

[REDACTED]

The Mayor and Commonalty and Citizens of the City of London
Comptroller and City Solicitor's Department
City of London Corporation

[REDACTED]

Dear Madam/Sir

Judicial Review - Letter Before Claim

1. **To:** The Mayor and Commonalty and Citizens of the City of London
2. **The Claimant:** Sex Matters¹
3. **Reference Details:** N/A
4. **Details of the Matter being Challenged:**
 - 4.1. The Defendant's decisions of 9 and 20 May 2025 to maintain its gender identity policy ("the Policy"), pending a review of the facilities at Kenwood Ladies' Bathing Pond ("the Ladies' Pond").
 - 4.2. The Defendant's ongoing failure to ensure paragraph 6 of the Hampstead Heath byelaws ("HHB") is enforced.
5. **Language and terminology**
 - 5.1. In this letter, the following terms are used:

¹ Sex Matters is a human rights charity; its object is to promote human rights where these relate to biological sex, in particular by: contributing to the sound administration of human rights law; eliminating infringements of human rights (where infringement relates to biological sex); and promoting the sound administration of the law in relation to biological sex and equality in the law.

- 5.1.1 “sex”, “biological sex” or “natal sex”, to denote the immutable sex of a person as observed and recorded at birth;
 - 5.1.2 “man”, “male”, “woman” and “female” to denote the sex of a person notwithstanding transgender identification or any gender recognition certificate (“GRC”);
 - 5.1.3 “trans identifying man/male” to denote a man who identifies as a woman, femme, cross-dresser, non-binary, genderfluid, agender or any other gender variant, and this will be reflected in our approach, and “trans identifying woman/female” to denote a woman who identifies as a man, transmasc, non-binary, genderfluid, agender (whether or not he or she is in possession of a GRC);
 - 5.1.4 “male/man with a GRC” to denote a trans identifying man who holds a GRC which reflects his identification as a woman, and “female/woman with a GRC” to denote a trans identifying woman who holds a GRC reflecting her identification as a man.
- 5.2 Pronouns are used in accordance with biological sex.
- 5.3 Language in this area is contested; some may find one or more of these usages objectionable. However, sex is relevant and significant for the purposes of the matters addressed and using these terms ensures that the issues may be appreciated with clarity, which is particularly important.

6. **The Issue:**

6.1. **Summary of factual background**

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

- 6.1.1. The Kenwood Ladies Pond opened in 1925 and has been the sole women-only freshwater swimming amenity in the country. It is supervised and landscaped with trees and hedges in such a way that it provides seclusion.
- 6.1.2. The Kenwood Ladies' Pond displays signage at its entrance that says “women only” and “no men beyond this point”. Admission is by ticket. The admissions policy displayed on a board at the entrance to the pond and on the website says that the pond is:
 - Women only
 - Up to two female children aged 8-13 years are allowed under the supervision of an adult

- No children under 8 years old
- 6.1.3. Various risks are included on the board in relation to swimming in open, untreated water. There is no mention of the risk of exposure to men.
- 6.1.4. The pond is supervised by female staff in the ticket booth and as lifeguards.
- 6.1.5. HHB state at paragraph 6 *“No male person over the age of 14 years shall go or attempt to go into any part of any open space in contravention of any regulation of the Council specified in a notice exhibited on such part reserving such part for the use of female persons and children under the age of 14 years only.”*² Enforcement of the HHB is undertaken by constables of the Hampstead Heath Constabulary, administered by the Defendant.
- 6.1.6. The Ladies’ Pond changing hut contains open communal showers (with no shower cubicles) and an open changing area. There are four closed changing cubicles which have gaps at the top and bottom and open onto the changing area. There is one shower with a shower curtain which is not full length.
- 6.1.7. The open showers and open changing area involve full nudity. There is no place to hang clothes in the curtained shower area so women enter and leave the showers naked.
- 6.1.8. As well as the indoor showers and changing area, which is quite small, there is an outdoor shower and women change outside in an area adjacent to the changing hut and on the grass slope.
- 6.1.9. There are only female toilets, and they are the kind with gaps above and below the cubicle doors.
- 6.1.10. In summary, the facilities are designed and advertised for single-sex use and nudity is common.
- 6.1.11. Adjacent to the pond is “the upper meadow”, which is an area used by women and girls for sunbathing and picnicking. Admission to the meadow is free but this is covered by the same admissions criteria.
- 6.1.12. The Defendant also operates a Men’s Pond and a Mixed Pond on Hampstead Heath, as well as the Parliament Hill Lido, which, like the Mixed Pond, is open to all. All three ponds and the Lido are open all year round.

² <https://www.cityoflondon.gov.uk/things-to-do/green-spaces/hampstead-heath/hampstead-heath-byelaws>

6.1.13. In April 2019, the Defendant published *Gender Identity Survey: Report*³. The survey had been launched in July 2017 by Charles Edward Lord, then Chair of the Defendant's Establishment Committee, with the words "*It shouldn't be controversial. It shouldn't be a debate. Trans women are women, trans men are men.*" The Survey Report noted the Defendant's view that those proposing that single-sex facilities be single-sex were illegitimate: "*some proposed restricting access to services depending on 'biological sex', **which would be inconsistent with the Equality Act 2010, other than in exceptional circumstances.***"

[emphasis added]

6.1.14. On 2 May 2019, the Defendant adopted the Policy. The Policy allows trans identifying men to access the women-only Ladies' Pond and facilities at the lido and across the Defendant's estate.

6.1.15. The Policy states:

Gender Identity: Our Services

7. The protected characteristics under the Equality Act 2010 are: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

8. The term 'gender reassignment' applies to a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) to reassign their sex by changing their physiological or other attributes. This is a personal process, and not a medical one, and may or may not involve medical interventions (e.g. surgery or hormone treatment).

9. The Equality and Human Rights Commission advises that the term 'gender reassignment' is outdated or misleading, and the preferred umbrella term is 'trans'. The City Corporation recognises that gender identity is complex and varied (e.g. some people identify as genderfluid), and this will be reflected in our approach.

*10. **The Equality Act requires that people with the protected characteristic of gender reassignment are not discriminated against in the provision of single-sex services and are able to access services aligning with their gender identity.** In a few circumstances, services may lawfully discriminate if excluding trans people is a proportionate means to achieving a legitimate aim. The explanatory notes in the Equality Act provide single-sex counselling*

³<https://democracy.cityoflondon.gov.uk/documents/s113794/2019.04%20Gender%20Identity%20Report.pdf>

services for survivors of sexual violence as an example of where lawful discrimination could take place.

11. The City of London Corporation is committed to trans inclusivity and to open dialogue with the people who use our services. We will consider any 'legitimate aim' on a case by case basis, only deviating from a presumption of inclusivity where this can be evidenced to fully comply with the Equality Act. Any action taken by the City Corporation to legally discriminate by excluding trans people would need to be rigorously justified under the Equality Act, taking account of all the circumstances of the case and informed by an Equality Impact Assessment.

[emphasis added]

6.1.16. On the same day, the Defendant issued a press notice which stated:

The City of London Corporation has adopted a new gender identity policy following a widespread public survey.

...

For the City Corporation, the new policy will mean that:

...

- *Transgender people are not discriminated against in the provision of City Corporation services and are able to access services relating to their gender identity.*

...

Under the Equality Act 2010, trans people can access single-sex services in line with their 'acquired gender'. A trans person is not required to have a Gender Recognition Certificate, or have undergone any form of medical intervention, to be protected under this legislation. In restricted circumstances, it is lawful for a single-sex service to provide a different service, or deny access to, a trans person, where they can demonstrate that doing so is a 'proportionate means of achieving a legitimate aim.'

[emphasis added]

- 6.1.17. In 2020, Mr Lord referred to the Policy as being a “single-sex facility”, and the Equality Act 2010 permitting trans people to use single-sex facilities in accordance with their gender identity.⁴
- 6.1.18. On 16 April 2025, the Supreme Court handed down judgment in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 (“FWS”)⁵. The Court held that for the purposes of the Equality Act 2010 (EqA), “woman” means a biological woman and “sex” means biological sex. This is the case regardless of whether or not a person holds a GRC.
- 6.1.19. The Court further held that “*where the words of legislation, enacted before or after the commencement of the GRA 2004, are on careful consideration interpreted in their context and having regard to their purpose*” found to be inconsistent with the rule in s9(1) GRA, that a GRC changes a person’s sex in law for all purposes, that rule was disapplied by s9(3) GRA without the need for express words of disapplication or for such disapplication to arise by necessary implication.
- 6.1.20. On 9 May 2025, the Defendant published a notice stating:

Supreme Court Ruling 16 April 2025

In line with many other affected organisations, we are carefully considering the judgment and awaiting statutory guidance from the EHRC which, by law, service providers must take into account.

We take our obligations very seriously and a carefully considered decision in this complex matter will be taken in due course.

Any unlawful discrimination will not be tolerated. Our gender identity policy is designed to ensure our services are welcoming to everyone, including all who use the Bathing Ponds.

We are committed to providing a safe, respectful, and inclusive environment for all.

- 6.1.21. Implicit in this notice was a decision to maintain the Policy.
- 6.1.22. On 20 May 2025, the Defendant’s Hampstead Heath, Highgate Wood and Queen’s Park Committee discussed the FWS judgment. It was agreed to review the swimming facilities at Hampstead Heath. The

⁴ <https://celord.com/2020/04/24/trans-rights-should-be-supported-not-reversed-a-cautionary-note-to-the-minister-for-women-equalities-liz-truss-trussliz-geogovuk/>

⁵ Sex Matters were one of two human rights organisations who intervened and were granted permission to make oral submissions at the Supreme Court. Sex Matters’ interpretation of the law was judged to be the correct one.

Committee similarly decided that the current arrangements under the Policy would remain in place pending the outcome of the review.

6.1.23. Sex Matters understands that trans identifying males continue to use the Ladies' Pond and facilities. It has been contacted by women who have:

- i) felt uncomfortable being undressed and showering in the changing facilities when trans identifying men have been present;
- ii) been subjected to trans identifying men being naked in the changing area and showers;
- iii) experienced trans identifying men taking photographs of women and girls and trans identifying men topless in the meadow, both of which are not permitted;
- iv) experienced trans identifying men staring at women and girls in the showers and changing facilities;
- v) felt violated in what they considered was a women-only safe space;
- vi) left the Pond because there was a trans-identifying man present;
- vii) changed the time or the manner in which they use the Ladies' Pond, such as only going with a group of friends, not taking their swimsuit off in the shower, or only going at certain times where they feel safer;
- viii) self-excluded permanently from the Ladies' Pond altogether after encountering a trans identifying man; and
- ix) no longer felt it was a safe space to bring their daughters.

6.1.24. Sex Matters understands that the Defendant's current position is:

- i) the Ladies' Pond is not a single-sex service because trans identifying men are permitted to use the facilities;
- ii) women, in general, are not directly discriminated against by allowing trans identifying men into the Ladies' Pond, as the decision to allow trans identifying men into the Ladies' Pond is not to discriminate against women on the basis of their sex, but for inclusion of trans people;
- iii) women, in general, are not indirectly discriminated against by allowing trans identifying men into the Ladies' Pond, simply by

their presence because it is not a single-sex service and has a separate toilet, shower and changing room; and

- iv) it is not required to comply with the Public Sector Equality Duty (“PSED”) under s149 EqA because it is not managing Hampstead Heath as a function of a local authority. Nonetheless, the Defendant will have due regard to accessibility arrangements.

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.

6.1. **Grounds of challenge**

Grounds

Matters going to all Grounds

- 6.2.1. Before turning to the detail of each Ground, it is convenient to address some factual and legal propositions which are common to all of them.
- 6.2.2. The Defendant’s Policy permits any male who claims to have the protected characteristic of gender reassignment to use the Ladies’ Pond. As noted by the Defendant, to have this protected characteristic, a person does not need to have had any surgery, taken any cross-sex hormones, taken any particular steps to “reassign their sex”, or been proposing to undergo the process of gender reassignment for any minimum length of time. In practice, the Defendant permits any male to enter the Ladies’ Pond providing that person identifies with the female gender or purports to do so.
- 6.2.3. The Defendant fails to make clear to users of the Ladies’ Pond that men or trans identifying men may be present in any of the facilities at all times.
- 6.2.4. The Defendant’s Policy means that the following circumstances (“the Circumstances”) arise:
 - i) women and girls who don’t know about the policy will be nude in the shower or in the communal changing areas without knowing that men or trans identifying men may be present or appear;
 - ii) women who know about the policy and undress in the shower and communal changing area feel like they are playing “Russian

Roulette” in that they don’t know if a trans-identifying man will appear;

- iii) women and girls may encounter trans-identifying men who are naked in the showers, this is alarming even if the men claim no sexual motive;
- iv) women and girls will be in their bathing costume in the Ladies’ Pond and surrounding areas without knowing that men or trans identifying men may be present or appear;
- v) women and girls are at risk of indecent exposure of male genitalia and sexual harassment;
- vi) some women and girls will self-exclude from the Ladies’ Pond or be constrained in how they use it (such as only going in groups); and
- vii) women and girls are at risk of voyeurism from men or trans identifying men in a space they understand to be for women only;
- viii) women and girls who value and have sought out an advertised “women-only” service are denied this service and are only able to use the service at the risk that a trans-identifying male will be there;
- ix) the meadow is no longer guaranteed to be a female-only space and some women do not feel safe bringing their daughters or leaving their children with friends in order to swim;
- x) women and girls from religious minorities with strong codes of sex separation and modesty in particular self-exclude from the Ladies Pond and the Meadow, which was previously a female only space; and
- xi) women and girls who are surprised, shocked, alarmed or upset to find themselves in a situation of unexpected nakedness or exposure with males in a “women-only” space fear they will have their complaints dismissed and branded as transphobic both by lifeguards and potentially also by the Hampstead Heath Constabulary.

6.2.5. In FWS, the Supreme Court held that, for the purposes of the rights in the EqA, trans identifying males are men. It means that in single-sex services trans people should be treated as their biological sex. It does not make a difference if a trans person has a GRC.

6.2.6. The judgment explains how the EqA should always have been interpreted. This means that it also has retrospective effect. The Defendant must implement how it operates in order to comply with the judgment as quickly as possible. The Defendant should not wait, for example, for the EHRC to publish its revised Code, or any other guidance, before withdrawing the Policy. The Defendant should not follow the EHRC's original Code or the EHRC's single-sex services guidance, until these documents have been updated in light of the judgment. Whilst of course the Defendant can review the position and take time to do so, the Policy must be withdrawn in the meantime with immediate effect as it is clear that the current position is unlawful and this can be simply rectified by withdrawing the Policy.

Ground 1: Violation of Articles 3 and 8 ECHR and breach of ss 7 and 8 HRA 1998

6.2.7. As a result of the Circumstances, the Defendant's Policy creates anticipatory Article 3 and 8 ECHR violations, as the Circumstances are capable of amounting to inhuman or degrading treatment and interference with private life including dignity. The concept of "private life" has been described by the European Court of Human Rights and out domestic courts as "a broad term not susceptible to exhaustive definition" which encompasses "the physical and psychological integrity of the person".⁶ This protects, among other things, the "zone of interaction of a person, even in a public context".⁷

6.2.8. For those reasons, a failure to provide single-sex facilities may inhibit women's ability safely or confidently to exercise their personal autonomy (by using public facilities) or to enjoy their freedom to establish relationships with the outside world and/or their freedom from violence by third parties. Those are freedoms are encompassed by Article 8.

6.2.9. By continuing to call the service the Ladies' Pond, and to have "women-only" and "no men" and failing to make clear that this does not mean biological sex, the element of realistic choice and control over personal autonomy, privacy and dignity is denied to women, such that their Article 3 and 8 rights are more seriously jeopardised.

6.2.10. Although not all women will object to the Circumstances, it is reasonable to expect that many will. Many women will be unknowingly placed in a situation of being undressed or in a bathing costume when males are

⁶ *R (Wood) v Commissioner of Police of the Metropolis* [2010] 1 WLR123, at [18]; *S v United Kingdom* (2008) 48 EHRR 1169, at [66]; *Pretty v United Kingdom* (2002) 35 EHRR 1, at [61]; *YF v Turkey* (2003) 39 EHRR 715, at [33]; *X and Y v The Netherlands* (1986) 8 EHRR 235, at [22].

⁷ *Von Hannover v Germany* (2005) 40 EHRR 1, at [50]. *R (Wood) v Commissioner of Police of the Metropolis* [2010] 1 WLR123, at [21].

present; this will contradict some religious women's beliefs about how they present in front of men.

- 6.2.11. There is a positive obligation on the Defendant 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 to put in place a regulatory and administrative framework to avoid the risk of treatment contrary to Article 3: *R (Limbuella) v SSHD* [2005] UKHL 66.
- 6.2.12. Again, the Defendant also has positive obligations regarding prevention of breaches of Article 8 and the efficacy of those preventative measures⁸.
- 6.2.13. The Court of Appeal held that "*deception as to gender can vitiate consent*", *McNally v R* [2013] EWCA Crim 1051. Although this is in the context of rape, the analogous situation of an Article 3 violation means that if women are not being told that the Ladies' Pond permits entry to any males, they cannot consent to being naked in front of them.
- 6.2.14. The Defendant's decisions post-FWS to maintain a Policy, which is systemically flawed for being incompatible with, sanctioning or encouraging violations of the ECHR, is unlawful.
- 6.2.15. The Defendant's failure to ensure that paragraph 6 of the HHB is enforced in light of the reported and ongoing anticipatory breaches of Articles 3 and 8 ECHR is in itself a breach of the positive obligation on the Defendant to effectively investigate and punish perpetrators of these breaches. The Defendant has and continues to act in a way which results in a systemic violations of the ECHR, which breaches ss7 and 8 HRA 1998; see *Commissioner of Police of the Metropolis v DSD & Anor* [2018] UKSC 11.

Ground 2: Discrimination and Harassment

6.2.16. The Defendant's decisions not to withdraw the Policy pending the review will result in direct discrimination, indirect discrimination and harassment against women users of the Ladies' Pond. This is because by allowing trans identifying men to use the Ladies' Pond, it places these 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;

⁸ *LW and Ors v Sodexo* [2019] EWHC 367 (Admin)

- 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) the risk of seeing a male in a state of undress or being seen by a male undressed engages the vulnerability, privacy and dignity rights of women and, although men will share those rights, it is unlikely to be controversial that women have a greater taboo around nudity and well-founded sense of vulnerability as against men than the other way round;
- iv) men are statistically a more likely to be guilty of crimes of violence, sexual assault, indecent exposure, and voyeurism than women; and
- v) women in general feel (and have enforced against them) taboos about physical modesty more powerfully than men.

6.2.17. These disadvantages are not controversial and are central to the rationale for the customary division of the sexes in public facilities where women and girls are in a state of undress or are otherwise physically vulnerable.

6.2.18. The HHB, which specifically exclude men over 14 from going or attempting to go into any part of any open space which is labelled as being for women, reflect this greater risk to women from male encroachment than vice versa.

6.2.19. 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 being in a state of 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.

6.2.20. Sex crimes are of course not committed exclusively by biological males who are transgender. Crucially, however, the evidence shows that biological males who are transgender are no less likely to commit such crimes than other biological males. Moreover, the Policy permits any male to access the Ladies' Pond so it cannot be stated that this group is distinguishable from the wider cohort of males.

6.2.21. The Defendant's decisions post-FWS to maintain a Policy, which is systemically flawed for resulting in direct discrimination, indirect discrimination and harassment against women, is unlawful.

Direct Discrimination

6.2.22. Direct discrimination is provided for at s13 EqA and provides that:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

6.2.23. Accordingly, as Lord Hodge noted in FWS “*where sex is the protected characteristic, a woman relying on section 13(1) must compare her treatment with the treatment that was or would have been afforded to a man whose circumstances are not materially different to hers; in other words, a similarly situated man*” (§134).

6.2.24. The heightened risk to a women’s safety or privacy from the Policy, as opposed to the risk faced by men, amounts to unequal and inadequate provision on the basis of sex and is therefore direct discrimination. The facilities are objectively worse for women compared with men, which is grounded directly in sex because of the heightened risks arising from the Circumstances; see *R (Coll) v Secretary of State for Justice* [2017] UKSC 40.

6.2.25. The Policy also directly discriminates against men and boys who wish to access the Ladies’ Ponds but do not have or claim to have the protected characteristic of gender reassignment as they are treated less favourably than a woman and girls or indeed less favourably than a person having the protected characteristic of gender reassignment. This would be direct discrimination on the basis of sex and belief (the lack of belief in gender identity). As Lord Hodge noted in FWS, the effect of a policy based on self-ID is to make it impossible for the service provider to rely on the exceptions at paragraphs 26-28 Schedule 3 EqA.

6.2.26. It is not an answer for the Defendant to rely on the purpose of the Policy – to include trans people – so say there is no direct discrimination. It is the outcome or the fact of the less favourable treatment as a result of the Policy which constitutes direct discrimination, rather than the intent.

Indirect discrimination

6.2.27. Indirect discrimination is provided for at section 19 EqA:

(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.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—

(a) *A applies, or would apply, it to persons with whom B does not share the characteristic,*

(b) *it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, (emphasis added)*

(c) *it puts, or would put, B at that disadvantage, and*

(d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*

6.2.28. The Policy is a provision, criteria or practices (“PCP”) for the purposes of s19 EqA, putting women at a disadvantage by comparison to men as a result of the Circumstances and the matters at 6.2.16 to 6.2.19.

6.2.29. The PCP (a) permits, allows or encourages men who identify as having a female gender or purport to having a female gender to use the Ladies’ Pond; (b) labels the Ladies’ Pond, the Mixed Pond and the Male Pond as facilities as for women, both sexes and men, when the Ladies’ Pond is in a fact mixed-sex facility; and (c) fails to have single-sex changing and showering facilities.

6.2.30. The fact that some women will not object to the presence of a trans identifying male in the women’s changing rooms is not significant or probative of whether there is a ‘particular disadvantage’ to women.

6.2.31. In the alternative to direct discrimination, the Defendant’s decisions not to withdraw the Policy therefore result in indirect discrimination to women on account of their sex.

6.2.32. Indirect discrimination concerns group disadvantage and focuses on the disadvantage that the claimant experiences as a member of a group and which is compared, pursuant to s23 EqA with a group that does not share that characteristic. As Lord Hodge DPSC noted in FWS, *“the provisions concerning indirect discrimination are specifically directed at the problem of group discrimination and their purpose is to counter group (not individual) disadvantage. They operate where an apparently neutral policy or practice is applied generally to everyone but produces a disproportionate disadvantage for a particular group with a shared protected characteristic.”* (§144)

6.2.33. The Defendant’s decisions engage s29 EqA. They go to *“the terms on which A provides the service to B”* as described by s. 29(2)(a), and second, following *Earl Shilton Town Council v Miller* [2023] EAT 5 §26, the risk of seeing a man in a state of undress would *“clearly constituted a detriment”*. Similarly, being seen undressed when you do not want to

be is a detriment and that the risk thereof constitutes being 'subjected to a detriment'. A *risk* may constitute a 'detriment' and does not necessarily need to materialise (see e.g. *R v Birmingham City Council, Ex p Equal Opportunities Commission* [1989] AC 1155).

6.2.34. It is not an answer for the Defendant to maintain that women are not indirectly discriminated against by allowing trans identifying men into the Ladies' Pond as it is already acutely aware of the Circumstances and the matters at 6.2.16 to 6.2.19. this remains the case whether or not the Ladies' Pond and the facilities are a single-sex service due to the matters set out above.

6.2.35. The Defendant's PCP of not enforcing paragraph 6 of the HHB in the Ladies' Pond amounts to unlawful indirect discrimination because of the disproportionate impact this will have on women as compared with men.

Harassment

6.2.36. Section 26 EqA provides: -

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

6.2.37. In *Unite the Union v Nailard* [2019] ICR 28 the Court of Appeal held that a failure to deal with harassment by a third party could 'create' a hostile environment where "*inaction or a cold shoulder is really indicative of silently taking sides with the perpetrator - even without encouraging the perpetrator*" (§102).

6.2.38. Allowing men, including and trans identifying males to use the Ladies' Pond without very clear notices that males may use all of the facilities constitutes "unwanted conduct related to [sex]". The Policy has the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for many women users of the Ladies' Pond.

6.2.39. As a result of the Circumstances and the matters at 6.2.16 to 6.2.19, the Policy is permissive of violations to the dignity of women using the Ladies' Pond, and/or of an environment which is intimidating, hostile, degrading, humiliating or offensive by reason of conduct related to sex

or of a sexual nature. Where the proscribed effect is caused inadvertently, by its very nature it is highly likely to be reasonably experienced as causing the proscribed effect for the purposes of s.26(4) EqA, and thus to satisfy the requirements of both causes of action. The Policy appears reckless to enhance the likelihood of unlawful harassment or sexual harassment being perpetrated upon women.

Ground 3: Error of law / irrationality

- 6.2.40. Sex Matters' understands that the Defendant's current position is that the Ladies' Pond is not a single-sex service and so it can admit trans identifying men. This contradicts the position in the Policy, which refers to a single-sex service and allows people to use the pond which aligns with their gender identity.
- 6.2.41. It also contradicts paragraph 6 of the HHB which state clearly that male people over the age of 14 years must not attempt to go into any part of the Heath specified in a notice as being for women-only, as is the case in the Ladies' Pond further to the signs at the entrance and the admissions policy displayed at the entrance and on the Defendant's website.
- 6.2.42. Sex Matters notes that the Defendant's position in 2019 at the time that the policy was adopted appears to have been that the ponds were as "single-sex service" and that the Equality Act required that to include members of the opposite sex based on the protected characteristic of gender reassignment.
- 6.2.43. In any event, the Defendant is mistaken in considering that the EqA requires that people with the protected characteristic of gender reassignment must be able to access single-sex services "*aligning with their gender identity*" (§10 of the Policy). The Supreme Court confirmed in FWS that this is not and has never been correct. The Defendant's decisions following FWS amount to a serious error of law and are unlawful.
- 6.2.44. If the Defendant maintains that the Ladies' Pond is not a single-sex space, it is required to provide: i) details of when the decision that it is not a single-sex service was made; ii) documents confirming when this decision was made; iii) details of public notices of the same; and iv) why the justification for having a previously lawful single-sex space no longer applies.
- 6.2.45. On the basis that the Ladies' Pond is not a single-sex service and open to all men, the decision to maintain the Policy post-FWS is irrational. The Defendant provides a Mixed and a Men's Pond. The Circumstances

and the matters at 6.2.16 to 6.2.19 demonstrate a clear need for a women-only pond.

- 6.2.46. If the Policy is correct, and the Ladies' Pond is a single-sex service, the Defendant is operating it unlawfully by allowing trans identifying males to access it.
- 6.2.47. The Defendant's decisions in light of the above are unlawful.
- 6.2.48. In addition, the Defendant's continuing failure to ensure that paragraph 6 of the HHB is enforced is challenged. For the reasons set out above relating to need to protect women and girls in the Ladies' Pond relating to the violation of ECHR rights, unlawful discrimination and harassment, the Defendant's must enforce paragraph 6 to protect women and girls. The ongoing decisions not to do so is an error of law and irrational.
- 6.2.49. If the Defendant is not enforcing paragraph 6 because it allows males to identify as females, this is an error of law. Section 9(3) GRA applies to paragraph 6 for analogous reasons as to why it applies to EqA, namely because of the reasons single-sex spaces are required in places where women undress in public places. Self- identification of males into women-only spaces is not the law.
- 6.2.50. If the Defendant is not enforcing paragraph 6 on the basis that the Ladies' Pond is not a single-sex space, this is in conflict with the notices at the entrance and the displayed admissions policy which states that it is for women only.

Ground 4: Public Sector Equality Duty

6.2.51. 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.

- 6.2.52. It is noted that the Defendant's position is that it is not required to comply with the PSED under s149 EqA because it is not managing Hampstead Heath as a function of a local authority. Sex Matters seeks further clarification on this point including any settled caselaw confirming this point, including in relation to both the Policy and enforcing paragraph 6 of the HHB.
- 6.2.53. To preserve its position, Sex Matters relies on the Defendant's failure to comply with the PSED when making the decisions and not enforcing paragraph 6 of the HHB.
- 6.2.54. Due regard must be had on the impact on sex, sexuality and religion and belief when making the decisions (including whether to enforce paragraph 6 the HHB), as people with these protected characteristics will be significantly more impacted by the decisions to maintain the Policy pending the review and not enforce paragraph 6 of the HHB. As the impact has not been considered and acknowledged, then consideration to how this can be mitigated (if all) cannot have taken place.
- 6.2.55. In light of the serious Article 3 and 8 ECHR violation issues raised above, there is a heavy burden imposed on the Defendant to consider the full scope and import of the matter pursuant to the PSED.

6.2.56. If the Defendant cannot adequately confirm that the PSED is disapplied in relation to both matters under challenge, or has provided evidence that it has been complied with, Sex Matters will pursue this ground.

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.

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

- 7.1 To confirm that the Policy is withdrawn with immediate effect.
- 7.2 To issue a statement online confirming that it will comply with FWS and will operate the Ladies' Pond as a single-sex service.
- 7.3 To undertake to use signage at the Ladies' Pond to make clear that it is for women only (meaning their biological sex is female).
- 7.4 To confirm that paragraph 6 of the HHB will be enforced against males (including trans identifying men).
- 7.5 To provide evidence of the decision-making process and the decision that the Ladies' Pond shall not operate as a single or separate service.

8. In practical terms, what the Claimant is seeking:

- 8.1. That the Policy is withdrawn immediately and paragraph 6 will be enforced against males.

9. Details of the Legal Advisors Dealing with this Claim: Deighton Pierce Glynn, 63 Gee Street, London, EC1V 3RS, [REDACTED] [REDACTED]

10. Details of any Interested Parties: None.

11. 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:

11.1. The documents referred to at 6.2.44, 6.2.52 and 7.5 above.

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

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

None other than those identified above.

13. **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.

14. **Address for Reply and Service of Court Documents:** Deighton Pierce Glynn, 63 Gee Street, London, EC1V 3RS; [REDACTED]
[REDACTED]

15. **Proposed Reply Date:** By 4.00pm on 1 July 2025.

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.

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 and 8 violations from the decision to maintain the Policy and not enforce paragraph 6 of the HHB. The Defendant is therefore asked to confirm that, even if the claim is not conceded, the steps at section 7.1 to 7.4 of this Letter Before Claim are agreed 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