between persons deprived of liberty and ... staff, or nudity, ... The risk is high for these practices to be used or applied in such a way as to constitute degrading or inhuman treatment or even torture”.*
- vi) *In my view, an EIP search involving visually searching inside intimate body parts is no less intrusive than an intimate search that involves touching. An EIP search may require an arrestee to manipulate intimate body parts to assist the search and is profoundly humiliating.*

5.1.18. Similarly, female officers would be likely to experience humiliation and degradation if required to carry out a strip search of a man (even if he has been issued with a birth certificate reading female as a result of having a GRC). Officers must obey any lawful order of a higher-ranking officer and the junior officer could be fearful that a refusal to comply with the search may lead to disciplinary action. Further, officers may fear objecting, despite being uncomfortable with carrying out a strip search on a man, due to concerns about being perceived as transphobic, weak or unprofessional. Other relevant factors include being in a very male/macho dominated and hierarchical environment



with pressure to conform, length of service and/or age affecting confidence to object, revulsion at having to view or inspect a penis and testicles, and difficulty in understanding the convoluted BTP Guidance.

If any part of this summary of the factual background is disputed or is believed by your authority to be inaccurate, please identify in your response each part of the factual background that is disputed, please explain why it is disputed and please provide full details of the basis for this alternative factual account including copies of any reports or relevant contemporaneous records upon which it is based.

## 5.2. Grounds of challenge

### Law and policy

#### ECHR

- 5.2.1. Article 3: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 8: (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10: (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers [...] (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

- 5.2.2. ECtHR, *Guide on Article 3 of the European Convention on Human Rights: Prohibition of torture*, 31 August 2024:

21. ... the Court has emphasized that there is a particularly strong link between the concepts of “degrading” treatment or punishment within

*the meaning of Article 3 of the Convention and respect for “dignity” (Bouyid v. Belgium [GC], 2015, § 90).*

22. *For instance, treatment or punishment was held to be “degrading” when:*

▪ *the applicant was subjected to a strip search in an inappropriate manner, such as the making of humiliating remarks (Iwańczuk v. Poland, 2001, § 59; see also Valašinas v. Lithuania, 2001, § 117 where the applicant was stripped naked in front of a female prison officer ... ).*

- 5.2.3. Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Women in Prison*, January 2018:

*Persons deprived of their liberty should only be searched by staff of the same sex. Any search which requires a prisoner to undress should be conducted out of the sight of custodial staff of the opposite sex.*

*Strip searches are a very invasive and potentially degrading measure. When a strip search is considered necessary in a particular case, every reasonable effort should be made to minimise embarrassment.*

- 5.2.4. The Court of Appeal held that “*deception as to gender can vitiate consent*”, *McNally v R* [2013] EWCA Crim 1051.

- 5.2.5. There is a positive obligation on states to act before the ultimate stage of inhuman or degrading treatment is reached; it is not just a question of wait and see. As soon as it is clear that there is an imminent prospect that a breach will occur, there is a duty: *R (Limbuella) v SSHD* [2005] UKHL 66.

- 5.2.6. *LW and Ors v Sodexo Limited & Anor* [2019] EWHC 367 (Admin):

*39. Both the Divisional Court and the Court of Appeal have confirmed that strip searches are capable of breaching Article 3 and Article 8. In R (LD, RH and BK) v Secretary of State for Justice, supra, the Divisional Court said at [32]:*

*"Of course we accept that strip-searches can result in degrading treatment, which can breach Article 3. No doubt, if carried out in a thoroughly abusive fashion contrary to the instruction [viz , PSI 67/2011] or if, for example, **in the presence of an officer of another sex then, indeed, it would be a breach of Article 3 .***

*40. In R (BK and RH) v Secretary of State for Justice, supra, the Court of Appeal held (at [51(vi)]):*

*"[T]here can be no doubt that strip-searching is capable in itself of engaging Article 3 (and Article 8 ). Certainly the application of strip searches, particularly to those who are not prisoners or reasonably suspected of having committed a criminal offence, requires rigorous adherence to prescribed procedures and the need to protect human dignity. Correspondingly, a search carried out in an appropriate manner and for a legitimate purpose may be compatible with Article 3 and Article 8 : see *Wainwright v United Kingdom* [2009] 44 EHRR 40 , at paragraphs 41 – 43".*

*41. Thus, there is a negative obligation on those to whom the Convention applies in this context to refrain from carrying out searches in a manner which infringes Articles 3 or 8 . However, there is also a positive obligation inherent in Articles 3 and 8 on those persons to ensure so far as reasonably practicable that individuals are protected from cruel, inhuman and degrading treatment (Article 3) and from a disproportionate interference with their private life (Article 8). In other words, those to whom Articles 3 and 8 apply must take positive steps that are reasonably practicable to avoid either of these outcomes.*

*44. In *Edwards v United Kingdom* (2002) 35 EHRR 19, [56], the ECtHR said that 'persons in custody are in a vulnerable position and ... the authorities are under a duty to protect them'. In *Wenner v Germany* (2017) 64 EHRR 19 , [55], the ECtHR held that Article 3 :*

*"... imposes on the state a positive obligation to ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention ...".*

***46. In order to fulfil this obligation, there must, at a minimum, be an appropriate legislative and administrative framework which makes for the effective prevention of the risk of breaches of Articles 3 and 8 : see eg *R (FI) v Secretary of State for the Home Department* [2014] EWCA Civ 1272, [36].***

[emphasis added]

#### Police and Criminal Evidence Act 1984 ("PACE")

5.2.7. S54(9) *The constable carrying out a search shall be of the same sex as the person searched.*

5.2.8. S39 *Responsibilities in relation to persons detained.*

*(1) Subject to subsections (2) and (4) below, it shall be the duty of the custody officer at a police station to ensure—*

*(a) that all persons in police detention at that station are treated in accordance with this Act and any code of practice issued under it and relating to the treatment of persons in police detention; and*

*(b) that all matters relating to such persons which are required by this Act or by such codes of practice to be recorded are recorded in the custody records relating to such persons.*

5.2.9. Pursuant to s66 PACE, the Code of Practice, Code C of PACE Revised Code of Practice for the detention, treatment and questioning of persons by Police Officers was made. This states:

*1.13(c)(i) if there is doubt as to whether the person should be treated, or continue to be treated, as being male or female in the case of:*

*(i) a search carried out or observed by a person of the same sex as the detainee; or*

*(ii) any other procedure which requires action to be taken or information to be given that depends on whether the person is to be treated as being male or female;*

*then the gender of the detainee and other parties concerned should be established and recorded in line with Annex L of this Code.*

*4.1 ... The custody officer may search the detainee or authorise their being searched to the extent they consider necessary, provided a search of intimate parts of the body or involving the removal of more than outer clothing is only made as in Annex A. A search may only be carried out by an officer of the same sex as the detainee. See Note 4A and Annex L.*

#### **Annex A: Intimate and strip searches**

*11. When strip searches are conducted:*

*(a) a police officer carrying out a strip search must be the same sex as the detainee (see Annex L);*

*(b) the search shall take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex (see Annex L) except an appropriate adult who has been specifically requested by the detainee;*

...

*(d) the search shall be conducted with proper regard to the dignity, sensitivity and vulnerability of the detainee in these circumstances, including in particular, their health, hygiene and welfare needs to which [paragraphs 9.3A](#) and [9.3B](#) apply. Every reasonable effort shall be made to secure the detainee's co-operation, maintain their dignity and minimise embarrassment. Detainees who are searched shall not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing;*

*(e) if necessary to assist the search, the detainee may be required to hold their arms in the air or to stand with their legs apart and bend forward so a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice;*

12. A record shall be made on the custody record of a strip search including the reason it was considered necessary, those present and any result.

### ***Annex L: Establishing gender of persons for the purpose of searching and certain other procedures***

*1. Certain provisions of this and other PACE Codes explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search or other procedure or require action to be taken or information to be given which depends on whether the detainee is treated as being male or female. See Note L1.*

*2. All such searches, procedures and requirements must be carried out with courtesy, consideration and respect for the person concerned. Police officers should show particular sensitivity when dealing with transgender individuals (including transsexual persons) and transvestite persons (see Notes L2, L3 and L4).*

#### *(a) Consideration*

*3. In law, the gender (and accordingly the sex) of an individual is their gender as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's gender is their acquired gender. This means that if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman and they must be treated as their acquired gender.*



4. When establishing whether the person concerned should be treated as being male or female for the purposes of these searches, procedures and requirements, the following approach which is designed to maintain their dignity, minimise embarrassment and secure their co-operation should be followed:

(a) The person must not be asked whether they have a GRC (see paragraph 8);

(b) If there is no doubt as to whether the person concerned should be treated as being male or female, they should be dealt with as being of that sex.

(c) If at any time (including during the search or carrying out the procedure or requirement) there is doubt as to whether the person should be treated, or continue to be treated, as being male or female:

(i) the person should be asked what gender they consider themselves to be. If they express a preference to be dealt with as a particular gender, they should be asked to indicate and confirm their preference by signing the custody record or, if a custody record has not been opened, the search record or the officer's notebook. Subject to (ii) below, the person should be treated according to their preference except with regard to the requirements to provide that person with information concerning menstrual products and their personal needs relating to health, hygiene and welfare described in [paragraph 3.20A](#) (if aged under 18) and [paragraphs 9.3A](#) and [9.3B](#) (if aged 18 or over). In these cases, a person whose confirmed preference is to be dealt with as being male should be asked in private whether they wish to speak in private with a member of the custody staff of a gender of their choosing about the provision of menstrual products and their personal needs, notwithstanding their confirmed preference (see [Note L3A](#));

(ii) if there are grounds to doubt that the preference in (i) accurately reflects the person's predominant lifestyle, for example, if they ask to be treated as a woman but documents and other information make it clear that they live predominantly as a man, or vice versa, they should be treated according to what appears to be their predominant lifestyle and not their stated preference;

(iii) If the person is unwilling to express a preference as in (i) above, efforts should be made to determine their predominant lifestyle and they should be treated as such. For example, if they appear to live predominantly as a woman, they should be treated as being female except with regard to the requirements to provide that person with information concerning menstrual products and their personal needs relating to health, hygiene and welfare described in [paragraph 3.20A](#) (if

aged under 18) and [paragraphs 9.3A](#) and [9.3B](#) (if aged 18 or over). In these cases, a person whose predominant lifestyle has been determined to be male should be asked in private whether they wish to speak in private with a member of the custody staff of a gender of their choosing about the provision of menstrual products and their personal needs, notwithstanding their determined predominant lifestyle (see [Note L3A](#)); or

(iv) if none of the above apply, the person should be dealt with according to what reasonably appears to have been their sex as registered at birth.

5. Once a decision has been made about which gender an individual is to be treated as, each officer responsible for the search, procedure or requirement should where possible be advised before the search or procedure starts of any doubts as to the person's gender and the person informed that the doubts have been disclosed. This is important so as to maintain the dignity of the person and any officers concerned.

*(b) Documentation*

6. The person's gender as established under paragraph 4(c)(i) to (iv) above must be recorded in the person's custody record or, if a custody record has not been opened, on the search record or in the officer's notebook.

7. Where the person elects which gender they consider themselves to be under paragraph 4(b)(i) but, following 4(b)(ii) is not treated in accordance with their preference, the reason must be recorded in the search record, in the officer's notebook or, if applicable, in the person's custody record.

*(c) Disclosure of information*

8. Section 22 of the GRA defines any information relating to a person's application for a GRC or to a successful applicant's gender before it became their acquired gender as 'protected information'. Nothing in this Annex is to be read as authorising or permitting any police officer or any police staff who has acquired such information when acting in their official capacity to disclose that information to any other person in contravention of the GRA. Disclosure includes making a record of 'protected information' which is read by others.

*Notes for Guidance*

*L1 Provisions to which paragraph 1 applies include:*

- *In Code C; paragraphs 3.20A, 4.1 and Annex A paragraphs 5, 6, and 11 (searches, strip and intimate searches of detainees under sections 54 and 55 of PACE) and 9.3B;*
- *In Code A; paragraphs 2.8 and 3.6 and Note 4;*
- *In Code D; paragraph 5.5 and Note 5F (searches, examinations and photographing of detainees under section 54A of PACE) and paragraph 6.9 (taking samples);*
- *In Code H; paragraphs 3.21, 4.1 and Annex A paragraphs 6, 7 and 12 (searches, strip and intimate searches under sections 54 and 55 of PACE of persons arrested under section 41 of the Terrorism Act 2000) and 9.4B.*

*L2 While there is no agreed definition of transgender (or trans), it is generally used as an umbrella term to describe people whose gender identity (self-identification as being a woman, man, neither or both) differs from the sex they were registered as at birth. The term includes, but is not limited to, transsexual people.*

*L3 Transsexual means a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of gender reassignment, which is a protected characteristic under the Equality Act 2010 (see paragraph 1.0), by changing physiological or other attributes of their sex. This includes aspects of gender such as dress and title. It would apply to a woman making the transition to being a man and a man making the transition to being a woman, as well as to a person who has only just started out on the process of gender reassignment and to a person who has completed the process.*

*Both would share the characteristic of gender reassignment with each having the characteristics of one sex, but with certain characteristics of the other sex.*

*L3A The reason for the exception is to modify the same sex/gender approach for searching to acknowledge the possible needs of transgender individuals in respect of menstrual products and other personal needs relating to health, hygiene and welfare and ensure that they are not overlooked.*

*L4 Transvestite means a person of one gender who dresses in the clothes of a person of the opposite gender. However, a transvestite does not live permanently in the gender opposite to their birth sex.*



*L5 Chief officers are responsible for providing corresponding operational guidance and instructions for the deployment of transgender officers and staff under their direction and control to duties which involve carrying out, or being present at, any of the searches and procedures described in paragraph 1. The guidance and instructions must comply with the Equality Act 2010 and should therefore complement the approach in this Annex.*

Equality Act 2010

5.2.10. S11 Sex: *In relation to the protected characteristic of sex—*

*(a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;*

*(b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.*

5.2.11. S19 Indirect discrimination: *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

5.2.12. S26 Harassment: *(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B's dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(2) A also harasses B if—*

*(a) A engages in unwanted conduct of a sexual nature, and*

*(b) the conduct has the purpose or effect referred to in subsection (1)(b).*

*(3) A also harasses B if—*

*(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex ...*

5.2.13. S39 Employees and applicants: *... (2) An employer (A) must not discriminate against an employee of A's (B)—*

*(a) as to B's terms of employment.*

5.2.14. S40 *Employees and applicants: harassment: (1)An employer (A) must not, in relation to employment by A, harass a person (B)—*

*(a) who is an employee of A's;*

5.2.15. S149 *Public sector equality duty ("PSED")*

*(1) A public authority must, in the exercise of its functions, have due regard to the need to—*

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

*(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

...

*(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*

*(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*

*(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*

*(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*

*(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*

*(a) tackle prejudice, and*

*(b) promote understanding.*

5.2.16. In *R (Bracking & Others) v Secretary of State for Work & Pensions* [2013] EWCA Civ 1345, (in a summary approved by the Supreme Court in *Hotak v Southwark LBC* [2015] UKSC 30 at [73]) the applicable principles were identified as follows:

*“(1) ...equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.*

*(2) An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements...*

*(3) The relevant duty is upon the Minister or other decision-maker personally....*

*(4) A [decision-maker] must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a “rearguard action”, following a concluded decision: per Moses LJ, sitting as a Judge of the Administrative Court, in *Kaur & Shah v LB Ealing* [2008] EWHC 2062 (Admin) at [23 – 24].*

*(5) These and other points were reviewed by Aikens LJ, giving the judgment of the Divisional Court, in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), as follows:*

*(a) The public authority decision-maker must be aware of the duty to have “due regard” to the relevant matters;*

*(b) The duty must be fulfilled before and at the time when a particular policy is being considered;*

*(c) The duty must be “exercised in substance, with rigour, and with an open mind”. It is not a question of “ticking boxes”; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;*

*(d) The duty is non-delegable; and*

*(e) Is a continuing one.*

*(f) It is good practice for a decision maker to keep records demonstrating consideration of the duty.*

*(6) “[G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria.”*

*(7) Officials reporting to or advising Ministers/other public authority decision makers, on matters material to the discharge of the duty, must not merely tell the Minister/decision maker what he/she wants to hear but they have to be “rigorous in both enquiring and reporting to them”.*

5.2.17. In *Bracking*, the Court also referred to the decision of Elias LJ in *R (Hurley & Moore) v Secretary of State for Business, Innovation & Skills* [2012] EWHC 201, recognising the duty of sufficient enquiry in this context:

*“89 ... the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required”.*

5.2.18. In considering the judgment of the Outer House in the first instance, the Inner House in *For Women Scotland Ltd v Scottish Ministers* [2023] CSIH 37 noted at [18], “[53] *For all of the foregoing reasons, I conclude that in this context, which is the meaning of sex for the purposes of the 2010 Act, ‘sex’ is not limited to biological or birth sex, but includes those in possession of a GRC obtained in accordance with the 2004 Act stating their acquired gender, and thus their sex. Such a conclusion does not offend against, or give rise to any conflict with, legislation where it is clear that ‘sex’ means biological sex. Mr O’Neill referred to the example of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 where references to the sex of the forensic medical examiner can only mean, read fairly, that a victim should have access to an examiner of the same biological sex as themselves. I agree. There are no doubt many other such examples. That does not give rise to the inevitable conclusion, as was urged upon me, that ‘sex’ in the present context must mean the same thing as it does in others. A rigid approach in this context is neither mandated by the language of either statute nor consistent with their respective aims and purposes”.* The judgment continues at [44] *“The decision of the UK Parliament to enact the GRA in the wide terms which it did necessarily, however, drives us away from a strict biological definition unless the context clearly and necessarily dictates otherwise.”*<sup>6</sup> [emphasis added]

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<sup>6</sup> The Supreme Court will hear the appeal of this decision on 26 and 27 November 2024. However, the Justices of the Supreme Court will not be considering whether s54(9) PACE should be read to mean that same sex searches should be limited to biological sex.

### Gender Recognition Act 2004 (“GRA”)

5.2.19. *9(1) Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).*

*22(1) It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person. (2) “Protected information” means information which relates to a person who has made an application under section 1(1) and which— (a) concerns that application or any application by the person under section 4A, 4C, 4F, 5(2), 5A(2) or 6(1) under any other section of this Act] or (b)if the application under section 1(1) is granted, otherwise concerns the person’s gender before it becomes the acquired gender.*

5.2.20. S22(4) provides that it is not not an offence under this section to disclose protected information relating to a person for a variety of reasons including that the person has agreed to the disclosure of the information, the disclosure is for the purpose of preventing or investigating crime, or the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.

5.2.21. There is no requirement for a person to have any surgery or medical treatment to obtain a GRC.

### Data Protection

5.2.22. UK GDPR, Article 5: Principles relating to processing of personal data

1. Personal data shall be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes (‘purpose limitation’);
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);

- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
- (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

5.2.23. The College of Police *Code of practice on Police information and records management* states:

*"4.2 Creating and managing police information according to the principles in this Code will result in information that:*

- can be located, accessed, retrieved and accurately interpreted when needed can support effective decision making, forecasting and efficiencies can be trusted as complete and accurate, increasing public and employee confidence;*
- has been legally and ethically collected, and is used for the purpose for which it was collected - is periodically reviewed, to ensure that it is retained for no longer than is required for the purpose for which it was recorded;*
- helps forces manage risk, protect the vulnerable and bring offenders to justice."*

## Grounds

### Ground 1: Violation of articles 3 and 8 ECHR and Article 10

- 5.2.24. It is clear that there would be a violation of article 3 ECHR for a male officer to carry out a strip search on a woman. This remains the case if that male has a government-issued GRC, and whether or not the woman knows about the certificate.
- 5.2.25. There is no legal obligation on a woman to pretend that she is not being searched by a man, just because he has a GRC. There *is* a legal obligation (and a human-rights obligation) on the state to protect women from this humiliation.
- 5.2.26. The article 8 rights of a detainee or officer with a GRC do not outweigh the rights of a woman compelled to conduct or submit to a strip search of or by someone of the opposite sex.
- 5.2.27. The article 10 rights of the female detainee are violated if she is not told the sex of the person who will be searching her, or if she is misled or deceived about it (for example when she is told that she will be searched by a female officer, but it is in fact a male officer with a GRC).
- 5.2.28. If a female officer or detainee is not given accurate information about a male's biological sex in relation to a strip search, then any consent that may be given to the strip search is likely to be vitiated; *McNally*. True consent may also not be able to be provided due to the vulnerable condition detainees are in when being subjected to a strip search, or by officers worried about the impact objecting could have on them.
- 5.2.29. In any event, there will also be article 8 breaches caused by the BTP Guidance due to the interferences with a person's dignity.

### Ground 2: Error of law / ultra vires / frustrating the legislative purpose

- 5.2.30. Given the serious risks of an article 3 violation from allowing a male officer with a GRC to carry out a strip search on a detainee, and of requiring a female officer to carry out a strip search on a male detainee with a GRC, the requirement in s54(9) PACE for the constable carrying out a search to be of the same sex as the person searched must be understood as a reference to actual sex, unmodified by a GRC; *For Women Scotland*. This is without a doubt a situation where the context clearly and necessarily dictates that the strict biological definition of women is required, despite the provision in s9(1) GRA. To fail to read "*biological*" into s54(9) PACE, would render that piece of legislation

incompatible with the EHRC, and make the purpose of single sex searches “*meaningless*”.

- 5.2.31. BTP’s failure to treat s54(9) PACE as requiring strip searches to be carried out by a person of the same biological search is therefore an error of law and/or ultra vires.
- 5.2.32. Similarly s39(b) requires that all matters relating to persons in detention be recorded in the custody records, with specific guidance on recording of strip searches in Code C. Failing to record and communicate the actual sex of individual officers undertaking searches means that this basic requirement is not being met. It is also in breach of the requirement to record data fairly, transparently and accurately under Article 5(1)(a) and (d) UK GDPR. By way of example, it would result recording that a detainee was searched by an officer of the same sex when in fact she was searched by an officer of the opposite sex. Recording data in this way does not meet the purpose of managing risk, protecting the vulnerable and bringing offenders to justice in line with the College of Policing code of practice for police information and records management.
- 5.2.33. Code C is simply non-statutory guidance. To the extent that BTP has treated the provisions in Code C on allowing a detainee or officer with a GRC to be treated as the opposite sex as overriding PACE or the Equality Act 2010, it has made an error of law and/or is ultra vires.
- 5.2.34. BTP’s guidance also frustrates the legislative purpose of s54(9) PACE, as it prevents single sex searches taking place on detainees despite the clear reasoned need for them.
- 5.2.35. The BTP Guidance also frustrates the purpose of s22 GRA, since it will be clear that a male being permitted to carry out a strip search on a female detainee will hold a GRC. Similarly, if a female officer is required to carry out a strip search on a male detainee, it will be clear that he holds a GRC. However at the same time as this information is implicitly revealed to those present by the application of the Policy, it may not be discussed or acknowledged. What is recorded in the custody record is that a same-sex statutory search took place, with no issue of consent for an opposite-sex search needing to be considered.

### Ground 3: Indirect discrimination and harassment

- 5.2.36. The BTP Guidance amounts to indirect discrimination and harassment against women detainees, women officers and women travelling on public transport in the UK because by treating sex under s54(9) PACE to include sex as sex modified by a GRC, it places such women at risk



of fear, humiliation, indignity and harassment. It puts women at a particular disadvantage compared to men because:

- i) women are in general more fearful of men than men are of women;
- ii) women are in general at greater risk of violence at the hands of men than men are of violence at the hands of women;
- iii) men are statistically a more likely to be guilty of crimes of violence, sexual assault, indecent exposure, and voyeurism than women; and
- iv) women in general feel (and have enforced against them) taboos about physical modesty more powerfully than men.

5.2.37. Men are responsible for 98% of sex crimes, and male cross-dressing and transsexualism has been found to be associated in the medical literature with sexual paraphilia: transvestic fetishism and autogynephilia (a man's sexual attraction to the idea of himself as a woman). Thus a woman forced to undress in front of a man who identifies as a woman may be being exposed to a behaviour has its roots in sexual arousal and coercion. Similarly ordering female officers to search male detainees who expresses a preference for being searched by women exposes them to sexual harassment and abuse by detainees motivated by sexual fetish. While it is not the case that every transgender male is paraphilic, the policy of requiring and allowing males to search women (or to demand to be searched by female officers) exposes women to a real risk of deliberate sexual abuse, sponsored by the state.

Ground 4: Breach of the PSED and/or failure of sufficient inquiry and/or failure to take into account relevant considerations

5.2.38. BTP has failed to comply with the PSED for the following reasons:

- i) No consideration has been given to impact of the BTP Guidance on the protected characteristic of sex, when it is clear that women will be significantly more impacted by this policy than men, as the fear, humility, indignity and harassment will be experienced on a far greater scale by women who are strip searched by a male with a GRC, or women having to carry out a strip search on a male with a GRC, compared to men in the opposite position. If the impact has not been considered and acknowledged, then consideration to how this can be mitigated (if all) cannot take place.

- ii) Although the EIA states that detainees who object to being searched by a person of the opposite sex due to faith or protected belief will have this request accommodated, it is entirely unclear from the BTP Guidance how this will work in practice. It is clear that the detainee will not be told that an officer holds a GRC (and is in fact of the opposite to that which they are being presented as) and, in any event, the Guidance only provides for opting out of consensual searches, not a statutory search from an officer whose sex has been modified by a GRC.
- iii) The EIA refers to the possibility of consent being required where a strip search is being carried out on a detainee of the opposite sex, but fails to acknowledge the power imbalance of female detainees and junior female officers to be able to feel safe to do so.
- iv) The EIA does not state what the effects are on women (and people with religious and gender critical / sex realist beliefs) of being stripped searched by a male (with or without a GRC).
- v) The EIA does not state what the effects are on women officers (and people with religious and gender critical / sex realist beliefs) of being required to strip search a male (with or without a GRC).
- vi) The EIA has therefore failed to demonstrate any consideration of the impact (and mitigation) on women, and those who hold religious and gender critical / sex realist beliefs, of the BTP Guidance as it applies to trans detainees or officers with a GRC; under the Guidance, where there is a GRC the person of the opposite sex will not be told that the trans person has a GRC or the opportunity to object before doing so.

5.2.39. For these reasons, the EIA is inadequate. There is no other evidence that the three limbs of s149(1) Equality Act 2010, or s149(3) and (5), were considered in any, or any adequate, detail.

5.2.40. In light of the serious article 3 and 8 and 10 ECHR violation issues raised, there is a heavy burden imposed on BTP to consider the full scope and import of the matter pursuant to the PSED.

5.2.41. BTP failed to consider sufficiently or at all:

- i) How the Guidance will work in practice. It is unclear how the guidance can operate, given that it states that the existence of a trans person's GRC cannot be disclosed; at what stage

objections to a search can be raised; whether and if so when detainees will be advised that they can raise an objection; and if detainees are advised that they can raise an objection, does this compromise s22 GRA.

- ii) The effect that a power imbalance may have on female detainees or female staff objecting to taking part in a strip search with a male (with or without a GRC).
- iii) The effectiveness of the BTP Guidance, given the unclear language of the document and the need for officers to act swiftly when strip searches are required.

5.2.42. Similarly, BTP failed to take into account articles 3, 8 and 10 ECHR, the matters it was required to have due regard to under s149 Equality Act 2010, and the issues listed above which it was required to give sufficient consideration to when approving the Guidance.

In your response, please refer to each numbered point in turn and confirm whether the ground is conceded or disputed and, if it is disputed, please provide full details of the basis on which it is disputed.

**6. Details of the Action that the Defendant is Expected to Take:**

- 6.1. To confirm that the BTP Policy is withdrawn.
- 6.2. To issue an interim policy within 7 days that:
  - (a) confirms detainees will only be searched under statutory powers by an officer or staff of the same biological sex (and not sex modified by a GRC); and
  - (b) confirms that the sex of both detainees and officers involved in any search will be accurately and clearly recorded and communicated to detainees.
- 6.3. To agree to prepare fresh policy, on consensual searching i.e where the detained person indicates a preference to be searched by an officer of a sex in contradiction of the requirements of statutory powers), which takes into account the impact on officers who may be under pressure to undertake these searches.
- 6.4. To disclose, in accordance with the duty of candour, copies of all of the documents obtained and considered as part of the *Search Position* EIA of 30 September 2024 including, but not limited to, the internal and external feedback referred to at page 11 of the EIA and any guidance relied on.

6.5 To disclose, in accordance with the duty of candour, any evidence of compliance with the PSED, save for the EIA referred to herein.

6.6 To confirm whether the BTP Guidance was discussed with the EHRC before or after it was issued. If it was, to disclose copies of any correspondence or notes detailing these discussions.

**7. In practical terms, what the Claimant is seeking:**

7.1. That the current Guidance is withdrawn immediately, and that it is confirmed that strip searched will be carried out on the basis of same biological sex only.

**8. Details of the Legal Advisors Dealing with this Claim:** Deighton Pierce Glynn, 33 Bowling Green Lane, London, EC1R 0BJ, reference SRO/6226/001.

**9. Details of any Interested Parties:** The NPCC.

**10. Documents and information that you should provide with your response:**

You are asked to provide the following information within fourteen days in accordance with the judicial review pre-action protocol.

You are reminded that in responding to this letter you must comply with your duty of candour.

This duty requires due diligence in: (a) investigating what material is relevant to this claim; and, (b) disclosing that material where it is relevant or assists the Claimant, including on some as yet unpleaded ground. A failure to comply with the duty of candour when providing your response to this letter may result in costs sanctions.

The duty of candour is reinforced by paragraphs 6 and 16(d) of the Judicial Review Pre-Action Protocol which provide that you must enclose any relevant documentation requested by the Claimant with your response and that where you ignore this requirement the court may impose sanctions, for example costs sanctions.

Accordingly, in your response, you are asked to confirm that you have investigated what material is relevant to this claim and to disclose that material in or with your response. In addition, we would ask you to ensure that copies of the following documents are provided with your response in compliance with your pre-action disclosure duties:

10.1. The documents referred to at 6.5 and 6.6 above.

10.2 Any other documents you consider as part of the reply to this letter.

11. **Details of any other documents that are Considered Relevant and Necessary:**

None other than those identified above.

12. **Alternative Dispute Resolution (ADR):**

We will not delay the issue of the proceedings to engage in ADR given our experience of the timescales involved in participating in ADR and the requirement that any claim for judicial review be issued promptly. We will, however, take full instructions on any proposals your authority puts forward regarding the use of ADR and we will, if necessary, consider agreeing a stay of these proceedings in order to facilitate ADR.

If your authority is minded to propose ADR, please provide full details of the form of ADR that is being proposed, contact details of any external ADR provider that is being proposed, details of the outcome of your enquiries into that provider's availability, details of the likely timescales involved, details of the likely costs of mediation and how your authority proposes those costs be met and details of any concessions your authority is prepared to make pending the outcome of the ADR referral.

13. **Address for Reply and Service of Court Documents:** Deighton Pierce Glynn, 33 Bowling Green Lane, London, EC1R 0BJ; email:

[REDACTED]

14. **Proposed Reply Date: By 4.00pm on 29 November 2024.**

14.1 We are treating 12 December 2024 as the limitation date based on the BTP Guidance being dated 12 September 2024. A truncated reply time is therefore required due to the time needed to consider BTP's response and prepare the claim to issue. However, we understand that the BTP Guidance may not have been published internally within the BTP until 30 September 2024 (and not externally until after this). If the BTP Guidance was not published until 30 September 2024, please confirm by return, and confirm agreement that the limitation date is agreed to be 30 December 2024. We note the need to issue the claim promptly in any event.

14.2 If your authority considers that more time is needed to respond to any part of this letter, please let us know within the next four days identifying the relevant part, explaining why more time is needed, the date by which your authority proposes to respond, and full details of any concessions your authority is prepared to make in the interim.

14.3 We are also putting you on notice that Sex Matters is being advised about making an application for an injunction and/or expedition pending the determination of this claim due to the serious risks of article 3 violations from the BTP Guidance. BTP is therefore asked to confirm that, even if the claim is not conceded, the steps at section 6 of this Letter Before Claim are complied with on a Without Prejudice temporary basis until the claim is determined in order to avoid the costs and the Court's time of such an application.

Yours faithfully

*DPG*

**DEIGHTON PIERCE GLYNN**

CC: NPCC [REDACTED]  
[REDACTED]