IN THE COURT OF APPEAL (CIVIL DIVISION) Appeal no. CA-2026-000233

ON APPEAL FROM THE HIGH COURT OF JUSTICE (ADMINISTRATIVE COURT)
MRS JUSTICE LIEVEN [2026] EWHC 149 (Admin)

THE KING ota

SEX MATTERS

Claimant / Appellant

-and-

MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON

Defendant/Respondent

APPELLANT'S PTA SKELETON
19 February 2026

References in square brackets are to pages in the Core Bundle are in the form CB/xx and references to the Supplementary Bundle are SB/xx. References to paragraphs numbers are to the Judgment unless otherwise indicated.

A: INTRODUCTION

1. This is an appeal against the Order[1] of Mrs Justice Lieven dated 29 January 2026 **[CB/43-54]**, by which the Learned Judge refused permission for judicial review following a hearing on 17 December 2025. The challenge was to admission arrangements for the bathing ponds on Hampstead Heath in London. The arrangements were the subject of a formal Resolution of the relevant committee of the Defendant on 16 July 2025 and new signage. The Appellant contended below that the arrangements were unlawfully adopted since they would inevitably and inherently lead to direct (or alternatively indirect) discrimination contrary to the Equality Act 2010 ("EqA"). A prior understanding that similar arrangements were lawful was no longer sustainable following the decision of the Supreme Court in *For Women Scotland Ltd v Scottish Ministers* [2025] 2 WLR 879 ("*For Women Scotland*").

2. There is a "Men's Pond" and a "Ladies' Pond" on Hampstead Heath (together "the Bathing Ponds"). They are in different parts of the Heath; are different in size and shape; are differently configured; and have different facilities within their bounds **[SB/42-44, 110]**. Without prohibitions on access, persons of either sex would no doubt seek to enjoy the

[1] The Order has not yet been received, but judgment was handed down on 29 January 2026.

facilities at both of the Ponds. But the arrangements decided upon, reflected in the new signage, prohibit most women[2] from using the Men's Pond and most men[3] from using the Ladies' Pond. The arrangements inevitably and inherently give rise to direct sex discrimination (and indirect discrimination in the alternative), because they disadvantage women compared to men without justification). It was common ground that, in defending the arrangements, the Defendant cannot (following *For Women Scotland*) rely on the exception from liability for sex discrimination in Schedule 3 EqA (below, §§19-20); and the Defendant has not to date relied on any other basis for avoiding liability in response to the claim. The Learned Judge did not dispute that the grounds were arguable, at the very least.

3. The Learned Judge nevertheless refused permission on the bases that: (1) the claim had been brought prematurely or (inconsistently) was out of time, and (2) that the Claimant - a charity whose objects specifically concern the promotion of, education about, and the sound administration of the law in relation to sex and equality between the sexes - lacked standing. In connection with (2), it appears that the Learned Judge also conflated the issue of standing with the principle that a claimant in judicial review should usually first pursue a suitable alternative remedy available to them (which did not apply to the Claimant here, because the Claimant itself did not have, and never claimed to have, EqA rights). The Learned Judge barred the claim on the basis that someone *other than* the Claimant could, in principle, bring a claim alleging discrimination against them personally in the County Court, notwithstanding that there was no evidence of any individual in a position to do so.

4. The Claimant, now Appellant, contends that the Learned Judge was plainly wrong to refuse permission, and that the Grounds of Appeal developed below therefore have a real prospect of success. In any event, the nature and significance of the issues raised by the claim indicate that there are compelling reasons for the appeal to be heard. The two bases for refusing permission were freestanding (see §65). Therefore, the effect of the Learned Judge's reasoning, if followed[4], is that neither NGOs with specific interest and expertise in the subject-matter of a claim founded on anti-discrimination rights, nor even an individual alleging a breach of such rights, may challenge arrangements of the present sort by way of judicial review. This is notwithstanding that the EqA makes express provision for precisely a claim by that means and notwithstanding the existence of numerous examples of the same

[2] Namely, all women who do not trans-identify as men, including those who identify as trans in another way such as non-binary, gender fluid or gender queer.
[3] That is, all men who do not identify as women, including (as above) those who trans-identify in another way.
[4] Since this was not a decision that *"only decide[d] that the application [wa]s arguable" per* Practice Direction (Citation of Authorities) [2001] 1 WLR 1001 §§6.1-6.2 it may be cited and relied upon: see *R (Fluid System Technologies (Scotland) Limited & Ors) v HMRC* [2025] UKUT 278 (TCC at §§71-72).

in practice[5]. In the Appellant's submission, it is contrary to the public interest, the rule of law, and the sound administration of justice for important issues such as those raised in this claim to be debarred from consideration by the High Court, and for them instead to have to be determined through County Court claims by various individuals, which may take many years to reach the higher courts, at huge cost to individuals, the court system, and the public at large, including to service-providers seeking clarity in this highly-contested area of the law.

5. Given the need for an authoritative determination of the points of law raised in the claim, the high level of public interest, and the importance of the substantive legal issues, the Appellant seeks an order granting permission to apply for judicial review instead of permission to appeal (CPR 52.8(5)).[6] Further, thereafter, and for the reasons set out herein, the Court of Appeal is invited to retain the case, as for instance Newey LJ decided in *R (Ivory) v Welwyn Hatfield BC* [2025] PTSR 1179, see §17 thereof.

B: SEX DISCRIMINATION IN SERVICES AND FACILITIES

Discrimination in services and facilities

6. Section 29 EqA contains prohibitions relating to the provision of services, including those provided in the course of a public function. So far as relevant, it provides as follows:

"(1) A person (a "service-provider") concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.

(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)— […]

(c) by subjecting B to any other detriment".

7. By section 31(2) EqA ('Interpretation and exceptions') "*A reference to the provision of a service includes a reference to the provision of goods or facilities."*

8. "Detriment" is treatment which a reasonable person would or might consider in all the circumstances to be detrimental to them: *Derbyshire v St Helens Metropolitan Council* [2007] ICR 841 §§27, 66, 67. In *Earl Shilton Town Council v Miller* [2023] IRLR 352 the treatment in

[5] See §74(3) and (4) below.

[6] The White Book states at §52.8.6 that "*It is respectfully suggested that (except in cases where the court needs to adjourn in order to hear the respondent) this power should generally be exercised, essentially for three reasons: (1) if there is a real prospect of success on the appeal, almost by definition the underlying claim for judicial review must be arguable; (2) it is undesirable that the merits of a judicial review claim should be scrutinised at a full hearing before two or three lords justices before it is adjudicated upon by a first instance judge; (3) it may be thought oppressive to make the claimant pay a third set of costs before their claim reaches the starting line."*

question, whereby women often had to use the men's toilets with the ensuing risk of seeing a man using a urinal, was held to have *"clearly constituted a detriment"* (§26).

9. Section 31(10) gives effect to Schedule 3 "Services and Public Functions: Exceptions" which at §§26-27 provides for single sex facilities and services (see below §§19-20).

Sex and gender reassignment

10. Section 4 of the EqA sets out nine protected characteristics including "sex" and "gender reassignment".

11. In relation to the protected characteristic of sex, section 11 EqA provides that:*" (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman; (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex."* Pursuant to section 212: "*"woman" means a female of any age; and "man" means a male of any age"*. References to "sex" in the Act are to being "male" or "female" and have a biological meaning. A "trans man" is a woman and a "trans woman" is a man and they remain so irrespective of whether or not they have the protected characteristic of "gender reassignment", and irrespective of whether or not they have acquired a GRC: *For Women Scotland,* §264.

12. It follows, as confirmed recently in *R (Good Law Project Ltd) v Equality and Human Rights Commission (Sex Matters intervening)* [2026] EWHC 279 (Admin) *("EHRC")* (§§52-53), that a service provider which allows members of the opposite sex (however they identify) to use an otherwise single sex facility cannot rely on §§26-27 of Schedule 3 EqA (see below).

13. Section 7 EqA provides that: -*"(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex*". Thus, the category of individuals protected by section 7 is not synonymous with all those who describe themselves as "trans" and *"the protected characteristic is not, therefore, defined by a notion of self-identification": EHRC* (§25). The protected characteristic of gender reassignment is narrower and, as noted in *AA v NHS England* [2023] PTSR 608 (§131), to be covered one must have made a conscious decision to reassign one's sex which can be properly described as settled.

Direct discrimination

14. Section 13 EqA 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".*

15. Further, "*On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case":* section 23(1) EqA. As Lord Hodge

explained in *For Women Scotland*, §134: *"Accordingly, 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."*

16. Admission rules can be directly discriminatory where the treatment complained of is said to be *"inherent in the act itself"* and signage denoting such rules have a long and notable history in discrimination law: see for example *Amnesty International v Ahmed* [2009] ICR 1450 at §33[7] where, in a passage endorsed on a number of occasions by the Court of Appeal, Underhill J (President) said: *" In some cases the ground, or the reason, for the treatment complained of is inherent in the act itself. 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"* (underlining added). Thus, if sex, race or one of the other protected characteristics is the reason for excluding a person from a facility, it does not matter that the duty bearer may have had a benign motive.[8]

17. In *R (Al-Hijrah School) v Chief Inspector of Education, Children's Services and Skills* [2018] 1 WLR 1471 (*"Al-Hijrah"),* the Court of Appeal considered whether rules in a mixed school by which the pupils were segregated by sex amounted to direct sex discrimination of its pupils, where there was no valid exception for separate provision (i.e. under Schedule 11 EqA). Holding that it was, the Court explained that direct discrimination falls to be considered by reference to the position of individual EqA right-holders (in that case, the girls viewed individually, and the boys viewed individually): see §§50-51. It was not necessary to assess whether, on the facts of the case, any individual girl valued interaction with boys in the school or wanted to intermix or socialise with boys and *vice versa*. It was sufficient that individual boys and girls in the school (who were not parties before the court) were excluded from something which had some objective value. *Al-Hijrah* is also authority that mirror rules applying to both the sexes may nonetheless constitute less favourable treatment of one sex.

18. Save in the (immaterial) case of age discrimination, direct discrimination cannot be justified and is unlawful unless a relevant exception applies.[9]

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[7] See also *R(E) v Governing Body of JFS* [2010] 2 AC 728 esp. at §21 *per* Lord Phillips PSC; §64 *per* Lady Hale JSC; §78 *per* Lord Mance JSC; §114 *per* Lord Kerr JSC; §140 *per* Lord Clarke JSC.

[8] See e.g. *Nagarajan v London Regional Transport* [2000] 1 A.C. 501; *R v Birmingham City Council, Ex p Equal Opportunities Commission* [1989] AC 1155, or *James v Eastleigh Borough Council* [1990] 2 AC 751.

[9] As well as the exceptions to allow for single sex facilities and services, there are also exceptions under the Act allowing, for example, for charities to make provision only for particular racial or religious groups to the exclusion of other racial or religious groups.

Single-sex facilities

19. Paragraphs 26-27 of Schedule 3 EqA provide exceptions from liability for sex discrimination in relation to *"separate services for persons of each sex"* (§26) or *"by providing a service only to persons of one sex"* (§27)[10], rendering lawful the otherwise unlawful sex discrimination inherent in the provision of services or facilities for one sex only, to the exclusion of the other: *For Women Scotland* (§§185, 211). As noted by Baroness Hale in *R (Coll) v Secretary of State for Justice* [2017] 1 WLR 2093 (§34), §26 (and by extension §27) *"proceeds on the assumption that, without it, the provision of single sex services would be unlawful discrimination"*.

20. Thus, the purpose of these provisions was thus, as Lord Hodge noted at §211, *"to* [lawfully] *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"*.

Indirect discrimination

21. 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 [referred to as a "PCP"] *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,

(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".

22. Indirect discrimination focuses on the disadvantage that the right-holder experiences as a member of a group: see Lord Hodge in *For Women Scotland* at §144. However, it does not require statistical proof that more of those in the protected group suffer the disadvantage than those outside it (although this may be used) and other types of evidence may be used to establish the necessary effect: see Baroness Hale in *Homer v Chief Constable of West Yorkshire Police* [2012] ICR 704 (SC) at §14.

[10] Further, §28 provides for an exception from gender reassignment discrimination in relation to single sex services if it is a proportionate means of achieving a legitimate aim. As noted in *For Women Scotland,* this would permit a woman-only service to exclude a trans-identifying woman who presented as male: §221.

23. The word "particular" was not intended to connote a disadvantage which is necessarily *"serious, obvious, and particularly significant"* but only one that is disadvantageous to those sharing a protected characteristic relative to those that do not: *McNeill v Revenue and Customs Comrs* [2020] ICR 515 (CA) per Underhill LJ at §16.

24. There is no requirement that the claimant show *why* the PCP puts one group sharing a particular protected characteristic at a particular disadvantage when compared with others. It is enough that it does: see *Essop v Home Office* [2017] 1 WLR 1343 (SC) (§24).

25. In terms of justification, the Court will generally apply the well known four-stage analysis *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 (§74)[11], but compressed or adapted for domestic discrimination law.[12] However, in an indirect discrimination case, proportionality is assessed by reference to the PCP as a whole and the disadvantage weighed in the balance is the group disadvantage resulting from the PCP rather than the individual disadvantage in any one case: see *The University of Bristol v Dr Robert Abrahart (Administrator of the estate of Natasha Abrahart, deceased)* [2024] IRLR 396 (HC) at §255.

26. In *Lewisham v Malcolm* [2008] 1 A.C. 1399 (HL) (§§19, 101, 104, 160) the House of Lords held that as a matter of principle, the Court was not entitled to give effect to and therefore endorse an act which is proscribed as unlawful discrimination. It follows that a measure which amounts to unlawful direct discrimination against members of one group (e.g. men) is incapable of justifying indirect discrimination against a(nother) group (e.g. women).

Judicial reviews alleging breach of the EqA

27. The EqA affords jurisdiction to courts and tribunals to hear claims by right-holders of breaches of its provisions. Thus the County Court is given a jurisdiction to determine a claim relating to (*inter alia*) a contravention of Part 3, which contains section 29: s.114(1)(a). Where such a claim is made, an assessor is normally, but not always, appointed (see s.114(7)), and the County Court has power to grant judicial review remedies (see s.119(2)).

28. As to the different question of where proceedings relating to a contravention of the EqA must be brought, that is dealt with by section 113 (which was cited to, but not referred to by, the Learned Judge). Subsection (1) provides that *"proceedings relating to a contravention of this Act must be brought in accordance with this Part"* (which includes section 114). But subsection (3) makes clear that *"Subsection (1) does not prevent (a) A claim for judicial review …"*.

[11] See e.g *R ((TTT) v Michaela Community Schools Trust* [2024] PTSR 1627(§156)
[12] See *Higgs v Farmor's School* (CA) [2025] IRLR 368, §34; *R (Z) v Hackney LBC* [2020] 1 WLR 4327 (SC) at §40.

29. Thus, the EqA expressly provides for proceedings relating to a contravention of the EqA to be brought via a claim for judicial review. The present is such a claim.

Standing to bring claims for judicial review

30. Standing is governed by statute: section 31 of the Senior Courts Act 1981 (cited to, but not referred to by, the Learned Judge) states that: *"…the court shall not grant leave to make [an] application [for judicial review] unless it considers that the applicant has a sufficient interest in the matter to which the application relates"*. This test is known in shorthand as the "sufficient interest" test.

31. In the context of proceedings relating to a contravention of the EqA, the sufficient interest test was considered by a decision of a Divisional Court in *R (The Good Law Project and the Runnymede Trust) v The Prime Minister and the Secretary of State for Health and Social Care* [2022] EWHC 298 (*"The Good Law Project"*), upon which the Learned Judge placed great reliance, and which is addressed below at §§75-78.

C: THE CLAIM FOR JUDICIAL REVIEW

Introduction

32. The Appellant challenges the temporary admissions rules of the Bathing Ponds, as decided upon by the Defendant's Hampstead Heath, Highgate Wood and Queen's Park Committee ("the Committee") at a meeting on 16 July 2025 **[CB/160-166]**, and/or by new signage at the Bathing Ponds on or around 25 July 2025 **[CB/167]**, and/or by a notice posted on the Defendant's website on 29 July 2025 **[CB/169-170]** or 10 August 2025 **[CB/171-172]** (together, "the Decision(s)").

33. The Decisions were prompted by the handing down of the judgment in *For Women Scotland*. In that case, the Supreme Court held that "sex" in the EqA referred to biological sex, such that a trans-identifying person could not change their "sex" for the purpose of the Act. Accordingly single-sex services which could lawfully be provided separately for men and women under Schedule 3 EqA were services for men and women as defined by biology, and not by any process of self-identification or certification.

34. Despite this, the Decisions set out above allowed men[13] who identify as women (sometimes called "trans women"[14]) to continue to be admitted to the Ladies' Pond, and women who identify as men (sometimes called "trans men"[15]) to continue to be admitted to the Men's Pond - including, in each case, the communal showers and changing areas. The Decisions

[13] Who, for the avoidance of doubt may be wholly intact male-bodied individuals.
[14] Given the ratio of *For Women Scotland* the term "trans identifying man/men" is used.
[15] Likewise, the term "trans identifying woman/women" is used.

reflected the view of the Committee that the arrangements should remain consistent with arrangements in place prior to the handing-down of *For Women Scotland*, pending what it described as a "consultation" surveying public opinion on proposed admissions rules for the Bathing Ponds; albeit that, as explained below, the arrangements as reflected in the signage erected to give effect to the Committee's view were different from the historic arrangements.

35. The Appellant's case was and is that the Decisions were unlawful, because the arrangements inherently amount to and inevitably give rise to unlawful discrimination. They were therefore not arrangements which, in public law, the Defendant was entitled to adopt. In light of *For Women Scotland*, it would be lawful for the Defendant to operate the Bathing Ponds as separate services for persons of each sex (defined in terms of biology), but it has decided not to do so and instead has expressly disavowed any reliance on the single-sex facility exceptions under the Act. Nor has it relied to date on any other basis for avoiding liability. Accordingly, applying the arrangements would inherently and inevitably give rise to:

    (1) direct sex discrimination against both women and men (section 29(1) read with section 13 EqA): they deny individual women access to the Men's Pond (so treating them less favourably than a man), and deny individual men access to the Ladies' Pond (so treating them less favourably than a woman);

    (2) direct sex discrimination against women (section 29(2) read with section 13 EqA): in providing the service on terms or in circumstances which permit the opposite sex to be present in the Bathing Ponds, they treat individual women less favourably than men because a woman is at greater risk of suffering the detriment of her privacy, dignity or safety being compromised than is a man; and/or,

    (3) indirect sex discrimination against women (section 29(2) read with section 19 EqA): they put women as a group at a particular disadvantage compared with men, put individual women at such a disadvantage, and are not justified under section 19(2)(d).

Factual background

36. Sex Matters is a charity whose objects are to promote human rights based on biological sex, to advance education about sex and the law, and to promote the sound administration of the law in relation to sex and equality between the sexes **[SB/23-27]**.

37. The Defendant operates the Bathing Ponds pursuant to powers transferred to it under the London Government Reorganisation (Hampstead Heath) Order 1989 (SI 1989/0304). Admission is by ticket. As well as the Men's and Ladies' Ponds, it also operates Parliament

Hill Lido and the Hampstead Mixed Pond on Hampstead Heath.[16] The Men's Pond is staffed by men and the Ladies' Pond is staffed by women. Each of the Bathing Ponds have communal changing and showering facilities where nudity is normal **[SB/56-60, 176, 177]**.

38. For some years the admissions arrangements at the Bathing Ponds referred to and were predicated on a Gender Identity Policy dated April 2019 ("GIP") **[SB/99-101],** which applied to all services and facilities provided by the Defendant. This operated a *"presumption of inclusivity"* by which persons identifying as "trans"[17] would be able to self-identify into the facility of their choice. The background to this was the 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".*

39. On 16 April 2025, the Supreme Court handed down judgment in *For Women Scotland*.

40. On 25 April 2025 the EHRC published an update on its website described as *"An interim update on the practical implications of the UK Supreme Court judgment"* ("the Interim Update") which stated in so far as relevant: -

> *"It is not compulsory for services that are open to the public to be provided on a single-sex basis or to have single-sex facilities such as toilets. These can be single-sex if it is a proportionate means of achieving a legitimate aim and they meet other conditions in the Act. However, it could be indirect sex discrimination against women if the only provision is mixed-sex.*
>
> *In workplaces and services that are open to the public:*
>
> > *trans women (biological men) should not be permitted to use the women's facilities and trans men (biological women) should not be permitted to use the men's facilities, as this will mean they are no longer single-sex facilities and must be open to all users of the opposite sex* (underlining added)" **[SB/5]**

These statements, including the words underlined, have now been upheld as lawful: see *EHRC* (§§51, 53, 77) (handed down after the Learned Judge's Order in the present case).

41. On 20 May 2025, there was a meeting of the Defendant's Committee which considered the implications of *For Women Scotland* for the operation of the Bathing Ponds **[SB/12].** The

[16] There are a number of other freshwater natural swimming amenities in London, including the Serpentine Lido, the West Reservoir Centre, the Royal London Docks, Eden Docks, Merchant Taylors' Lake, and Beckenham Place Park but the Bathing Ponds, which opened in 1925, are the only ostensibly single-sex freshwater swimming amenities in the capital.

[17] The policy was based on a conception "*that gender identity is complex and varied (e.g. some people identify as genderfluid, gender queer or non-binary)*" and this will be reflected in our approach.

Chair stated that the starting point was that: "*these are single sex facilities that we, because of the gender identity policy, had decided were open to others"* (underlining added). He further stated that the GIP "*basically allowed people to use a suitable facility according to their gender. Of course, that was based on what has turned out to be a misinterpretation of the law"* **[SB/15]**.

42. On 30 June 2025, the Defendant issued an update on its website on the effect of *For Women Scotland,* stating that *"The current arrangements remain in place during the review. To understand who can currently access our bathing facilities, please read our Gender Identity Policy"* (emphasis added) **[SB/21]**. Notwithstanding this update, and presumably in acknowledgement of the fact that it was unlawful, the GIP was subsequently withdrawn.

43. Despite this, the Defendant decided not to adopt clear sex-based rules on who could use the two ponds labelled "Women only" and "Men only". Instead, on 16 July 2025, the Committee resolved to adopt an officer recommendation to *"Agree that the current access arrangements remain unchanged pending the carrying out of a consultation exercise…"*: Officer Report Recommendation 4 **[CB/154 and 165]**. Then, on around 25 July 2025, the Defendant erected signs at the respective Ponds. In relation to the Ladies' Pond, this stated:

"*Those who identify as women are welcome to swim at the Kenwood Ladies' Pond. The Ladies' Pond is open to biological women and trans women with the protected characteristic of gender reassignment under the Equality Act 2010*" **[CB/167]**.

Similar signage *mutatis mutandis* was put up at the Men's Pond **[CB/168]**.

44. These arrangements were different from what the GIP had said. Taking the case of the Ladies' Pond, entry for trans-identifying men was now for *"trans women with the protected characteristic of gender reassignment under the Equality Act 2010"* so did not include, for example, non-binary and genderfluid individuals, or any other trans person not falling within the protected characteristic of gender reassignment. It further appears that the Defendant no longer operates a *"presumption of inclusivity"* or says that it will exclude trans individuals only following an Equality Impact Assessment. The range of different approaches is illustrated by the Defendant's "consultation", which sought opinion on "trans inclusion" approaches based on different categorisations. Option 1(b) corresponded to the 2025 approach *"where the Men's Pond included biological men and trans men, and the Ladies' Pond included biological women and trans women",* but Option 1(c) took a different approach, proposing that the Men's Pond would be only be *"open to those living as men (including trans men), and the Ladies' Pond would only be open to "those living as women (including trans women)"*. Neither allows people identifying *inter alia* as non-binary or genderfluid to use opposite sex facilities, as previously.

45. On 29 July 2025 and 10 August 2025, the Defendant issued a further statement on its website, confirming that: -

(i) *"those who identify as women are welcome to swim at the Kenwood Ladies' Bathing Pond. The Ladies' Pond is open to biological women and trans women with the protected characteristic of gender reassignment under the Equality Act 2010".*

(ii) *"Similarly, those who identify as men are welcome to swim at the Highgate Men's Bathing Pond. The Men's Pond is open to biological men and trans men with the protected characteristic of gender reassignment under the Equality Act 2010."*

Procedural history

46. Following pre-action correspondence, the claim was issued on 19 August 2025 with an application for the claim to be expedited.

47. On 11 September 2025, Mr C M G Ockelton adjourned the application for expedition "*to be put before a judge for consideration on the papers promptly after the expiry of the time allowed for the claimant's reply (or, if earlier, the receipt of the claimant's reply) and in any event no later than four weeks after the earlier of those dates"*. Mr Ockelton observed (wrongly, in light of the above) that "*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."*

48. Summary Grounds of Resistance were served on 16 September 2025 and a Reply on 22 September. In response to Mr Ockelton's observations, the Appellant made an application to extend time to bring the claim if, notwithstanding the Appellant's principal case, the claim was found to be out of time.

49. On 30 September 2025, the Defendant launched what it described as a "consultation" on proposed arrangements for the Bathing Ponds, stating that it had withdrawn its GIP **[SB/267-268]**. On 2 October 2025 the Appellant's solicitor wrote requesting confirmation of when the GIP 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. 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"*[18] **[SB/287]**.

[18] As noted in *R (Sky Blue Sports & Leisure Ltd) v Coventry City Council* [2013] EWHC 3366, the fact that disclosure has not been given pre-permission may well be a *"persuasive or decisive"* reason to *grant* permission so that those documents can be produced.

50. 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 ordered the matter to be listed for a one-day hearing, referring to the fact that the case gave rise to complex and controversial issues. The matter was heard on 17 December 2025.

D: THE PERMISSION DECISION

51. At §34 the Learned Judge determined that *"the Corporation has not made a fresh decision which is amenable to judicial review"* and accordingly the Appellant was premature in bringing the claim:

"35. The substantive decision in respect of access arrangements at the Ponds is the same as it has been since at least 2017, namely that transgender people can swim in the pond of the gender they identify with. That arrangement has not changed. The Corporation accepted a recommendation on 16 July 2025 to continue the existing arrangements and to start a process towards making a fresh decision after consultation. The sign that was erected merely continued those existing arrangements and did not itself indicate any fresh decision.

36. This challenge is an attempt to limit the options in that consultation and as such I agree with Mr Stilitz that it would be contrary to good administration and to proper decision making to allow a judicial review to proceed at this stage. The Corporation should be allowed to conduct a full consultation, with all options on the table and then to consider all those options. If it then adopts an option which is alleged to be unlawful, potentially on one or more of the grounds pleaded here, then that will be the time to challenge. That analysis entirely follows the approach of Chamberlain J in Inclusion Housing at [69], where he refers to the time of a challenge to run from the decision of the internal review process. The equivalent of the internal review process here, is the decision following the consultation."

52. In relation to delay and the application to extend time, the Learned Judge held that: -

"38. … the same substantive decision has been in place since at least 2017. Although there are cases where the court has allowed decisions to be challenged well outside the three month limit, where there is an ongoing effect, the general rule is that time runs from when the individual is affected by the application of the challenged measure, see R (Badmus) v Secretary of State for the Home Department [2020] EWCA Civ 657 [2020] 1 WLR 4609 at [77]-[78].

39. It is in my view particularly inappropriate to allow a challenge out of time, when the decision maker is themselves undertaking a complex process leading up to the making of a fresh decision. There is therefore a significant factual difference between a case such as ex p EOC where an arguably unlawful policy was continuing to be applied with no suggestion of any change unless a challenge was brought, and the current position where the Corporation is actively engaged in public consultation and legal advice in order to reach a fresh decision.

40. For the same reasons it would be wrong to allow an extension of time on the facts of this case. The rule of law can be fully vindicated by an in-time challenge to a fresh decision, if so advised, when the Corporation has made such a decision."

53. The Learned Judge addressed standing and alternative remedy compendiously: -

"55. In my view the more appropriate person to bring this claim is an individual who says that they have been discriminated against by decisions about access to the Ponds. The starting point of the Claimant's case is direct discrimination, and the statutory scheme in the Equality Act 2010 is focused on individuals who say they have been treated less favourably.

56. The position here is similar to that in Good Law Project where there are individuals directly and personally affected by the decisions under challenge who would be capable of bringing the case. There are not the type of structural barriers, not least of being outside the UK, which made challenge by individuals in a discrimination claim difficult in the Roma Rights case, and therefore justified an interest group bringing the claim.

57. There are individuals who argue they have been discriminated against by the Corporation's decision and therefore could bring individual claims. A number of women have signed witness statements in this claim and could bring challenges in their own name. They may prefer that the claim is brought by the Claimant, but there are no specific matters raised, such as mental health issues in MM, which would prevent them from bringing the claim. If there are real and significant issues around anonymity, then that is a matter that could be dealt with by the Court in any County Court claim.

58. In terms of the financial position, that alone does not justify departing from the statutory scheme which envisages claims brought by individuals in the County Court.

59. There are a number of features of this case which point towards one or more individuals being the appropriate claimant and the County Court being the appropriate forum. Firstly, the procedure envisaged in the Act is that of the County Court, and to allow a judicial review risks undermining the will of Parliament, see LJ Mummery in R (Davies) v Financial Services Authority. Section 114(1)(a) provides that the claim should generally be brought in the County Court, and it creates a structure, including the appointment of assessors, which is specifically designed for such a claim.

60. Secondly, the statutory scheme envisages an individual claimant and, in a direct discrimination claim, requires the court to carry out a comparative exercise between individuals. Although not determinative, that points to individual claimants being appropriate.

61. Although the Administrative Court can consider and determine issues of fact, and even, exceptionally, hear oral evidence, it is not as well placed as the County Court, which in the particular context is exercising an expert jurisdiction. This is a case where issues of primary fact, such as the facilities at the respective Ponds, may require determination.

62. The Claimant submits that it would not be able to bring a challenge in the County Court because it is a group not an individual. However, in my view that supports the Corporation's argument that judicial review is not the appropriate remedy. The Act envisages cases brought by individuals in the County Court, in a forum where facts can be fully considered and appraised. The fact that the Claimant cannot do so merely reinforces the conclusion that this is not the appropriate forum.".

E: GROUNDS OF APPEAL

Ground 1: the learned judge erred in concluding that there was no decision amenable to judicial review, and/or that the claim was premature

54. The facts were as above. On 16 July 2025, the Defendant's Committee had chosen to adopt the recommendation of an officer to continue with rather than change arrangements during a period of consultation. It need not have adopted that recommendation, but it did. That decision was a legitimate target in itself for judicial review. Furthermore, thereafter, signs were erected describing arrangements which were not, in fact, the same as those applying prior to the decision of 16 July (see §44 above). The City-wide GIP, on which the historic arrangements had been based, was withdrawn and a new Ponds-specific policy was adopted as conveyed by the signs. In substance the arrangements are now different from those applying before. On that alternative or additional basis, the Appellant was entitled to challenge the arrangements applying.

55. The Learned Judge nevertheless concluded at §34 that the Appellant was *"premature in bringing a challenge at this point in the decision-making process"* because the Defendant was *"in the process of"* making a *"fresh decision"* on the admission arrangements. This would render the present arrangements immune from challenge.

56. The Learned Judge took an unjustifiably restrictive approach as to the legitimate target of judicial review which is not supported by, and which is contrary to, established authority.

57. **First,** a clear and considered choice between options is a decision capable of being judicially reviewed: see *R (Badmus) v SSHD* [2020] 1 WLR 4609 (CA), §61. That is what happened at the meeting of the Defendant's Committee on 16 July 2025 when the Committee adopted Recommendation 4. That was not a draft or provisional decision subject to a pending internal review (in contrast to the position discussed in *Inclusion Housing CIC v Regulator of Social Housing* [2020] EWHC 346 (Admin) ("*Inclusion Housing* ") at §69) nor a part of a staged decision-making process (in contrast to the position in *R (Eisai) v NICE* [2008] EWCA Civ 438). Rather, it was a concluded decision. The fact that the Defendant is choosing to survey public opinion or take advice with an intention to take a further, future decision (with no guarantee

that it will necessarily do so) does not insulate the present arrangements from challenge. If, reliant on the decision below[19], a defendant could avoid liability by doing so, that would enable liability to be avoided in many claims.

58. **Second**, contrary to the Learned Judge's finding at §§35/38, if the decision was simply to continue the same admissions arrangements as before (which is not accepted), the fact that the arrangements remained the same did not mean that the formal decision to continue them was not justiciable. *Inclusion Housing* (§69) illustrates that, where a decision-maker turns its mind to consider whether an earlier decision should be changed, and then decides not to change it, a challenge can be made to the later decision, and time will start to run from when that decision is made. The facts of *Inclusion Housing* were different because it concerned a second decision on internal review. The present case is *a fortiori*: the Defendant's 16 July decision is not subject to internal review: it was a concluded decision as to the arrangements for an indefinite period and is not shielded from review by the Defendant's stating an intention to take a further decision at some future undefined time.

59. **Third,** the Learned Judge was in any event wrong to find that the admissions arrangements had not changed. As above, the Ponds-specific policy (rather than a City-wide policy) set out in the admissions arrangements that followed the decision in July 2025 are not the same as those operating previously (see §44 above). Whereas the previous admissions arrangements at the Bathing Ponds had been expressly predicated on the GIP, the GIP had been withdrawn following the Defendant's recognising that it was based on a *"misunderstanding of the law"*. In those circumstances it was not possible to find that the arrangements had not changed, and the Learned Judge was plainly wrong to proceed on the basis that they had not done so.

60. The decisions made were publicised and set out in new signage, such signage being a paradigmatic example of a discriminatory act (see e.g. *Amnesty International v Ahmed* [2009] ICR 1450 at §33 where Underhill J (President) noted *"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."* Although it formed an important part of the Appellant's argument, the Learned Judge wholly ignored the change in the arrangements in her judgment.

61. **Fourth,** to the extent that the Judge purported to exercise a broad discretion as to whether to *"allow"* the claim to proceed (§36), she misdirected herself in law. The existence of a justiciable decision is an evaluative decision and not an exercise of judicial discretion.

Ground 2: The Learned Judge erred in concluding that the claim was out of time

[19] See fn. 4 above.

62. The next proposition of the Learned Judge, inconsistent with that above, was that the claim was out of time. This was necessarily premised on the Defendant not having made any change to the arrangements.

63. **First,** for the reasons given above, the Learned Judge was wrong to conclude that *"the same substantive decision has been in place since at least 2017"* (§38). The arrangements put in place following the decision were not the same as those previously (see §44 above) and any challenge to the GIP (now withdrawn) or to some unspecified previous policy, as opposed to the decision of 16 July 2025 and/or as reflected in the new signage, would have been academic. In failing to have regard to the same the Learned Judge erred in law.

64. **Second,** even were that not so, the Learned Judge failed to consider when the *"grounds to make the claim first arose"* (CPR 54.5(1)(b)), failed to adopt a contextual approach to the ascertainment of the 'starting date'[20], and failed to determine or consider the nature of the *"real dispute"* between the parties[21]. It was *"antithetical to the context of a time limit barring judicial review",*[22] and lacked realism, to seek to attribute the 'starting date' to some unidentified and unknown point in time "many years" ago. Identifying the *"real dispute"* between the parties, the Learned Judge ought to have recognised that the central focus of the dispute was the Defendant's response to the Supreme Court's decision in *For Women Scotland,* in relation to which the EHRC had given clear and categorical advice by means of the Interim Update, and to which it was necessary for the Defendant to respond given its previous *"misunderstanding of the law"*. The Defendant decided upon arrangements that it knew or ought to have known were unlawful but the Judge shut out the Appellant from challenging them.

65. **Third,** if the correct analysis was not that time started to run from the date of the Decisions, it was that the challenge was properly made to a continuing act or state of affairs. The Learned Judge properly recognised at §38 that *"there are cases where the court has allowed decisions to be challenged well outside the three month limit, where there is an ongoing effect"*, but rejected that the present was such a case because the decision-maker was *"undertaking a complex process leading up to the making of a fresh decision"* (§39). That is simply to side-step the illegality which (on the current premise) was ongoing. The point in *R v Birmingham City Council, Ex p Equal Opportunities Commission* [1989] AC 115 ("*ex parte EOC*"), which the Learned Judge failed to recognise, is that a claimant will not be put out of Court if they issue more than three months after the effect of a discriminatory state of affairs first subsists. Thus in that case the Equal

[20] See *R (Burkett) v Hammersmith & Fullham LBC* [2002] 1 WLR 1593 (HL) (§45)
[21] See *R (O) Hammersmith & Fulham LBC* [2012] 1 WLR 1057 (CA)
[22] *Burkett* (§45)

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.

Ground 3: The Learned Judge erred in her approach to and determination of the application to extend time

66. Without prejudice to the Appellant's contention that the claim was not out of time, the Learned Judge in any event erred in refusing its application to extend time.

67. **First,** the Learned Judge wrongly failed to have regard to (1) the good reason for the delay, (2) the public interest in the claim proceeding, (3) the importance of the issues, and (4) the strength of the claim, such matters being expressly relied upon as set out in the Appellant's written submissions of 23 September 2025, and supported by witness evidence, and which the Learned Judge did not take into account, consider, or give reasons for rejecting: -

(1) Good reason for the delay: Although it is not a perquisite for an extension of time that the Appellant has a good reason for the delay (see *R v Secretary of State for Trade and Industry ex parte Greenpeace* [2000] Env LR 221 (HC), 261) it will usually be an important consideration: *Amey Highways Ltd v West Sussex County Council* [2019] PTSR 455 (§35). Here, the reason for not issuing the claim sooner could not be clearer or more compelling. The decision in *For Women Scotland* fundamentally altered the understanding of how sex was understood under the EqA, what it meant in law to be a "woman", and how the exceptions at §§26-27 Schedule 3 operated.

(2) 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: *Maharaj v National Energy Corporation of Trinidad & Tobago* [2019] 1 WLR 983 ("*Maharaj*") (PC), §38. The question of whether or when a service-provider can provide separate services for the sexes which are not the subject of the exception from liability is an issue of public importance affecting the functions of service providers nationwide.

(3) The importance of the issues: this may be a sufficient reason to extend time even where the delay is unjustified: see e.g. *R (Hughes) Board of Pension Protection Fund* [2020] EWHC 1598 (Admin) at §§99-101. The above is repeated.

(4) The strength of the claim: The clear legal merit of the claim is a factor strongly in favour of the claim being heard. Ground 1 in particular was unanswered and unanswerable.

The Appellant's argument follows the advice in the EHRC's Interim Update, which has now been upheld by the High Court (albeit that this judgment had not been handed-down by the time of the Learned Judge's Order). In the circumstances, the Court should step in to vindicate the rule of law and stop a practice that is manifestly unlawful. See e.g. *Maharaj* at §38.

68. In not having regard to those matters, the Learned Judge erred in law.

69. **Second,** it was no answer that there could be an *"in-time challenge to a fresh decision"* (Judgment §40). On the reasoning of the Learned Judge in relation to standing/alternative remedy, no-one can make such a challenge: rather, an individual would have to bring a claim in the County Court. The Learned Judge thus failed to have regard to the totality of her findings. Further, it cannot be an answer to an application for an extension of time to repeat that the claim is premature (which, for the reasons given, it was not). It is not the effect of the Learned Judge's Order, and there is no guarantee that the Defendant will make the further decision it has claimed it will make.

70. **Third,** the Learned Judge erred in failing to have proper regard to or give proper weight to the fundamental principle that the role of the Court in judicial review is to uphold the rule of law and to address public "wrongs". The fact that the state of affairs is continuing, and indeed in this case that the Defendant is actively consulting on a continuation of the current policy and variations of it, strongly militates towards an extension of time so as to enable the substantive issues to be resolved: see for example *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). Contrary to §36 of the Judgment, a hearing of the present claim will *advance* good administration because it will enable the Defendant to benefit from the ruling in relation to any future decision which it may indeed make.

Ground 4: The Learned Judge erred in her approach to and determination of the Appellant's standing / alternative remedy

71. Standing and alternative remedy are separate issues. The Learned Judge wrongly conflated them. The question was whether Sex Matters had standing. If it did, there was no room for the Defendant to rely on the principle that a claimant must usually first exhaust a suitable alternative remedy before proceeding with a judicial review, because (as was common ground) no suitable alternative remedy was available to Sex Matters.

72. **First,** as to standing, the Learned Judge lost sight of the statutory test. Instead, she directed herself as to who the *"more appropriate"* person (underlining added) was to bring a claim. The

question, however, was whether Sex Matters had a *"sufficient interest in the matter to which the application relates"*. As Lord Reed made clear in Walton v Scottish Ministers [2013] SC 67 at §92, it not necessary to demonstrate that a claimant has a better right to claim than any other claimant, it being enough that a claimant's interest is "sufficient": *"The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no one was able to bring proceedings to challenge it."* It would be *"a grave lacuna in our system of public law if a pressure group, … were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.": IRC v National Federation of Self-Employed and Small Businesses* [1982] A.C. 617 (HL), 644E-G. For this reason, Courts adopt, in general, a liberal approach in claims brought by campaigning groups within their area of activity[23]. As observed in *The Good Law Project*, it is commonplace for campaigning groups and charities to have standing in relation to matters within their areas of interest and expertise[24]. It is no answer to an objection to standing that, in principle, a claim raising similar arguments could be brought by someone else; and even if it were, the evidence before the Court explained (contrary to §57) why individuals were not in a position to bring claims.[25]

73. **Second,** had the Learned Judge properly considered whether the Appellant had *"sufficient interest",* she would have been bound to find that it did. As explained in the evidence (see especially the witness statement of Ms Forstater at §§4-14), its particular interest or focus was on sex-based rights; it has specific expertise in its field; it has significant output in its field; it is recognised by organs of state as a valuable contributor in its field; and it was precisely on the basis of its interest and expertise in this area that Sex Matters was given permission to intervene in *For Women Scotland*. At §35 of the Supreme Court Judgment, the Appellant's submissions were singled out as *"particularly helpful"* giving *"focus and structure to the argument that "sex", "man" and "woman" should be given a biological meaning"*. Its arguments before the Court were accepted in full as accurately setting out the law. Its expertise has thus received endorsement at the highest judicial level. The Appellant is very far from a *"mere busybody … who interferes in something with which he has no legitimate concern"* as referred to by Lord Reed in

[23] Some examples were given in the Statement of Facts and Grounds §99, and fn 30.

[24] Well known examples of this include *R v Inspectorate of Pollution, ex parte Greenpeace Ltd (No 2)* [1994] 4 All ER 329 where Greenpeace was held to have standing as a *'campaigning organisation which has as its prime object the protection of the natural environment,"* (§70). Other examples include *R. (Campaign for Nuclear Disarmament) v Prime Minister* [2002] EWHC 2777 (Admin), *R (Public Law Project) v Lord Chancellor* [2016] AC 1531, *R v Secretary of State for Foreign and Commonwealth Affairs, ex p. World Development Movement Ltd* [1995] 1 WLR 386; *R (Refugee Legal Centre) v SSHD*; [2005] 1 WLR 2219; and *R (Motherhood Plan) v HM Treasury* [2022] PTSR 494. The last case shows that even a newly established campaigning organisation may have standing.

[25] See witness statements of Eve Kay-Kreizman §19, TBS §12, Josephine Graham §§17-18, Issy Ismail §§10-11, and Marilyn Herman §15,

Walton (§92). On the contrary, it is a highly respected stakeholder and contributor on an important issue of considerable public concern.

74. **Third,** the Learned Judge misunderstood or failed to reflect both the Appellant's claim and how it related to the enforcement provisions of the EqA. She was wrong to find that "*The starting point of the Claimant's case is direct discrimination, and the statutory scheme in the Equality Act 2010 is focused on individuals"* (§55), that "*the statutory scheme […] envisages claims brought by individuals in the County Court"* (§58), that "*the procedure envisaged in the Act is that of the County Court, and to allow a judicial review risks undermining the will of Parliament …"* and that *"section 114(1)(a) provides that the claim should generally be brought in the County Court"* (§59):

(1) As above, the Appellant's claim was not that the Defendant had breached Sex Matters' right not to be discriminated against. Sex Matters' claim was that the Decisions were unlawful, because they were to decide upon arrangements which would inevitably lead to discrimination. The claim was not that an individual's rights had been (or would be) breached; it was a claim of unlawfulness in public law. A public body cannot adopt a policy which will inevitably lead to discrimination against individuals. That claim was properly one for (and indeed only one for) judicial review.

(2) The Learned Judge omitted entirely to consider the express provision made in the EqA for claims for judicial review, in the case of proceedings relating to a contravention of the Act i.e. section 113, cited above. That section is inconsistent with the Learned Judge's suggestion (not put in argument) that *"to allow a judicial review risks undermining the will of Parliament"* (Judgment §59). To the contrary, it gives effect to Parliament's will. Further the Learned Judge was wrong to suggest that *"section 114(1)(a) provides that the claim should generally be brought in the County Court …"* (Judgment §59): it simply does not say that. On the contrary, as the Court of Appeal explained in *R (Rowley) v Minister for the Cabinet Office* [2022] 1 WLR 1179 ("*Rowley*"), *"Parliament has expressly recognised that a person discriminated against by breach of the reasonable adjustments duty may make a claim, including for damages, and may bring that claim by judicial review."* Whilst it is true that a different claimant could, in principle, allege breach of their individual rights in the county court (subject, on the Learned Judge's approach, to the Defendant's making a further decision in the future), that would be a different claim, and the Act does not create any hierarchy in the manner in which complaints under the EqA can be brought.

(3) There are many examples of judicial review claims in which it is argued that a rule, policy, or arrangements breaches or leads to a breach of domestic anti-discrimination rights, whether under the EqA or its predecessor provisions, including *contra* Judgment

§60, in relation to direct discrimination, for example: *R (Lunt) v Liverpool CC*) [2010] RTR 5 (failure to make reasonable adjustments in taxi licensing), *R(E) v Governing Body of JFS* [2010] 2 AC 728 (direct race discrimination in a school), *R (MM) v SSWP* [2014] 1 WLR 1716 ("*MM*": failure to make reasonable adjustments in welfare benefits: below §77(1)), *Coll* (above §19: direct sex discrimination in the prison estate), *R (H) v Ealing LBC* [2018] PTSR 541 (indirect sex/disability discrimination in housing allocation), *R (VC) v SSHD* [2018] 1 WLR 4781 (failure to make reasonable adjustments in immigration detention), *R (Gullu) v Hillingdon LBC* [2019] PTSR 1738 (indirect race discrimination in housing allocation), *R. (TX) v Adur DC* [2023] HLR 17 (indirect sex discrimination in housing allocation), *R. (Z) v Hackney LBC* [2020] 1 WLR 4327 (SC) (direct religious discrimination in housing allocation), *R (SH) v Norfolk CC* [2020] EWHC 3436 (Admin) (indirect discrimination in local authority charging scheme); *R (DMA) v SSHD* [2021] 1 WLR. 2374 (indirect discrimination and failure to make reasonable adjustments in asylum support accommodation), *Rowley* (above, failure to make reasonable adjustments in Covid announcements); *R (TTT) v Michaela Community Schools Trust* [2024] PTSR 1627 (indirect religious discrimination in a school).

(4) More specifically still, there are numerous examples of judicial reviews where the claimant advancing such an argument is not an individual rights-holder: see e.g. *R (European Roma Rights Centre and Others) v Immigration Officer at Prague Airport* [2002] EWHC 1989 (Admin) ("*Roma Rights*") (direct discrimination of applicants for immigration leave); *R (Adiatu and Or) v HM Treasury* [2020] PTSR 2198 (in which the Independent Workers' Union of Great Britain was held to have standing in relation to unlawful sex discrimination contrary to section 19 EqA). *R (Joint Council for the Welfare of Immigrants) v SSHD* [2021] 1 WLR 1151 (CA) (where it was said that the 'right to rent' provisions gave rise to direct and indirect race discrimination), *R (Motherhood Plan) v HM Treasury* [2022] PTSR 494 (a claim stated at §§55-56 to rely on ss19 and 23 EqA).

(5) In *Roma Rights*, the defendants had argued that the claimant (a campaigning and advocacy group) ought not be permitted to advance an argument of discrimination in the Administrative Court, it being said that it was not the appropriate venue (see 35(ii)(b)). However, as Burton J found (in reasoning not interfered with by the Court of Appeal or House of Lords), *"these proceedings are not (or not primarily) put forward by the Claimants on the basis of an individual claim, whether for damages or otherwise by HM, and certainly not by the non-claimants. The evidence in relation to them is sought to establish or support a case that the Prague operation has been carried out discriminatorily"* (§53(iv)). The Judge wrongly

distinguished *Roma Rights* on the basis that it was allowed to proceed because of "*structural barriers, not least of being outside the UK, which made challenge by individuals in a discrimination claim difficult*" (§56). That was not the reason why the defendant's submissions as to standing and alternative remedy were rejected in *Roma Rights*.

75. **Fourth,** the Learned Judge was wrong at Judgment §56 to treat as analogous the claimant and/or claim in *The Good Law Project*. Unlike Sex Matters, The Good Law Project campaigns on numerous different and varied causes with no particular mandate. The open nature of its interests was one of the main factors leading to the Divisional Court's finding in that case that it lacked standing: see e.g. *The Good Law Project* §58, contrasting it with the Runnymede Trust, another claimant in that case, which *"exists specifically to promote the cause of racial equality"*. *The Good Law Project* decided that that organisation did not have standing to pursue challenges to specific government appointments of particular persons. In that context the Divisional Court observed at §31 in relation to a claim that those appointments were discriminatory that *"this is not a case where all members of the public are equally affected; there were individuals, directly and personally affected by the persons under challenge, who would be capable of bringing proceedings alleging unlawful discrimination: those who were considered (or perhaps feel that they should have been considered) for appointment to one of the posts in question but were not appointed"* (underlining added). Contrary to Judgment §56, that is not analogous to the present case. Here, members of the public are "equally affected": the Bathing Ponds are open to the public at large.

76. **Fifth**, the Learned Judge wrongly conflated the issue of standing and the principle of suitable alternative remedy. The latter principle concerns whether there is a suitable alternative remedy for the claimant: see *R (Tapecrown Ltd) v Crown Court at Oxford*) [2019] 1 WLR 3394, §41 (or *Watch Tower Bible*, cited by the Learned Judge at §47, which describes the principle as applying *"if other means of redress are "conveniently and effectively" available to a party"* (underlining added). There was no analogy with the *Good Law Project* for the reasons above. If the Appellant had standing, no separate issue of alternative remedy arose.

77. **Sixth,** even if that were wrong, the Learned Judge failed to consider or address whether judicial review was in the circumstances the more appropriate remedy in any event: cf. *Rowley*, §17). In particular, the Judge failed to consider whether the public interest and the interests of justice favoured determination of the claims in the High Court having regard to:

    (1) Declaratory relief in the County Court, necessarily, confined to the circumstances of any individual case would not be an adequate remedy for the Appellant here, which seeks to vindicate the rights of any member of the public of either sex unlawfully refused access to, or discriminated against, by the arrangements used to manage either

of the Bathing Ponds. In *MM* [2012] EWHC 2106 (Admin)[26], Edwards-Stuart J allowed a discrimination claim for failure to make reasonable adjustments to proceed as a judicial review, rather than as a County Court claim, where the claim sought declaratory relief for benefit applicants at large. At Judgment §57, the Learned Judge wrongly distinguished *MM* on the basis that it was allowed to proceed as a judicial review because of "*mental health issues in MM, which would prevent them from bringing the claim"* (§57). That was not the reason why the defendant's submissions on standing and alternative remedy were rejected in *MM*.

(2) It is in the public interest that there be an authoritative determination by a Court of Record. A County Court is not a Court of Record, even at Circuit Judge level. The ratio of the High Court's decision would bind the County Court if an individual claim were to be made.

(3) The complexity of the legal issues meant that judicial review was the appropriate means of challenge. Thus, in *R (Fisher) v Durham CC* [2020] EWHC 1277 (Admin) [2020] H.L.R. 41 the Court did not refuse to entertain a claim challenging, on grounds that it constituted unlawful discrimination, a decision to serve an abatement notice, notwithstanding that the claimant had an alternative remedy.

(4) 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. On a proper application of the overriding objective the stress and cost to individuals and the burden on the court system of bringing claims in the County Court is not to be minimised.

78. **Seventh**, the Learned Judge was wrong to find that any dispute of fact in this case meant that judicial review was not appropriate (esp. §§61-63):

(1) No issue arises as to the "reasons" for the treatment because the protected characteristic is inherent to the difference in treatment (see SFG §51);

(2) contrary to the implication at §60, the identification of a comparator is straightforward - see Lord Hodge in *For Women Scotland*, at §134 (above §15). The conclusion at §44 that the *"the considerations in Good Law Project"* apply with greater force in this case because it includes a complaint of direct discrimination is wrong. Where, as here, the complaint is that access arrangements inherently and inevitably lead to direct

[26] Subsequently in the Court of Appeal on another issue: [2014] 1 WLR 1716

discrimination then, by virtue of section 23 EqA, the personal circumstances of those affected are not relevant.

(3) the extent of individual disadvantage is not relevant on a claim in indirect discrimination, where proportionality is assessed by reference to the PCP itself and not by reference to individual facts (see SFG §62);

(4) 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. In these cases, the Court is well able to resolve any relevant dispute of fact.

F: CONCLUSION

79. In the premises, since she did not find any ground of claim unarguable, the Learned Judge ought to have granted permission to apply for judicial review. Accordingly, the Appellant seeks an order granting permission to apply for judicial review instead of permission to appeal (CPR 52.8(5)).

80. Alternatively, the Appellant seeks an order granting permission to appeal.

TOM CROSS KC
SARAH STEINHARDT

19 February 2026