PTA Template 269E1 - OCT16 – JR (Admin)

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2026-000233**

The King, on the application

Sex Matters –v– The Mayor and Commonalty and Citizens of the City of London

ORDER AMENDED UNDER THE SLIP RULE UNDERLINED IN RED THIS 26th MARCH 2026

ORDER made by the Rt. Hon. Lady Justice Elisabeth Laing

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review

Decision

EITHER: Permission to appeal

OR, instead, pursuant to CPR 52.8(5): Permission to apply for judicial review Granted

ONLY if permission to apply for judicial review is granted:

The substantive judicial review should be remitted to the Administrative Court ☒

OR

There are special reasons (set out in the reasons below) why the substantive judicial review should be retained in the Court of Appeal ☐

Reasons

1. This is an application for permission to appeal against a decision of Lieven J ('the Judge') to refuse permission to apply for judicial review to the Claimant (now the Appellant – 'A') to apply for judicial review of decisions described in section 3.1 of the claim form and made on dates between May, July and August 2025 ('the Decisions') in relation to access to the Hampstead Ladies' Pond ('the Pond'). The Decisions were (in short) the current policy should continue and that it would be the subject of a consultation.
2. I have read the Respondent's observations opposing the grant of permission to appeal ('the observations').
3. There are three grounds for judicial review based on discrimination law and on the effect of the decision of the Supreme Court in *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16; [2025] 2 WLR 879 ('*For Women Scotland*'). I consider that they are arguable.
4. The Judge did not engage with the merits of the grounds for judicial review except at the end of her judgment. She indicated that they were 'not so obvious or overwhelming as to outweigh any arguments about the challenge being premature'. She did not ask, or answer, the question whether they were arguable. The Respondent's engagement with the merits at the end of observations is brief and unpersuasive.

5. The Judge held that the challenge was too late and refused to extend time for bringing it because the Decisions did not amount to a 'fresh decision' and the substantive decision about access had been made several years previously. It is arguable that that aspect of the Judge's judgment is wrong, not least because the Decisions were arguably the Defendant's interim response to a relevant change in circumstances, that is, the decision in *For Women Scotland*.
6. The Judge also accepted an argument that the claim was an attempt to limit the Defendant's options in the proposed consultation, and that it was contrary to principles of good administration to permit the challenge at that stage – in other words, that the challenge was premature (as well as being too late). It is also arguable that aspect of the Judge's judgment is wrong.
7. The Judge held that A did not have standing and that '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'. Examples of such individuals were those who had signed witness statements in support of the application for judicial review. The statutory scheme envisaged claims by individuals in the county court. The fact that the claimant could not bring such a claim reinforced that conclusion.
8. ~~It is also arguable that t~~ That aspect of the Judge's judgment is wrong, not least because, as A points out, the statutory scheme also envisages an application for judicial review (section 113(3) of the Equality Act 2010). As A also points out, this part of the decision appears to contradict many authorities in which it has been held that expert charities do have standing to bring claims for judicial review, even where individuals can also do so.
9. Finally, if the Judge was right that the claim was too late, the factors relied on by A indicate that the Judge's refusal to extend time for bringing the claim are also arguably wrong.
10. Mr C M G Ockelton sitting as Judge of the High Court made an anonymity order in respect of TBS. For the reasons given in paragraphs 7-10 of section 10 of the Appellant's Notice, that order should continue.

Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35-day time limit for filing evidence provided for in CPR 54.14)

I will leave it to the Administrative Court to give directions for the further progress of this application.

Signed: BY THE COURT
Date: 16.3.2026
Amended 26.3.2026

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.8 provides that the Court of Appeal may, instead of granting permission to appeal, grant permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the substantive judicial review will proceed in the Administrative Court unless the Court of Appeal directs otherwise.

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