IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

CLAIM NO. AC-2025-LON-002809

THE KING
(on the application of SEX MATTERS)

Claimant

and

MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON

Defendant

DEFENDANT'S SKELETON ARGUMENT
FOR PERMISSION HEARING ON 17 DECEMBER 2025

References in the form [**PB/page**] below are to pages of the Claimant's Permission Bundle
References to the Statement of Facts and Grounds are given in the form [**SFG, ¶x**]
References to the Summary Grounds of Resistance are given in the form [**SGR, ¶x**]
References to the Authorities Bundle are given in the form [**Auth/Tab/Page**].
Suggested pre-reading: (a) the parties' Skeleton Arguments; (b) SFG; (c) SGR.

INTRODUCTION AND OVERVIEW

1. The Claimant challenges the current admission arrangements at two of the open air swimming ponds on Hampstead Heath: (1) the Kenwood Ladies' Pond ("**the Ladies' Pond**") and (2) the Highgate Men's Pond ("**the Men's Pond**") (together, "**the Swimming Ponds**"). The Swimming Ponds are maintained by the Mayor and Commonalty and Citizens of the City of London ("**the Corporation**").

2. Since at least 2017 both biological women and trans women have been permitted to swim at the Ladies Pond and both biological men and trans men have been permitted to swim at the Men's Pond.

3. The Claimant contends that these longstanding arrangements constitute unlawful sex discrimination against both women **and** men contrary to ss 13, 19 and 29 of the Equality Act 2010 ("**EqA**"). The Claimant's principal contention appears to be that the effect of the judgment in ***For Women Scotland v The Scottish Ministers*** [2025] UKSC 16 ("***FWS***") is to require the Corporation to segregate access to the Swimming Ponds at all times strictly accordingly to biological sex.

4. The Claimant has issued this Claim notwithstanding the fact that the Corporation is currently conducting a major public consultation exercise in order to inform its review of the admission arrangements for the Swimming Ponds ("**the Consultation**"). An important purpose of the consultation is to gather up-to-date information about the needs and experiences of the service users of the Swimming Ponds to assist

the Corporation in determining which arrangements to adopt in future. The Consultation sought views on a variety of possible ways of managing access to the Swimming Ponds.

5. The Consultation opened on **30 September 2025** and closed on **25 November 2025**. The public response has been overwhelming, with **38,742 responses** having been received. The Corporation has engaged Tonic, a leading independent consultancy, to assist with processing and evaluating the consultation responses. Tonic's report on the results of the consultation is due to be published on **13 January 2026**. The Corporation will then need to formulate policy proposals for consideration by its relevant committees before reaching a decision. It is currently envisaged that a final decision on the approach to be adopted will be taken in **March 2026**.

6. The options on the table include maintaining the current arrangements, changing them so as to restrict access at all times based on biological sex, allowing access to all, or a hybrid approach with different arrangements at different times. Whatever decision the Corporation takes, the Corporation will be required to consider the needs of all its service users and determine whether the future arrangements constitute a proportionate means of achieving a legitimate aim.

7. The Claimant is a campaigning organisation, which has alighted upon the admission arrangements at the Swimming Ponds as a vehicle to further its campaign for services segregated according to biological sex. The Claimant's challenge amounts to an attempt to pre-empt the outcome of the Consultation, and the Corporation's review. In summary, permission should be refused on the following grounds:

(1) **Limitation:** The current admission arrangements at the Swimming Ponds have been in place since at least 2017. The Corporation has not taken any new, substantive decision in relation to the admission arrangements. It has resolved to take a decision once the outcome of the Consultation is known.

(2) **Standing:** There are individual claimants who are the ostensible victims of the alleged discrimination and would be much more appropriate claimants.

(3) **Suitable alternative remedy:** There is a suitable alternative, statutory discrimination remedy in the County Court for any individual actually affected by the current admission arrangements.

(4) **No arguable grounds of challenge:** Even if (which is denied) the Corporation has taken a decision amenable to judicial review, that "decision" is and was only to reconsider its arrangements and to hold a consultation to facilitate that reconsideration. The only way in which a challenge to that decision could succeed would be if the Claimant were able to establish that there was, following the Supreme Court judgment, an absolute legal obligation to segregate access to the Swimming Ponds at all times according to biological sex, and that the position is so clear that the Consultation and review are entirely pointless. That contention is unarguable.

BACKGROUND FACTS

8. The relevant background is set out at ¶¶9-14 SGR [**PB/79-80**]. The admission arrangements for the Ladies' Pond and the Men's Pond ("**the admission arrangements**") are consistent with the commitment to trans inclusivity adopted in the Corporation's wider Gender Identity Policy [**PB/138**]. The Gender Identity Policy is also under review by the Corporation.

9. The account given of the changing and showering facilities at the Ladies' Pond at ¶13 SFG is misleading and incomplete: see SGR ¶13 [**PB/79-80**].

The Supreme Court judgment

10. The Supreme Court judgment in ***FWS*** decided a narrow point, namely whether trans women with a Gender Recognition Certificate ("**GRC**") fell within the definition of "women" for the purposes of the EqA. ***FWS*** was not concerned with the status of the majority of trans people who do not have a GRC.

11. The Supreme Court expressly recognised that the trans community is both historically and currently a vulnerable community which Parliament has sought to protect by statutory provision (¶1), and also stressed that its conclusion did not diminish the important protections available under the EqA for trans people: see ¶264, see also ¶¶161, and 248 – 264: **[Auth/19/505**].

12. Following the Supreme Court's decision, the Equality and Human Rights Commission ("**EHRC**") issued Interim Guidance and proposed changes to its code of practice for services, public functions and associations. The EHRC's Interim Guidance is subject to a judicial review challenge which was heard by Swift J on 12-13 November 2025, in respect of which judgment is currently awaited.

The Corporation's review and consultation

13. The steps taken by the Corporation in response to the judgment in ***FWS*** are set out in the SGR ¶¶19-28 [**PB/81-3**]. In response to a concern raised by the Claimant in pre-action correspondence that the admissions arrangements were not sufficiently clear, the Corporation agreed to provide further clarity by erecting new signage, which it did on 25 July 2025. In summary:

(1) The Corporation has not changed its long-standing admissions policy; but

(2) The Consultation is being undertaken with a view to reviewing that policy as soon as possible.

GROUNDS FOR RESISTING PERMISSION

1. Delay

14. The current admission arrangements have remained in place, unchanged and unchallenged, since 2017. The Supreme Court's decision in ***FWS*** did not change the law; it explained what the EqA has always meant. Hence, Mr CMG Ockelton, sitting as a judge of the High Court, stated in his ruling on the Claimant's

application for expedition: "*The admission policy has effectively been the same since 2019, and its lawfulness is not affected by For Women Scotland: if it is unlawful now, it was unlawful when adopted*". Time runs for the purposes of CPR 54.5(1) from when a person is affected by the application of the challenged measure: see, e.g. ***R (Badmus) v Secretary of State for the Home Department*** [2020] 1 WLR 4609 at ¶¶77 – 78 **[Auth/16/451]**. The Claimant's challenge has thus been brought years out of time.

15. In order to circumvent the limitation issue, the Claimant purports to rely on various "decisions" of the Corporation which are not, in substance, decisions at all.[1] All the Corporation has done is decide to review admission arrangements, with the benefit of up-to-date information about the needs of its service users.

16. It is well-established that in the context of an ongoing decision-making process, "*an early challenge should not generally be made before the final outcome is known (because any such challenge may prove to be unnecessary)*" in light of the final decision reached: see e.g., ***Secretary of State for Transport v Arriva Rail East Midlands Ltd*** [2020] 3 All ER 948 at ¶122. The Court of Appeal in that case relied upon ***R (Eisai Ltd) the National Institute for Health and Clinical Excellence*** [2008] EWCA Civ 438 where it was held that a challenge to NICE's refusal to disclose an economic model during an appraisal process would have been premature and inappropriate until the outcome of the appraisal was known (¶¶69-70) [**Auth/8/251**].

2. Standing

17. Further, and in any event, the Claimant does not have standing to bring the present challenge:

(1) The Claimant's challenge is a discrimination challenge. The obvious and appropriate person to bring any such claim is someone alleged to have suffered the unlawful discrimination, and to have been treated less favourably than the (actual, or hypothetical) comparator relied upon in each case. If there were substance to the Claimant's allegations as to the detriment caused by the current arrangements, there would be many potential claimants.

(2) In that regard, the Corporation relies on ***R ((1) Good Law Project Limited (2) Runnymede Trust) v (1) The Prime Minister and (2) Secretary of State for Health and Social Care*** [2022] EWHC 298 (Admin), in which the Court determined that neither the Good Law Project nor the Runnymede Trust had standing to pursue claims of indirect discrimination in relation to a Government appointment made without open competition: see ¶¶31-34 [**Auth/17/ 469**].

(3) The considerations in ***R (Good Law Project)*** apply with even greater force where (as here) the claim is one of direct discrimination, which must necessarily be premised on the circumstances of the individuals directly and personally affected by the decisions under challenge. The Claimant has led evidence from four women complaining about their encounters with trans women at the Ladies' Ponds:

[1] See ¶¶19-28 and 31 SGR.

see **Witness A** ¶7 [**PB, 270**]; **Graham** ¶13 [**PB, 280**]; **Ismail** ¶5, 8 [**PB, 283, 284**]; **Herman** ¶9 [**PB, 286**].

3. Adequate alternative remedy

18. The Claimant's claim is exclusively one for breach of the Corporation's duties under s. 29 EqA. Pursuant to s. 114(1)(a) EqA, the County Court has primary jurisdiction over discrimination claims concerning the provision of services to the public contrary to s. 29 EqA [**Auth/1/23**].

19. The County Court's jurisdiction under s. 114(1)(a) EqA does not prevent a claim for judicial review (see s. 113(3)(a) EqA) whether it is appropriate for an EqA complaint to proceed by means of judicial review remains subject to the prior questions of whether the Claimant has standing as well as whether there is an adequate alternative remedy available: see ***R (Good Law Project)*** at ¶30 [**Auth/17/469**].

20. Only in a most exceptional case will a court entertain an application for judicial review if other means of redress are conveniently and effectively available: ***R (Watch Tower Bible & Tract Society of Britain) v Charity Commission*** [2016] 1 WLR 2625 at ¶19 **[Auth/10/275**].

21. A claim in the County Court is an adequate alternative remedy. The Claimant's claim is entirely founded upon the proposition that the admission arrangements discriminate against individual service users, in breach of the Corporation's duties under s. 29 EqA. There are no discrete public law grounds which would fall outside the jurisdiction of the County Court.[2] Any individual woman or man said to have been subjected to discrimination has a cause of action in the County Court, and it is plain that the County Court remains the appropriate forum for the determination of any such claim. This is for a number of reasons:

(1) The County Court is better placed than the Administrative Court to resolve disputes of fact.

(2) Since the grounds of challenge advanced by the Claimant are discrimination claims, the disputes of fact are likely to be extensive. They extend to:

i. The reasons for the treatment, which the Court will be required to consider for the purposes of the direct discrimination complaints under ss 13 and 29 EqA (Grounds 1 and 2);

ii. The nature and extent of the alleged individual and group disadvantage, which must be determined for the purposes of the indirect discrimination complaint under ss 19 and 29 EqA (Ground 3).

iii. Whether, in respect of the comparator relied upon for the purposes of the direct discrimination complaint and the members of the pool for comparison for the purposes of the indirect discrimination complaint, they are in the same or materially similar circumstances for the purposes of s. 23 EqA; and

[2] The cases cited in ¶101-102 of the SFG (*DMA*, *JCWI*, *Adiatu*) involved claims where there were discrete public law grounds of challenge which could not have been raised in a civil claim, or where no point was taken on the alternative statutory remedy provided for by the EqA or its predecessor legislation.

iv. Whether the treatment is a proportionate means of achieving a legitimate aim (either under s. 19(2) EqA or under s. 158 EqA on positive action).

(3) This is why when the claims are heard in the County Court, the County Court will typically appoint a statutory assessor, with skill and experience in discrimination matters, to assist it: see s. 114(7) EqA [**Auth/1/24**], and s. 63(1) of the County Courts Act 1984.

(4) By way of example (and without limitation), in support of the discrimination claims detailed in the SFG the Claimant has led evidence about the specific experiences of particular women encountering trans women at the Swimming Ponds [see **¶Error! Reference source not found.** above)], the motivations of the trans people encountered [see, e.g., **Herman** ¶7, ¶11 [**PB/288**]], as well as general evidential assertions about the safety of women in the presence of trans people, their experiences using the Swimming Ponds, and alleged tendencies towards "*Tranvestic fetishism"* and "*autogynephilia"* amongst the trans community [see **Forstater** ¶36, ¶184 - 195]. These contentious factual allegations which go to the heart of the discrimination challenges and which will need to be properly tested, including by cross-examination and, if necessary, expert evidence.

22. None of the reasons given by the Claimant's witnesses for not wishing to be claimants themselves would prevent them from bringing claims in the County Court. The reasons given include costs (see: **Witness A** ¶12 [**PB, 271**] and **Ismail** ¶11 [**PB**, **285**]), the stress of litigation (see **Graham** ¶18 [**PB, 281**]), and litigation being "*financially and emotionally prohibitive"* (see **Herman** ¶15 [**PB, 290**]). The County Court has procedures for dealing with vulnerable parties under Practice Direction 1A – Participation of Vulnerable Parties or Witnesses. Further, as Ms Forstater acknowledges in her witness statement, Sex Matters does provide and has provided financial support for the bringing of civil claims: see e.g., **Forstater** ¶13 [**PB, 65**].

23. It appears to be suggested in **Forstater** ¶13 that the reason the claim is being pursued by means of a claim for judicial review is that Sex Matters cannot afford "*for individuals to have to take legal action to compel every individual provider of single and separate sex facilities to comply with the law"*. This, of course, assumes - wrongly - that the decision reached on the specific facts applicable to the Hampstead Heath Swimming Ponds would be of general application across the range of factual circumstances in which single sex services are provided, including hospitals, women's refuges and shelters. The facts and circumstances relevant to the merits of single sex services across different service providers in different factual contexts will be very different, not least because the question of whether the single sex service is a proportionate means of achieving a legitimate aim will depend on the particular aims being pursued and the extent and nature of the disadvantage in issue. But even if this judicial review could stand as general authority for the duties of service providers in a range of different contexts, the same must be true of a discrimination claim in the County Court.

24. The application of conventional alternative remedy principles in present case is not prevented by the 2002 ruling of Burton J in ***R (European Roma Rights Centre and Others) v Immigration Officer at Prague Airport*** [2002] EWHC 1989 (Admin). In that case, the claim was characterised as a challenge to the system of immigration control being applied at Prague Airport rather than to the discriminatory application of that system to individual cases (¶53) [**Auth/5/133**]. Here, the claim is squarely based upon the allegation that the admission arrangements give rise to discrimination against individual users and prospective users of the Swimming Ponds, which could be challenged in the County Court.

4. No arguable grounds to challenge the Corporation's decision

25. In any event, the Claimant's challenge is not arguable. As set out above, the only "decision" the Corporation has taken is to review the current arrangements and to hold the Consultation to facilitate that review. That is manifestly a responsible, and lawful, course of action.

26. The Claimant's challenge could only succeed if the Claimant were able to establish that there is, following the Supreme Court's judgment, an absolute legal obligation to segregate the Ladies' and Men's Ponds according to biological sex at all times, and that the position is so clear that the review and the Consultation are entirely pointless. In other words, the Claimant must establish that if the Corporation were to conclude following its review that it wished to maintain the current arrangements, or to introduce some modified arrangements which did not amount to 100% segregation based on biological sex, or, indeed, were to do away with any form of sex-segregated provision, that (i) those arrangements would inevitably be discriminatory; and (ii) any defence to a discrimination challenge would inevitably fail.

27. That is unarguable:

(1) The Supreme Court has not decided that all trans-inclusive services must henceforth be segregated according to biological sex.

(2) The relevant provisions of Schedule 3 to the EqA operate as defences to a claim of sex discrimination (¶¶26, 27) [**Auth/1/40-44**] or a claim of discrimination on grounds of gender reassignment (¶28). However, such defences are available only if the arrangements are a proportionate means of achieving a legitimate aim. Moreover, even if a service provider cannot rely upon the single-sex exceptions in ¶¶26 and 27, that does not mean that the provision of a trans inclusive service is unlawfully discriminatory on grounds of sex, not least because there are other potential defences under the EqA to a claim of sex discrimination, including (materially) s. 158 EqA [**Auth/1/33**] (see below).

(3) Any discrimination claim will turn on the facts, including, critically, the particular arrangements which the Corporation adopts following its review. If, for example, the Corporation were to make the Swimming Ponds mixed at all times, or adopt "trans inclusive" arrangements only at particular times, or on particular days, that would materially affect the legal arguments, to the point where, on any view, the Claimant's challenge could not be maintained.

(i) Ground 1 – direct sex discrimination against men and women

28. Under Ground 1, the contention appears to be that a woman (without the protected characteristic of gender reassignment) who wishes to swim at the Men's Pond is less favourably treated than a man (without the protected characteristic of gender reassignment) who wishes to swim at the Men's Pond (and men similarly suffer such less favourable treatment in relation to the Women's Pond: see SFG ¶5(1) and 71.

29. Where (as here) the allegation is of direct sex discrimination, there is no justification defence under s. 13 EqA. There are, however, other sections of the EqA that provide for exceptions to what would otherwise constitute unlawful sex discrimination, including the exceptions for separate or single sex service provision under ¶¶26 and 27 of Schedule 3 to the EqA, and the positive action provisions under s. 158 EqA.

30. Section 158 EqA makes provision for (lawful) positive action. The effect of the provision is to permit positive action measures to alleviate disadvantage experienced by people who share a protected characteristic or to meet their particular needs, provided that the action is a proportionate means of achieving the aims set out under sub-section (2): **[Auth/1/33**].

31. For the purposes of the direct discrimination complaint under Ground 1, the Claimant would need to establish (and in fact pleads) that the hypothetical woman claimant relied upon is in the same or materially similar circumstances as a man in relation to the access to the Men's Pond: see SFG ¶73. However, this runs directly counter to the evidential basis for the Claimant's case, viz. that it is positively detrimental to the hypothetical woman to swim (and change for swimming) in the presence of the opposite biological sex as a result of there being a risk to her privacy, dignity or safety. The same is not true – on the Claimant's case – of her hypothetical male comparator.

32. In any event, one possible outcome of the review is that a trans-inclusive policy is, in the Corporation's view, lawful positive action pursuant to s. 158 EqA i.e. it is a proportionate means of achieving the legitimate aim of meeting the needs of and/or alleviating the disadvantage of trans service users. The validity of that view, if it is adopted, will depend upon the facts and the evidence (which the Corporation is in the process of gathering).

33. Further, if, following its review, the Corporation were to decide that the Swimming Ponds should not be segregated at any time, which is a possible outcome, Ground 1 would fall away.

(ii) Ground 2 – direct sex discrimination against women

34. Under Ground 2, the Claimant argues that permitting members of the opposite sex to access the Ladies' Pond is direct discrimination against women, because a woman is at greater risk of "*suffering the detriment of her privacy, dignity or safety being compromised"* than is a man (SFG ¶79):

(1) The claim is not a claim of direct discrimination, but of indirect discrimination. Even if the Claimant could establish that some or most women would take the view that they suffer detriment to their

privacy, dignity or safety by the presence of trans women at the Ladies' Pond, it is not contended, and is not the case, that all women take that view. It follows that the claim under Ground 2 would not amount to direct discrimination. It follows that, even assuming that trans inclusive admission arrangements cause detriment to some women, the claim could only be one for indirect discrimination which thereby raises (amongst other issues) the issue of objective justification.

(2) The Claimant has not even attempted to articulate an appropriate comparator for this purported claim of direct discrimination, no doubt because the Claimant appreciates that it is not possible to do so consistently with the Claimant's case under Ground 1. Ground 1 depends upon the proposition that a woman wishing to access the Swimming Ponds is in the same or similar circumstances as a man wishing to do so. Under Ground 2, the Claimant maintains that a woman swimmer is not in the same or similar circumstances to a man because of the alleged greater threat to her privacy associated with swimming in the presence of men. The Claimant cannot have it both ways, any more than an individual claimant in the County Court could run, and seek to establish by evidence, two diametrically opposed factual cases.

35. As with Ground 1, Ground 2 will, on any view, fall away if the Corporation decides following the review, for example, to adopt a policy of mixed swimming at all times. If the current arrangements were maintained, Ground 2 may also be subject to a s. 158 EqA defence, which would turn on the facts.

(iii) Ground 3 – indirect discrimination against women

36. Under Ground 3, Ground 2 is deployed as an indirect discrimination complaint.

37. The ostensible provision, criterion or practice ("**PCP**") complained of is "*the admission rules*": SFG ¶89. It is not clear whether the challenge is directed to the admissions rules for the Ladies' Pond, the Men's Pond, or both. In any event, the burden lies with the Claimant to prove the individual group and disadvantage relied upon, and the evidence served by the Claimant falls well short of establishing even a *prima facie* case. As has been pointed out repeatedly in correspondence, the Ladies' Pond has fully enclosed, accessible, changing, toilet and shower facilities, which any biological woman and trans woman may use if she is concerned about her privacy or dignity in changing or showering in the presence of the opposite sex. Even if (which is not accepted) the Claimant could make out a *prima facie* case of indirect discrimination, there would be a justification defence available to the Corporation which would turn on the facts.

38. On the footing that the Corporation's review, and the Consultation, are not entirely pointless, the only remaining issue is whether it was rational for the Corporation to leave the current arrangements in place in the interim period. It was plainly rational to do so, in circumstances where the only alternatives would have been: (a) to change the longstanding arrangements during the Consultation period, without consultation and with immediate effect; or (b) to close the Swimming Ponds pending the conclusion of the

Consultation. The decision to maintain the existing arrangement in the interim was plainly the most rational one available.

CONCLUSION

39. For all of these reasons, the Court is respectfully invited to refuse permission.

40. If the Court is not satisfied that permission should be refused, the Corporation submits that the appropriate order would be that the claim be stayed pending the Corporation's decision on its reconsideration of the admission arrangements, with permission to amend the Statements of Case in light of that reconsideration, should the Claimant wish to pursue the claim in light of what the Corporation has decided.

41. For the avoidance of doubt, if the Court were minded to refuse permission, or to stay the claim, on the basis of the claim considered in isolation, it should not be influenced to the contrary by the Claimant's contention that the claim could be used as a vehicle for determining issues of potentially wider application regarding the implementation of the Supreme Court judgment. The Corporation explained why the claim would not have the wider impact portrayed by the Claimant in the Corporation's letter dated 2 September 2025.

DANIEL STILITZ KC

KATHERINE EDDY

11KBW

11 December 2025