IN THE HIGH COURT OF JUSTICE **CLAIM NO: AC-2025-LON-002809**

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

THE KING ota
SEX MATTERS

Claimant

-and-

MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON

Defendant

CLAIMANT'S SKELETON ARGUMENT FOR HEARING TO DETERMINE PERMISSION TO APPLY LISTED FOR 17 DECEMBER 2025

Preliminary

Bundles:	Permission Hearing Bundle
	Authorities Bundle
References:	in square brackets are to pages in the Permission Hearing Bundle
Essential pre-reading:	Statement of Facts and Grounds ("SFG") **[22-50]**
	Witness statement of Maya Forstater §§3-14 **[119-123]**, §§89-102 **[152-155]**, §§110-114 **[158-159]**, §141 **[167-168]**
	Summary Grounds of Resistance ("SGR") **[77-96]**
	Reply to Summary Grounds of Resistance **[97-101]**
	For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16, [2025] 2 W.L.R. 879 ("*FWS2*"), esp §§88, 202, 211-221

The below skeleton argument complies with the direction of Lieven J that it should be a maximum of ten pages **[116]**.

A: INTRODUCTION AND SUMMARY

1. This is a challenge to admission rules governing the provision of ostensibly single-sex facilities to the public on Hampstead Heath in the form of open-water Ponds for swimming with associated communal changing areas and communal showers.

2. The admission rules are the responsibility of the Defendant. For some years they accorded with a Gender Identity Policy dated April 2019 ("**GIP**"). This applied a "presumption" that, for the purposes of the provision of single-sex services (such as the Ladies' or Men's Ponds), persons identifying as "trans" (including those described in the policy as "genderfluid, gender queer, or non-binary") should be treated as being of the sex corresponding with their gender identity **[196-7]**. This was broadly consistent with a Statutory Code of Practice on Services, public functions and associations published by the Equality and Human Rights Commission ("**EHRC**") in 2011, paragraph 13.57 of which stated that: *"If a service provider provides single- or separate sex services for women and men, or provides services different to women and men, they should treat transsexual people according to the gender role in which they present"* **[81]**.

3. However, the Supreme Court's decision in *FWS2* has made clear that such an approach to single-sex service-provision is based on a misunderstanding of the law. Not providing a person with a service because of the person's sex will amount to direct sex discrimination under sections 29 and 13 of the Equality Act 2010 ("**EqA**") unless the service-provider can avail itself of an exception from liability in §§26-27 of Schedule 3 EqA. Paragraph 26 allows, in certain circumstances, for the provision of a service separately to the "sexes". *FWS2* established that a person who identifies as a member of the opposite sex from their biological sex, does not change their "sex" for the purposes of the EqA; that is so even if they have the protected characteristic ("**PC"**) of "gender reassignment" ("**GR**") (and thus a settled desire to reassign their sex), and even if they have obtained a gender recognition certificate. Thus, a Schedule 3 exception is only available where provision of the service is limited by biological sex, and trans people cannot be treated for that purpose as the sex with which they identify. The Supreme Court explained at §211 that in enacting the Schedule 3 exceptions, which avoid liability for sex and (separately) gender reassignment discrimination, the intention was *"to allow for the exclusion of those with the protected characteristic of gender reassignment, regardless of the possession of a GRC, in order to maintain the provision of single or separate services for women and men as distinct groups in appropriate circumstances"* (underlining added).

4. The Defendant has recognised that, as their names suggest, the Ladies' and Men's Ponds are "presented" as single-sex facilities: **[357]**. It has accepted that the GIP *"was based on what has*

turned out to be a misinterpretation of the law" **[357]**[1]. But in spite of this, the Defendant has resolved not to change the rules to ensure that the provision of these ostensible single-sex services is based on biological sex, as the Supreme Court explained that Parliament intended such facilities to be. Instead, the Defendant formally resolved, on 16 July 2025, to adopt an officer recommendation to *"Agree that the current access arrangements remain unchanged pending the carrying out of a consultation exercise…"*: see Officer Report Recommendation 4 **[432]**; and Resolution at **[443]**. Notwithstanding that Resolution, on around 25 July 2025, the Defendant has erected signs at the respective Ponds with admission rules which are different from what the GIP said[2]: trans-identifying persons are now afforded access to the Pond for the opposite sex to them if they have the PC of GR specifically: **[158-159]** and see the signs at **[199]** (Ladies' Pond) and **[201]** (Men's Pond).

5. The admissions rules are unlawful. The Claimant is a charity which exists to promote sex-based rights and successfully intervened in *FWS2*. It brings this claim for the benefit of Pond users as a class, and in the public interest. An EqA claim by an individual service-user, which would be heard in the County Court, is not necessary for the determination of the issues raised. At this stage, the Claimant need show only that the claim is arguable. The SGR contain no good (and far less a *"knock-out"*[3]) defence to the claim on its merits. Instead, the Defendant's tactic is to emphasise that it intends to make a decision in the future which may obviate the need for the claim. That cannot, of course, be an answer to the present unlawfulness and serves only to underscore the importance of this claim: any future decision-making by the Defendant will benefit from this Court's judgment. The Defendant's intention does however underline the importance of expedition, the need for which has already been recognized: see the Orders of Mr CMG Ockleton (**[67]** §2[4]) and Lieven J **[115]** §(1)(a)).

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[1] Indeed, as the Defendant points out at SGR §18 **[81]**, the EHRC is now *revising* its guidance: that is because the earlier guidance was wrong. The EHRC has stated that "The content in this version of the code currently in force is based on the EHRC's previous misinterpretation of the Equality Act 2010. The practical implications of this are that the 2011 code is now unlawful and will continue to be so until the minister makes an order to withdraw it": EHRC urges government to ensure accurate statutory guidance on Equality Act is available | EHRC.

[2] On 30 September 2025, the Defendant launched its 'consultation' on proposed arrangements for the Bathing Ponds **[449-454]**, stating that it had withdrawn its 'Gender Identity Policy' in the meantime **[449]**. On 2 October 2025 the Claimant's solicitor wrote requesting confirmation of when it was withdrawn and the minutes of the meeting that made that decision as well as any advice, report or other documents that supported that decision **[415]**. The Defendant declined to provide the same stating that *"this is not an appropriate stage of proceedings at which to make yet further requests for disclosure. We do not intend to respond to the requests at this stage"* **[416]**.

[3] *Maharaj v Petroleum Company of Trinidad and Tobago Ltd (Trinidad and Tobago)* [2019] UKPC 21, §3; *Ramdass v Minister of Finance (Trinidad and Tobago)* [2025] UKPC 4 §§30, 59.

[4] Contrary to the Order of 11 September 2025, the claim was not put before a judge for a decision on permission until 7 November 2025, when Mrs Justice Lieven made her order listing the matter for hearing **[115-116]**.

C: THE MERITS

(1) Ground 1

6. Section 29(1) EqA prohibits a service-provider concerned with the provision of a service to the public from discriminating against a person requiring a service *"by not providing the person with the service"*. Under this sub-section, the non-provision is sufficient to constitute discrimination: there is no additional requirement to establish "detriment". One form of discrimination is direct discrimination: see section 13 EqA. That arises where a person of one sex is treated less favourably than a person of the opposite sex, because of their sex. Direct discrimination must be considered on an individual rather than group basis: *R (Al-Hijrah School) v Chief Inspector of Education, Children's Services and Skills* [2018] 1 WLR 1471, CA, (Sir Terence Etherton MR and Beatson LJ) at §§50-51. The question is whether an individual woman is treated less favourably than her male comparator and *vice versa*[5], there being otherwise *"no material difference between the circumstances relating to each case"*: section 23 EqA[6].

7. Under the admission rules, whether or not one has the PC of GR is expressly material, and it must be taken into account on the comparison exercise. Thus, in relation to access to the "Men's Pond", an individual woman (without the PC of GR) is treated less favourably than a man (also without the PC of GR), because the man is provided with the facility and she is not. In such a case, sex is a reason[7] (in fact, the only reason) for the less favourable treatment. The same is true *vice versa*. There is direct sex discrimination against both.

8. It does not matter that *some* persons are not denied access to the facility of the sex opposite to theirs, i.e. that some trans-identifying men are permitted access to the Ladies' Pond and vice versa. It is not necessary for all those sharing a PC to be treated less favourably to establish direct discrimination: *R (Coll) v Secretary of State for Justice* [2017] UKSC 40 [2017] 1 WLR 2093 ("*Coll*") §30 per Baroness Hale.[8]

9. The admissions rules inherently breach section 29(1) and are *prima facie* unlawful. Direct discrimination cannot be justified. §§26-27 of Schedule 3 EqA afford potential exception from liability, but that is not available here for the reason explained above. The Defendant

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[5] *FWS2*, §134

[6] The material circumstances are those which, excluding the PC in question, the alleged discriminator does or would take into account when determining the relevant treatment of the claimant or comparator: *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, §§134-136 *per* Lord Rodger.

[7] It is sufficient for the PC being relied on (here, sex) to be a reason: it is not necessary for it to be the only reason: *Nagarajan v London Regional Transport* [1999] ICR 877 HL, 886 E-F per Lord Nicholls.

[8] See also Lord Mance JSC in *R (E) v Governing Body of JFS (United Synagogue intervening)* [2010] 2 AC 728, [89], approving a submission from the claimant, *"an organisation which admitted all men but only women graduates would be engaged in direct discrimination on the grounds of sex."*

is constrained to accept this: it does not even try to rely on Schedule 3. At SGR §49 **[92]**, it refers to the "positive action" provision at s.158 EqA, but does not seek to rely on it as a basis for avoiding liability for the admission rules. It suggests that it might be able to rely on it in relation to some sort of decision in the future. It is not accepted that it could, but it certainly does not do so now. SGR §52 **[93]** says that the arrangements may be changed in future, but that is no answer to their unlawfulness now. There is no knock-out to Ground 1.

(2) Ground 2

10. Ground 1 above concerns breach of sub-section (1) of section 29. Ground 2 is that the admissions rules breach sub-section (2). Sub-section (2) prohibits discrimination *"in providing the service"*. In providing the service on terms or in circumstances which permit the opposite sex to enter the Bathing Ponds, the admission rules treat individual women less favourably than men because an individual woman is at greater risk of suffering the detriment of her privacy, dignity or safety being compromised than is an individual man.

11. A greater risk of suffering a detriment is a clearly established form of direct discrimination: see *Coll* §§26, 31. In that case the geographical distribution of "Approved Premises" meant that women prisoners released on licence were at greater risk of suffering a detriment (in that case, being located far from their home) than were men. As Lady Hale explained at §31: *"… The fact that some of them would not suffer this detriment does not mean that those who do suffer it have not been discrimination against".*

12. In relation to the present case, it is important to understand that, in the context of swimming facilities including a communal changing area and communal showers where exposure of the body outside clothing can be expected, men with the protected characteristic of GR are unlikely to appear female. In other words, they are likely to be recognisable as biologically male. It is not necessary, in order to have the PC of GR, to have *any* appearance of the opposite sex: a person qualifies even when they "*propose to undergo"* GR (albeit that they must have a *"settled intention"*[9]). They may appear completely *in*distinguishable from a non-trans person of their sex: *FWS2* §§88, 202. See further Ms Forstater's evidence at §44 **[134]**, §48 **[135-6]**, §123 **[161]**.

13. The rules expose individual women to the presence of men (i.e. trans-identifying men) when the women and the trans-identifying men are in a state of partial or full nudity. It is obvious

[9] *AA v NHS England* [2023] P.T.S.R. 608 at §131. The full definition of the PC of GR is at SFG §45 **[32-33]**

and undisputed that such exposure will be a "detriment" to women[10]. There is clear evidence before the Court that women experience or risk experiencing the presence of men in the space for the Ladies' Pond as a violation of their dignity and privacy, as something that makes them feel vulnerable and at risk, and as something that interferes with their comfort and enjoyment: see Ms Forstater's witness statement for example at §§20(c)-(d), 27 to 36, and 141ff **[126, 128-132, 167ff]**.

14. The SGR do not deny that experience or risk of experience, nor that the risk of detriment is greater for individual women than individual men. Contrary to §53(1) **[93]**, which ignores *Coll*, it is a matter of direct not indirect discrimination. As to §53(2), it is nothing to the point that some women may be content to be naked and share a shower and changing area with trans-identifying men: it is not necessary that all women suffer the detriment (*Coll*, §30) and direct discrimination focuses on the individual (*Al-Hijrah* §§50-51). As for §53(3), the comparator is obvious: a man using the Men's Pond, exposed to the presence of trans-identifying women.

15. Accordingly, there is no knock-out to Ground 2. There is no reliance on Schedule 3 and no reliance on section 158. It is no answer that the point may become academic in future.

(3) Ground 3

16. Alternatively, the admissions rules are *indirectly* discriminatory against women, reading section 29 with section 19 EqA. Indirect discrimination focuses on those sharing a PC as a group: see *FWS2*, §144. Here, the rules put or would put women at a particular group disadvantage compared to men, and put or would put individual women at that disadvantage. The disadvantage is the greater risk, compared to men, of experiencing compromise to their privacy, dignity and/or safety. (It does not matter *why* the rules put women at the disadvantage: it is enough that they do: *Essop v Home Office (UK Border Agency)* [2017] UKSC 27 [2017] 1 WLR 1343 §24). The Defendant does not attempt to explain why the rules are a proportionate means of achieving a legitimate aim[11]. It is fanciful to suggest, at SGR §56 **[94]**, that the Claimant's evidence does not establish a *prima facie* case of disadvantage. It is not understood why it is said that the possibility that a service-user could change or shower

[10] Especially applying the low threshold for the recognition of such: *Derbyshire v St Helens Metropolitan Council* [2007] ICR 841 §§27, 66, 67. It was held in *Earl Shilton Town Council v Miller* [2023] EAT 5 that the risk of a woman seeing a man whilst using a toilet space was *"clearly a detriment*": §31.

[11] Nor does the Defendant seek to answer the Claimant's case that indirect discrimination against those having one PC (women) cannot in any event be justified if it constitutes direct discrimination against another (men): see SFG §63 and fn 28 referring to *Lewisham v Malcolm* [2008] 1 A.C. 1399 §§19, 101, 104, 160.

in the (limited) enclosed facilities obviates the disadvantage. At SGR §57 **[94-95]**, the Defendant says the arrangements are "rational", but they are not if they are discriminatory.

D: OTHER ARGUMENTS

(1) 'No decision'

17. The Defendant says there is no challengeable decision which is distinguishable from an (unidentified) decision taken years ago to have the current admissions rules. That is wholly without merit:

    (1) Contrary to SGR§§22, 31 **[82, 85]**, the Defendant did not merely decide to consult, or *"to take a decision in the future"* post-consultation. As explained above, it formally resolved to adopt Officer Recommendation 4 on 16 July 2025 **[443]** where it could have rejected that recommendation. Such a clear and considered choice is plainly a decision which may be challenged in its own right.[12] It does not matter that the decision was (subject to the below) to continue access arrangements which had been applying: see *Inclusion Housing CIC v Regulator of Social Housing* [2020] EWHC 346 (Admin), §69.

    (2) The above is underscored by the erection of new signage on or around 25 July. Signage is a paradigmatic example of a discriminatory act. In *Amnesty International v Ahmed* [2009] ICR 1450 at §33, Underhill P explained: *"If an owner of premises puts up a sign saying 'no blacks admitted', race is, necessarily, the ground on which (or the reason why) a black person is excluded."*

    (3) Furthermore, the rules as shown on the signage are in any event different from the approach as reflected in the GIP: compare **[196-7]** with **[199]-[203]**. They have changed.

18. The claim form was sealed on 21 August 2025. The claim was issued promptly. It follows that the claim is comfortably in time. The Defendant cannot protest both ways that the claim is both out of time and premature.

19. If that is wrong, the challenge is to a continuing act or state of affairs which is not out of time. In *R v Birmingham City Council, Ex p Equal Opportunities Commission* [1989] AC 115 ("*ex parte EOC*") the Equal Opportunities Commission ("EOC": a predecessor of the EHRC) successfully challenged ongoing arrangements made by a Council for grammar schools on the basis that they were leading to discrimination against girls, notwithstanding that the EOC had considered there to be discrimination for around 18 months before issuing: see 1157D and *per* Lord Goff at 1191 B-C, 1192B, and 1196H. Indeed, it is "antithetical to the context

[12] See *R (Badmus) v Secretary of State for the Home Department* [2020] EWCA Civ 657 [2020] 1 WLR 4609, §61.

of a time limit barring judicial review"[13] to seek to attribute the 'starting date' to some unidentified and unknown point in time "many years" **[401, §16; 405, §37]** ago.

20. If an extension of time is necessary, *quod non*, one should be granted[14]:

    a. Vindicating the rule of law: The fact that the state of affairs is continuing and the prospective nature of the relief strongly militates towards an extension of time: see e.g. *R v Warwickshire County Council ex p Collymore* [1995] ELR 217, 228G-229D (unlawfulness of continuing policy a reason to extend time in so far as remedy was prospective).

    b. Good reason for the delay: It is not a pre-requisite for an extension of time that the Claimant has a good reason for the delay (see *R v Secretary of State for Trade and Industry ex parte Greenpeace* [2000] Env LR 221, 261), but there is a plainly good reason in the present case, namely the change in understanding of the law resulting from *FWS2*. The understanding even of the EHRC, which is statutorily designated as the country's expert regulator in relation to discrimination law and responsible for enforcing it, was wrong: its Code of Practice on Services had incorrectly stated the law in relation to single-sex facilities. The Defendant's point that "*The Supreme Court's decision did not change the law"* **[112]** is thus disingenuous. The fact that the Claimant did not challenge some *earlier* decision of the Defendant in respect of the Ponds is, in the real world, unsurprising. There is no question that, in relation to the Defendant's consideration of the implications of *FWS2* for the Ponds, the Claimant has acted promptly.

    c. Public interest: The public interest in a claim proceeding may be sufficient on its own, even where there is no good reason for the delay. Thus, in *R v Secretary of State for Trade and Industry ex parte Greenpeace* [2000] Env LR 221 the public interest in the claim proceeding, as well as the strong merits of the claim, dictated that permission be granted notwithstanding the delay. It is in the public interest that this claim proceeds because the Court's consideration of the impact of *FWS2* on services presented as or ostensibly "single-sex" will benefit not only the Defendant but also other service-providers in analogous situations. To the extent that the Court addresses matters of law or principle it will plainly assist others; to the extent that the claim turns on its facts it still stands to be educative. In *R (Hughes) Board of Pension Protection Fund* [2020]

[13] *R (Burkett) v Hammersmith LBC* [2002] 1 WLR 1593, §45

[14] Paragraph 6.4.4.2 of the Administrative Court Guide 2025, endorsed in *R (Dobson) v Secretary of State for Justice* [2023] EWHC 50 (Admin) at §31, makes clear that the Court will consider all the circumstances: there is no prescriptive list.

EWHC 1598 (Admin), §§99-101 an extension of time was granted where *"the claim raises issues of general importance which are likely to arise in future cases"* and which *"could be raised in other, private law proceedings"*.

d. The strength of the claim: The clear legal merit of a claim is a further factor in favour of a claim being heard: see e.g. *Maharaj v National Energy Corporation of Trinidad and Tobago* [2019] UKPC 5, [2019] 1 WLR 983 at §38. For the reasons above, that is the case here.

e. Good administration: the Defendant professes that allowing the claim to proceed would interfere with good administration: **[113]**. The true position is precisely the opposite: the Defendant will benefit from the Court's consideration should it make a further decision. But should the Court refuse permission on this claim, the Defendant will not be obliged to make any further decision at all, and may well not do so.

(2) Standing

21. In order to have standing, a claimant need have only a "sufficient" interest in the matter to which the judicial review application relates: section 31(3) of the Senior Courts Act 1981. Here that matter is the admissions rules for the Ladies' and Men's Ponds. Sex Matters' work is explained in Ms Forstater's statement at §§3-14 **[119-123]** and its interest is apparent *passim*. It is unlike the Good Law Project which campaigns on numerous different and varied causes, from persuading Parliament to remove Prince Andrew's remaining titles or requiring the Reform Party to return ineligible donations to campaigning on national energy security or reducing the restriction on supporting Palestine Action: see *R (The Good Law Project) v The Prime Minister* [2022] EWHC 298 ("*Runnymede*") at §§55-59. Sex Matters has a particular interest and is acting in that field of interest by bringing this claim. It is representative of an identifiable group in society affected by the matter in question: see *Runnymede*, §21.

22. The Defendant contends that Sex Matters does not have standing because an individual claimant, or claimants, could bring a claim for damages in the County Court targeted at the admissions rules: SGR §33 **[85-87]**. This is misconceived**:** as Lord Reed made clear in *Walton v Scottish Ministers* [2012] UKSC 44 (2013) SC 67 at §92 it not necessary to demonstrate that a claimant has a better right to claim than any other claimant: the focus is on the distinction between *"the mere busybody and the person affected by or having a reasonable concern in the matter to*

which the application relates"[15]. Courts adopt a liberal approach in claims brought by campaigning groups within their area of activity (SFG §99 and fn 30 **[48]**). It makes no difference for the purpose of standing that the illegality complained of is discrimination that would be actionable by individuals. An example is supplied by *ex parte EOC*: the fact that the parents of children could have brought a discrimination claim did not prevent the EOC from challenging Birmingham's *"knowingly continuing their acts of maintaining the various boys' and girls' selective schools, which inevitably results in discrimination against girls"* [1196H]. See also *R (European Roma Rights Centre) v Immigration Officer at Prague Airport* [2002] EWHC 1989 (Admin)[16] in which this Court rejected an argument that a campaign and advocacy group should not be permitted to advance a discrimination argument, it being said that it was not the appropriate venue for *"in essence a claim of discrimination against individuals"*: §53.

23. *Runnymede* decided that the Good Law Project did not have standing to pursue challenges to specific government appointments of particular persons during the pandemic. These individual appointments were said either to be unlawful in themselves or to evidence a policy or practice alleged to be discriminatory: see §§1-5. As to SGR §33(3) **[86]**, the Court's reasoning that *"there were individuals, directly and personally affected by the persons under challenge, who would be capable of bringing proceedings alleging unlawful discrimination"*, needs to be understood in that context. Nor is *Runnymede* authority for some rule that if there might be benefits of a claim being heard in a different forum then standing is denied. Sex Matters has standing.

(3) Suitable alternative remedy

24. The Defendant misunderstands the principle. Suitable alternative remedy means suitable alternative remedy for the claimant: see *R (Tapecrown Ltd) v Crown Court at Oxford* [2018] EWHC 1450 (Admin) [2019] 1 WLR 3394 at §41. Here, Sex Matters cannot bring a County Court claim because it is not itself a rights-holder under the EqA. That is an end to the point.

25. In any event SGR §38 **[87-89]** does not assist the Defendant:

    a. It is not the purpose of the claim to seek to vindicate individual rights *per se*; the claim properly seeks declaratory relief for the benefit of Pond users as a class, and the wider public. In *R (MM) v Secretary of State for Work and Pensions* [2012] EWHC 2106 (Admin) in which Edwards-Stuart J allowed a discrimination claim for failure to make

[15] Although that case was directly about the rule in Scotland, the Supreme Court had made clear in *AXA General Insurance Ltd v HM Advocates* [2011] UKSC 46 [2012] 1 AC 868 that this was in substance the same as the question whether they have a sufficient interest (as recognised in *Runnymeade*, §24).
[16] This case went to the House of Lords but it is the first instance judgment which matters.

reasonable adjustments to proceed as a judicial review, rather than as a County Court claim, where it sought declaratory relief for the benefit of disabled benefits claimants as a class, and not merely on an individual basis.

b. This is indeed *"a suitable medium for clarifying aspects of [FWS2]"*: see the Order of Mr Ockleton at **[67]**. It is a more convenient, expeditious and effective means of determining the issues to which it gives rise than a claim in the County Court (which is not a Court of Record) would be in any event. Indeed, the proper application of the overriding objective, including the efficient use of resources and saving of expense, favours finality and clarity in the law and the avoidance of multiple claims at County Court level. The stress and cost to individuals and the burden on the court system of bringing numerous claims in the County Court is not to be dismissed.

c. The Defendant is wrong to say that *"disputes of fact are likely to be extensive"* (SGR, §38(2) **[88]**):

   (i) no issue arises as to the "reasons" for the treatment because the protected characteristic is inherent to the difference in treatment (SFG §51 **[34]**);

   (ii) the extent of individual disadvantage is not relevant on a claim in indirect discrimination, as proportionality is assessed by reference to the PCP itself: *University of Bristol v Dr Robert Abrahart (Administrator of the estate of Natasha Abrahart, deceased)* [2024] EWHC 299 (KB) [2024] I.R.L.R. 396, §255;

   (iii) the identification of a comparator is straightforward (see *FWS* §134, cited at SFG §50 **[33]**;

   (iv) whether, for ground 3, the Defendant can justify the admissions arrangements as proportionate is an issue suited to and frequently determined by the Administrative Court. Oral evidence is not needed. The contention at SGR §38(4) **[88-89]** that the Claimant's factual evidence will *"need to be properly tested, including by cross-examination and, if necessary, expert evidence"* is unfounded. The factual bases for the less favourable treatment (in the case of direct discrimination) and disadvantage (in the case of indirect discrimination) cannot sensibly be disputed, and this Court is well able to resolve any relevant dispute of fact in any event.

TOM CROSS K.C.
SARAH STEINHARDT

9 December 2025