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

CLAIM No:

B E T W E E N

THE KING
on the application of
SEX MATTERS

Claimant

-and-

(1) NATIONAL POLICE CHIEFS' COUNCIL (NPCC)
(2) CHIEF CONSTABLE OF THE BRITISH TRANSPORT POLICE (CCBTP)

Defendants

and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Interested Party

STATEMENT OF FACTS AND GROUNDS

A. INTRODUCTION

(i) Summary of challenge

1. The Claimant seeks to challenge the respective guidance documents issued by the First and Second Defendant concerning the conduct of strip searches of detainees pursuant to, or outside of, s.54 of the Police and Criminal Evidence Act 1984 ('**PACE'**).

2. The first guidance document is that of the NPCC entitled '*Interim Guidance – Searching by Transgender officers and employees of the Police and the Searching of Transgender detainees'* (the "**NPCC Interim Guidance**") [**PB/209**]. The second guidance document is that of BTP, entitled: *'Interim – Transgender and Non-Binary Search Guidance'* (the "**BTP Interim Guidance**") [**PB/236**].

3. The Claimant and the Second Defendant were parties to a related claim for judicial review of the latter's earlier search policy [AC-2024-LON-004169]. Those proceedings were disposed of by consent on 17th July 2025. **Annex A** to this Statement of Facts and Grounds

sets out the chronology of those proceedings [**PB/54**]. That chronology is relevant to certain matters of procedure raised in the parties' pre-action correspondence.

4. In short, the Claimant contends that, following the decision of the Supreme Court in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 ("***For Women Scotland***"):

   a. **Ground one**: The intention of both Defendants to operate a 'consensual' regime for opposite sex strip searches is contrary to s.54(9) of PACE, is in breach of statutory duty and is without any lawful foundation.

   b. **Ground two**: Both Defendants in their Equality Impact Assessments ("**EIAs**") or otherwise have failed to comply with the Public Sector Equality Duty ("**PSED**") in section 149 of the Equality Act 2010 and/or the EIAs evidence a failure of sufficient inquiry and/or a failure to take into account relevant considerations pertaining to the interests of female police officers and female detainees. In particular, both EIAs conducted by the Defendants are flawed, neither providing for any, or any sufficient mitigants to avoid a real risk of searches which would expose female detainees and female police officers to arbitrariness, uncertainty and inconsistency in the conduct of strip searching and/or a breach of Articles 8 and/or 3 ECHR.

   c. **Ground three**: The First Defendant's stated intent to 'default' to Annex L to PACE Code C, raised for the first time in its response to the Claimant's pre-action correspondence, is irrational. Notably, the Second Defendant has conceded that Annex L should be disapplied and the Home Secretary is actively considering her position upon the continuation of Annex L.

5. As a result, the Claimant seeks that the guidance of each Defendant be quashed. The Claimant also seeks a declaration from the Court that there was a failure to comply with the PSED. Because the First Defendant appears to have indicated an intention to 'default' to Annex L of PACE Code C in any event, the Claimant further seeks a declaration that the First Defendant's reliance upon Annex L to PACE Code C, to conduct opposite-sex strip searching, is irrational.

(ii) The Parties

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

7. The First Defendant is the National Police Chiefs' Council, which coordinates with all of the chief constables in England, Wales and Northern Ireland and promulgates guidance for police forces, often in tandem with the College of Policing. The Second Defendant is the Chief Constable of the British Transport Police.

B. RELEVANT FACTS

(i) Strip searches

8. The Interim Guidance of each Defendant concerns the conduct of strip searches involving transgender officers and detainees.

9. The nature and extent of a strip search must be properly understood. A "strip search" is "*a search involving the removal of more than outer clothing*" (PACE Code C, Annex A, §9) [**PB/734**], which "*may take place only if it is considered necessary to remove an article which a detainee would not be allowed to keep and the officer reasonably considers the detainee might have concealed*" (PACE Code C, Annex A, §10). A strip search can require a detainee to bend over or spread their legs, or using force to bend them over or spread their legs, provided that "*no physical contact is made with any body orifice*"[1].

10. The Defendants, like other police forces, use the terms 'More thorough search' ("MTS") and a 'search exposing intimate parts of the body' ("EIP"). The former is a search involving removal of more than a jacket, outer coat and gloves but no clothing which exposes intimate parts of the body.

[1] PACE Code C, Annex A, at §11(e) [**PB/735**].

11. It is significant in the prevailing context that a s.54 EIP strip search extends to the police being able to look under (or, where applicable, between) intimate body parts – including breasts or foreskin or testicles or buttocks – including in a manner which is "physical" (touching or moving them, or removing an item found), all in relation to concealed items which are not inside a body orifice (*Owens v Chief Constable of Merseyside Police* [2021] EWHC 3119 (QB) at [26]).

12. It is clear, therefore, that this type of s.54 strip search can and does extend far beyond the mere observance of a detainee's body parts and involves the spectre of an officer's examination of external and internal genitalia. In that way, an EIP strip search involves considerable intrusion into the detainee's bodily integrity and exposes a detainee to indignity and humiliation. Similarly, the officer performing a strip search which exposes intimate parts undertakes an extremely difficult task and is often liable to do so in challenging conditions.

13. Whilst the distinctions in law between what constitutes a strip search and an intimate search for the purposes of PACE are necessarily accepted, an officer's examination of a detainee's genitalia is plainly a profoundly intimate act. The position of female detainees in that respect is exacerbated, whose exposure of their genitalia is especially intrusive and can occur during menstruation.

(ii) <u>The position of female police officers</u>

14. In November 2022, HM Inspector of Constabulary and Fire & Rescue Service produced a report entitled '*An inspection of vetting misconduct and misogyny in the police service*'. In relevant part, the report made the following findings:

    a. "We were left in no doubt that in too many places, a culture of misogyny, sexism and predatory behaviour towards members of the public and female officers and staff still exists. Female officers and staff we spoke to in alarmingly high numbers described the profoundly negative effect such behaviour has had on them." [**PB/779**]

    b. "…we found a culture where misogyny, sexism and predatory behaviour towards female police officers and staff and members of the public still exists…concerningly, some female police officers and staff told us they felt they needed to acquiesce to prejudicial and improper behaviour." [**PB/795**]

c. "Many female officers and staff also told us they were worried about the repercussions of reporting such behaviour. They were concerned that they would be viewed as a troublemaker…" [**PB/803**]

15. In March 2023, Baroness Casey of Blackstock DBE CB produced her report '*An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service*' ('The Baroness Casey Review'). Chapter 9.2 'Sexism and Misogyny' made the following findings:

a. "…there is a culture of not speaking out in the Met. Leaders merely exhorting people to speak up will not change this culture while people's experience of doing so remains so negative. There is a legitimate fear among women that if they challenge or report sexist or misogynistic behaviour there will be serious implications for their working lives and careers. This fear is borne out in many accounts. Women's attempts to report inappropriate, or even criminal, behaviour were seen as rocking the boat and that the women themselves were being a troublemaker as opposed to being dealt with as examples of systemic misogyny". [**PB/857**]

b. "Women are not treated equally in the Met, and its structures and processes reinforce discrimination". [**PB/869**]

(iii) <u>The position of female detainees (including trans identifying females)</u>

16. Women in police custody (including trans identifying females) are likely to already have been a victim of male violence and/or sexual assault. Women with histories of abuse are overrepresented in the criminal justice system and can be described as victims as well as offenders. The biological difference between men and women has different social and personal consequences; Relationship problems and coercion by men, drug addiction, mental health problems and self-harm are all prevalent: Baroness Corston '*2007 Corston Report - review of vulnerable women in the criminal justice*' at page 3. [**PB/745**]

17. The Corston Report has been cited with approval by the Court of Appeal (*BK* [2015] EWCA Civ 1259 at [26]-[28]):

"26. Until 2007 female prisoners – as were male prisoners — were liable to be subjected to routine, non-targeted, strip-searching. However concerns with regard to female prisoners generally had caused the Secretary of State to request a review: and that review extended to the strip-searching of female prisoners.

27. An immensely thorough review of the position of women prisoners in the justice system was duly carried out by Baroness Corston. Her report ("the Corston Report") constituted, as it states: "A review of women with particular vulnerabilities in the Criminal Justice System." It was published in March 2007.

28. In her foreword, Baroness Corston among other things drew attention to the troubled backgrounds experienced by many women prisoners. She stated her view that for many women prison was both disproportionate and inappropriate. Her Report ranged wide in this context. But for present purposes our attention was drawn to parts of Chapter 3, relating to women in prison and to the prison environment. Baroness Corston dealt specifically with the issue of strip-searching women in prison at paragraphs 3.18 – 3.21 of that chapter."

18. At [25] of the same judgment, having cited the same-sex restriction upon the conduct of strip searches in prison, the Court of Appeal articulated the particular vulnerability of female prisoners who are subject to strip searches:

"*…there are real sensitivities and concerns relating to full body searches: not least in the context of women prisoners and especially when, as has been recognised, a significant proportion of women prisoners may previously have experienced abuse (sexual, physical or psychological) or other emotional disturbance giving rise to particular concerns as to vulnerability.*"

19. The Claimant relies upon the relevant findings of the Baird Inquiry (July 2024), commissioned in response to a television programme about three women who had been strip searched at a police station in Greater Manchester [**PB/892**]. In relevant part, the Report recorded:
    a. The impact of strip searches can be severe. They are a profound invasion of people's privacy and bodily autonomy. They are often experienced as humiliating and degrading.

Australian author Amanda George, writing in 1993 about their use on women in Australian prisons, likened strip searches to "*sexual assault by the state*" [**PB/911**].

b. Baroness Corston, in researching her seminal report on women with vulnerabilities in prison, described strip searching as making them feel embarrassed, invaded, degraded, uncomfortable, vulnerable, humiliated, ashamed, violated, and dirty.

c. In considering the case law of the European Court of Human Rights, Barbara Bernath recognised that: "*Body searches are inherently risky practices because they imply either physical contact between persons deprived of liberty and … staff, or nudity … The risk is high for these practices to be used or applied in such a way as to constitute degrading or inhuman treatment or even torture*" [**PB/913**].

20. Since its enactment on 31st October 1984, s.54(9) of PACE has mandated that: "*The constable carrying out a search shall be of the **same sex** as the person searched*" (emphasis added). It is the Defendants' attempt to introduce significant qualifications to that mandatory restriction, notwithstanding the decision of the Supreme Court in *For Women Scotland* (supra), which is the subject of challenge in this case.

(iv) <u>The NPCC and BTP Guidance</u>

21. On 11th January 2024, the NPCC withdrew its 2021 guidance '*Searching by Transgender Officers and Staff*' [**PB/326 and 321**]. That guidance was withdrawn following criticism of it by the Minister for Crime, Policing and Fire, because it permitted male police officers who self-identified as women to strip search female detainees.

22. On 30th September 2024, BTP issued *Transgender and Non-Binary Search Position* guidance. This permitted same sex PACE strip searches to be carried out on the basis of an officer or a detainee's sex as modified by a Gender Recognition Certificate ("**GRC**"). The policy also purported to create a consensual opposite sex strip search regime.

23. The Claimant sought to challenge that guidance by way of judicial review, as summarised in **Annex A**. In short, the Claimant contended that the search policy was unlawful because it exposed female detainees to a risk of inhuman and degrading treatment through being searched by male officers, and that the policy exposed male and female police officers to a

risk of harm through forced contact with genitalia of detainees of the opposite sex[2]. The Claimant further contended that the same-sex guarantees in ss.54(9) and 55(7) PACE[3] could not be altered by s.9(1) GRA and the search policy was ultra vires.

24. On 16th April 2025, the Supreme Court handed down judgment in *For Women Scotland* (supra). In that case, the Court held:

    a. For the purposes of the Equality Act 2010, "woman" means a biological woman and "sex" means biological sex, regardless of GRC status; and

    b. That "*where the words of legislation, enacted **before or after** the commencement of the GRA 2004, are on careful consideration interpreted in their context and having regard to their purpose*" found to be inconsistent with the rule in s.9(1) GRA that a GRC changes a person's sex in law for all purposes, that rule was disapplied by s.9(3) GRA without the need for express words of disapplication or for such disapplication to arise by necessary implication (emphasis added).

25. On 22nd May 2025, the NPCC sent updated Interim Guidance to police forces nationally. The NPCC directed the forces not to share a copy of this guidance. The Claimant's solicitor obtained a copy of the NPCC Interim Guidance through a FOIA response on 6th June 2025. The NPCC Interim Guidance states that:

    a. "The police have a duty to respect Article 8 rights. Therefore, as far as operationally viable, where an individual whose lived in gender is not the same as their biological sex expresses a preference to be searched by an officer of their lived gender, efforts will be made to ensure an appropriate officer is identified to conduct the search. In such circumstances, the search would require the written consent of the authorising officer, the person detained and the particular officer/s conducting the search."[4]

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[2] See First Witness Statement of Maya Forstater [**PB/73**] at §46: only a minority of people who identify as transgender have surgery, in particular genital surgery is not common.
[3] The s.55 power pertains to intimate searches which involve intrusion into the body orifices and are typically undertaken by a healthcare professional. This form of search contains a same-sex guarantee where the search is – extremely rarely – conducted by a constable. The focus of each Defendant's Interim Guidance in this case is the conduct of strip searches, including strip searches which expose intimate body parts.
[4] NPCC Interim Guidance, page 1 [**PB/209**].

b. "A trans officer can be exempt from searching. There will be no career detriment to the officer or member of staff."[5]

c. "The purpose of the proposed consensual regime is to preserve the integrity and dignity of trans detainees who are in custody where the alternative of a PACE search might amount to an interference with their Art 8/Art 3 rights. The same does not apply to an officer."[6]

d. There "will be no career detriment to the officer or member of staff" who refuses to search a trans detainee[7]. A request for an officer to carry out an opposite sex strip search will not be a "lawful order".

26. The NPCC Interim Guidance had appended to it '*NPCC – Equality Impact Assessment*' ('the NPCC EIA') [**PB/211**]. The EIA appears to be dated 2nd May 2025. In relevant part, it states that:

a. "Searching will be completed in line with biological sex however there will be times where a consensual search is agreed, and both the officer and the detainee give consent to the search."

b. "In England & Wales, there were 601,758 detentions in custody in the year ending March 2024. 84% of detainees were male, with 16% female, less than 0.1% were reported as other sex. 75,173 strip searches were conducted which is the equivalent of 8% of all detentions. There were 12 intimate searches and all 12 were completed by a health care professional. 8 of the intimate searches were conducted in males and 4 on females."

c. "Given the interaction between PACE and the Equality Act it is a reasonable assessment that the [s.9(3) GRA] definition could be applied to PACE. As PACE refers to same sex searching this would indicate that searching must be in line with biological sex. Annex L must also be considered as this documents how to establish the gender of a person for the purpose of a search."

[5] Ibid
[6] Ibid
[7] NPCC Interim Guidance page 2 [**PB/210**].

d. "The guidance states that trans colleagues can search in line with their biological sex. It is known that there will be colleagues who will find this abhorrent. These colleagues will be able to exempt themselves from searching with no detriment to their career."

e. "A trans detainee will be searched in accordance with biological sex. This should be discussed with the trans detainee and they can request that they are searched by an officer of their acquired gender. The officer will be asked to consent to conducting the search."

f. "As the interim guidance is adding an element of consensual searching, a trans detainee will be asked which officer they would prefer to be searched by and an officer who is willing to conduct the search will be located. There will be officers who will not agree to search a trans detainee and these officers will be able to exclude themselves from the search with no detriment."

g. Eighty five percent of detainees subject to a strip search are male.

h. "It may not be appropriate for a male officer to search a transwoman who has completed full medical intervention for example. There are implications for both the officer doing the search and the trans person being searched. An officer will be able to exempt themselves from searching with no consequences or career detriment based on biological presentation."

27. The EIA does not consider the impact on female officers of the guidance, despite the 'no career detriment' provision. It also does not consider the impact on trans identifying female detainees who consent to a strip search by a male officer. Further, the EIA does not contain any analysis of the operation of Annex L of PACE Code C in strip searches.

28. On 30th May 2025, BTP withdrew its '*Transgender and Non-Binary Search Position guidance'*. The Claimant's challenge to that guidance was stayed by way of consent on 17th June 2025 until 30th June 2025 [**PB/542**].

29. On 30th June 2025, BTP published '*Interim – Transgender and Non-Binary Search Guidance'*. Section 5 ("Consensual Searches") states that under certain circumstances (including as to capacity) a detainee can consent to a search outside the requirements of the legal power, in particular the requirement for a same-sex searcher (§§5.3—5.4).

30. Section 6 ("More thorough searches (MTs) and searches exploring intimate parts") states:

> *"6.2. For the purposes of this guidance sex will mean biological sex (sex registered at birth).*
>
> *6.3. The Officer must be the same biological sex (sex registered at birth) as the person being searched for More Thorough and EIP searches under statutory powers. (Section 54 of the Police and Criminal Evidence Act 1984 and Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland)*
>
> *6.4. Any officer or member of staff can refuse to search a Transgender detainee as part of a More Thorough Search or Search Exposing Intimate Parts with no detriment to their career.*
>
> *6.8. Where the Transgender or Non Binary detainee indicates a preference to be dealt with by officers of a different biological sex to them for More Thorough and EIP searches, the detained person is to be informed that this can only be conducted as a consensual search (Section 5 of this guidance) with the officers, authorising officer and detained person's explicit consent. This consent can be removed at any time from either party and the search conducted under the statutory powers as per section 6.6."*

31. It is significant in the context of the Second Defendant's procedural objections to this Claim that §6.4 of the Interim Guidance – the purported 'no detriment' guarantee – had not featured in the withdrawn search policy which was the subject of the Claimant's previous claim.

32. At §§6.11-6.12 of the BTP Interim Guidance, wording is set out for a declaration which is to be signed in the event of a consensual search.

33. BTP's Interim Guidance was accompanied by an EIA [**PB/258**]. That EIA recorded the following concerns expressed by stakeholders:

    a. "*If an officer declines to search a detainee because of their sex, the guidance states it will not impact on their career. How will we ensure this?*"[8]

[8] Section 2 of the EIA, recorded by Sex Equality and Equity Network (SEEN) Network [**PB/260**].

b. "*Female officers and staff are disproportionately affected by the risk of sexual harassment/assault. Both from within the workplace, and when 'on duty*"[9];

c. "*Requesting female officers to agree to consensually searching male bodied people is problematic – in a hierarchal organisation is consent truly given or is there coercion. Despite the promise of no career detriment, people are frightened to express sex realist views*[10]".

d. "*Women are also disproportionately affected by domestic abuse, and assault. Therefore, women detainees are more likely to have suffered trauma. Being asked if they consent to being searched by a trans identified male in custody may increase that trauma. Female officers may experience discomfort, and stress, resulting in psychological impact. Similarly, female officers and staff may have experienced trauma from sexual violence or domestic abuse. Requesting they strip search trans identified males in custody may adversely affect employees.*[11]"

e. "*Cross-sex strip searches raise concerns about privacy, dignity, and potential human rights violations of both the detainee and officer/member of staff.*[12]"

34. Despite these concerns and others being raised by BTP's stakeholders, the Second Defendant does not provide her own view on the impact on female officers and trans identifying female detainees and, importantly, whether and how these impacts can be mitigated [**PB/287**]. The Defendant just provides a generic consideration that the guidance "*will have an impact on trans and nonbinary employees, those with gender critical/sex realist beliefs and members of the public. This impact can be justified when we are following the law but must be handled in a respectful and appropriate way. BTP networks have been consulted on the development of this EIA and will be involved in the ongoing work.*"

35. On 17th July 2025, the Claimant's claim for judicial review against BTP was disposed of by consent. The relevance of that to this claim is addressed below. The Claimant send the

[9] Section 2 of the EIA, recorded by the Female Police Association – similar concerns recorded by Sex Equality and Equity Network (SEEN) Network at the outset of section 2 [**PB/260**].
[10] Ibid
[11] Section 2 of EIA, page 15 – concerns of Female Police Association [**PB/272**].
[12] Ibid page 16 [**PB/273**].

Defendants a Letter Before Claim on 18th July 2025 [**PB/289**]. Each Defendant provided a response on 1 August 2025 [NPCC **PB/305**] and CCBTP **PB/312**].

(v) <u>Operation of the Interim Guidance</u>

36. Opposite sex strip searches implemented in accordance with the Defendants' Interim Guidance expose female police officers being told to search a trans identifying male detainee (most likely with male genitalia). Male and female officers have expressed serious concern about what is involved in a female officer searching a male detainee; a man may not be cooperative to a female officer's request for him to reveal his anus or pull back his foreskin and there is a concern that a male detainee may prolong the search in order to humiliate the female officer[13].

37. In these scenarios, given the likelihood that the strip search will be taking place at a police station, the search may be taking place against the detention clock 'running down'[14] [15]. There will therefore likely be pressures of time brought to bear if a female officer expresses reluctance at examining a male's genitalia – especially, for example, if the detainee is behaving in a challenging manner.

38. The Claimant relies upon the Second Witness Statement of Maya Forstater, who reports the concerns and fears of a number of serving female police officers about the operation of a consensual opposite sex strip search policy outside the terms of PACE, as provided for in both Defendants' Interim Guidance. The following paragraphs are of particular relevance:

> *30. Under the new policies, cross-sex searches are said to be possible on a "consensual" basis, outside PACE and under a common-law principle that police officers can do anything by consent with members of the public that other citizens can do. The officers we spoke to said that these assertions ran contrary to all their training, and to the law as they have been taught to understand it. All said that in any situation where they are interacting with members of the public and a search is a possibility, there is an element of duress that means consent cannot be freely given. They also gave several examples of*

[13] Second Witness Statement of Maya Forstater, §§73 to 86 [**PB/167-171**].
[14] In the first instance, a person shall not be kept in police detention for more than 24 hours without being charged: see sections 41-43 of PACE.
[15] "*…quick decisions might need to be made [under s.54 PACE] for the protection of the detained person and others*": *Carter v Chief Constable of Essex Police* [2024] EWHC 126 (KB) at [47]; see also Second Witness Statement of Catherine Larkman at §21.

types of interactions to which two civilians can consent, but an officer or member of staff and a civilian cannot.

31. Several said that their training had taught them that PACE itself states that all searches, and all actions in a custody setting, must be covered by PACE or else are unlawful. In other words, any attempt to carry out searches outside PACE, or to act in a custody setting in ways not expressly permitted by PACE, is proscribed by PACE. They said that in their experience this was the usual understanding of PACE by officers and staff. They were disturbed by what they saw as an attempt to circumvent the rules of PACE, which are written to protect primarily detainees and other civilians interacting with police, but also to protect officers and staff members themselves.

32. They rejected the idea that police officers can automatically enter into mutually "consensual" agreements with citizens to do anything that private citizens can consent to do with each other. The understanding of all the officers we spoke to was that in custody, and in the other situations where officers have lawful coercive powers (such as in stop and search), the element of duress means the very notion of "consent" is void. The legal basis for a search under PACE is not consent: it is the lawful exercise of a power granted by PACE. Without that lawful power they questioned whether any search can be lawful." [**PB/155**]

39. These officers also report confusion at the current status of Annex L to PACE Code C, which the First Defendant points to as being a 'default' basis on which opposite sex strip searches could be conducted, if its Interim Guidance is withdrawn or quashed. The Second Defendant on the other hand, as well as several other national police forces, have determined to disapply Annex L:

"Officers also expressed bewilderment concerning how the policies interact with Annex L of PACE Code C, which sets out detailed (and confusing) rules concerning the searching of trans-identifying detainees that differ from those in the revised policies. None was able to say whether Annex L had been disapplied by their own force, or how the contradictions between Annex L and the new policies might work if a trans-identifying detainee was brought into custody.[16]"

[16] Second Witness Statement of Maya Forstater, §40 [**PB/157**].

40. In relation to the spectre of the 'no detriment' provisions, which both Defendants rely upon as a protection for police officers who refuse to conduct an opposite sex strip search, officers reported the following:

a. "*Custody settings are typically high-stress and sometimes congested with long wait times. If a detainee needs to be searched, this may be urgent, for example if there is reason to believe there is a concealed weapon, or drugs have been secreted in an orifice in a wrapper that may burst*". [17]

b. "*If an officer is requested to carry out a "consensual" cross-sex search and declines, that will mean delay and extra work for colleagues and direct superiors, in particular custody sergeants, who are unlikely to appreciate this. There may be an attempt to find another officer willing to do the search, which causes delay and extra work for colleagues*".[18]

c. "*The burden of accepting requests to carry out cross-sex searching and the negative consequences of refusing to do so will fall overwhelmingly on female police officers - women are a minority among officers – 22 percent in BTP, and not much higher in other forces. Secondly, the overwhelming majority – around 84 percent[19] – of those brought into detention are male. Together these mean that most requests for cross-sex searching will be made by male detainees, and it will fall to a comparatively small number of female officers to say yes or no.*"[20]

d. "*Refusing to carry out a cross-sex search on a trans-identifying detainee would, in effect, "out" an officer as holding "gender critical" beliefs that are widely regarded within policing to be bigoted and even unlawful, and which have been described in training and guidance provided to officers as "transphobic". The depth of these fears is evidenced by the fact that every serving officer we spoke to for this or my previous witness statement was willing to do so only on strict conditions of anonymity*".[21]

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[17] Ibid §54 [**PB/160**].
[18] Ibid
[19] https://www.gov.uk/government/statistics/other-pace-powers-year-ending-march-2023/police-powers-and-procedures-other-pace-powers-england-and-wales-year-ending-31-march-2023
[20] Second Witness Statement of Maya Forstater, §55 [**PB/161**].
[21] Ibid, §59 [**PB/162**].

e. "*In the absence of being able to rely on the powers granted under PACE, if a detainee later made a complaint about a cross-sex search, they said any complaint might end up being heard by the Independent Office for Police Conduct*".[22]

41. The Claimant further relies upon the Second Witness Statement of Catherine Larkin, Director and National Policing Lead and Wales Co-ordinator of Women's Rights Network Ltd ("WRN"). In relation to the basis of a consensual opposite sex strip searching regime "in contradiction" of PACE, she states:

a. "*Both the NPCC and BTP guidance would mean that the officer carrying out the search, and the officer authorising it, would have to give their consent in effect to depart from the provisions of PACE to carry out an opposite sex search. I consider this to be fraught with danger for several reasons, including protection of detainees, protection of officers and staff, and admissibility of evidence…The BTP guidance specifically refers to the searches as being 'outside of the requirements of the legal power'. In my view, officers are being asked to give their consent to act unlawfully*"[23].

b. "*Where 'consent' may be expressed by an individual detained prior to arrest, or subsequent to arrest in a custody area, that individual is already experiencing a significant imbalance of power and a restriction on their liberty to act freely. To suggest that consent in these circumstances is reliable and freely given without a degree of pressure being felt to comply makes no practical sense*."[24]

c. "*Many of the individuals dealt with by the police are vulnerable and mental health issues are common. Stepping outside the protection of legislation for these individuals is neither caring, nor sensible. While the guidance documents reference those with mental health issues, police officers will be acutely aware of this and will inevitably feel exposed to potential future litigation*."[25]

[22] Ibid, §64 [**PB/164**].
[23] Second Witness Statement of Catherine Larkman, §32 [**PB/138**].
[24] Ibid §36 [**PB/139**].
[25] Ibid §37 [**PB/139**].

C. LEGAL FRAMEWORK

(i) The Police and Criminal Evidence Act 1984

42. A police officer may search a person by requiring him to remove clothing, other than 'outer clothing', if it is considered necessary to remove an article which a detainee would not be allowed to keep and the officer reasonably considers the detainee might have concealed such an article: s.54(6)/(6A); PACE Code C, Annex A, §§9-10.

43. An intimate search, which consists of physical examination of an orifice other than the mouth, is carried out pursuant to s.55(1); PACE Code C, Annex A, §1.

44. Section 54(9) PACE states: "*The constable carrying out a search **shall** be of the same sex as the person searched*" (emphasis added). Where a constable and not a healthcare professional is authorised to conduct an intimate search (such instances are very rare), s.55(7) states: "*A constable **may not** carry out an intimate search of a person of the opposite sex*" (emphasis added).

45. Section 117 PACE provides that, where any provision in the Act confers a power on a constable which does not require as a condition of its exercise that the consent of another person is obtained, the officer may use reasonable force, if necessary, in the exercise of the power. Section 117 is applicable to searches conducted under s.54: *Davies v Chief Constable of Merseyside Police* [2015] EWCA Civ 114 at [23].

(ii) The PACE Codes and Annex L

46. The Secretary of State is required to produce Codes of Practice in connection with the use of powers of search and the detention, treatment and questioning of persons by police officers: s.66 PACE.

47. The Codes are available for inspection at police stations and are admissible in a court of law. The Codes are amended by way of secondary legislation following consultation with defined persons/entities: s.67(2)-(4) PACE.

48. Section 39(1) PACE provides that it is the duty of the custody officer in a police station to ensure that all persons in police detention are treated in accordance with the Act and any Code of Practice issued under the Act.

49. PACE Code A governs the governs the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest: §1.03. Annex A to Code A contains a list of 'stop and search' powers. That list does not include the power of search under s.54 PACE. The list, however, "*should not be regarded as definitive*": Code A, §1.03.

50. Paragraph 1.5 of PACE Code A states (emphasis added):

> "***An officer must not search a person, even with his or her consent, where no power to search is applicable****. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code*."

51. Code C is the relevant code of practice which governs this detention and treatment of detainees. On 10th July 2012, Code C was amended by way of inclusion of 'Annex L'. Annex L states that a GRC changes a person's legal sex for the purpose of ss.54 and 55 searches but that a person being searched must not be asked if they have a GRC. Annex L thereafter sets out the procedure to be followed in order to identify a person's gender for the purposes of a statutory search.

52. Annex L permits opposite sex searches to take place, because of the following paragraphs:

> ***"ANNEX L ESTABLISHING GENDER OF PERSONS FOR THE PURPOSE OF SEARCHING AND CERTAIN OTHER PROCEDURES***
>
> *1. Certain provisions of this and other PACE Codes explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search or other procedure or require action to be taken or information to be given which depends on whether the detainee is treated as being male or female. See Note L1.*
>
> *2. All such searches, procedures and requirements must be carried out with courtesy, consideration and respect for the person concerned. Police officers should show*

particular sensitivity when dealing with transgender individuals (including transsexual persons) and transvestite persons (see Notes L2, L3 and L4).

(a) Consideration

3. In law, the gender (and accordingly the sex) of an individual is their gender as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's gender is their acquired gender. This means that if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman and they must be treated as their acquired gender."

53. The current version of PACE Code C has had effect since 20th December 2023 [**PB/716**]. It necessarily pre-dates the judgment of the UKSC in *For Women Scotland*.

54. The Second Defendant's Interim Guidance expressly states that Annex L is to be disapplied[26] [§4.4; **PB/239**]. Several other forces have confirmed to the Claimant that they have disapplied Annex L[27]. As set out further below, the First Defendant considers Annex L to be the default position if their guidance is withdrawn or quashed.

55. The Claimant wrote to the Home Secretary on 13 June 2025 to ask that Annex L be withdrawn [**PB/229**]. The Home Secretary has been served with the pre-action protocol letters and responses, notifying her that she is to be named as an Interested Party. On 29 August 2025, the Home Secretary informed the Claimant that she was actively considering the position in respect of the continuation of Annex L to PACE Code C, in light of the judgment in *For Women Scotland* [**PB/324**].

(iii) <u>Strip searches and/or intimate searches: the Human Rights Act 1998</u>

56. Article 8(2) of the ECHR provides (emphasis added):

"There shall be no interference by a public authority with the exercise of this right except ***<u>such as is in accordance with the law</u>*** *and is necessary in a democratic society in the*

[26] It was similarly expressly disapplied by the Second Defendant in its earlier guidance.
[27] See letters from Merseyside [**PB/477**], Northumbria [**PB/484**], Surrey [**PB/489**] and Sussex police [**PB/490**].

interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"

57. Strip-searching is capable, in itself, of engaging Article 3 and Article 8: *BK v Secretary of State for Justice* [2015] EWCA Civ 1259 at [51]. A search carried out appropriately, with a legitimate purpose and with respect for human dignity could be compatible with Art.3, However, where the search was carried out in a manner which was debasing and significantly aggravated the humiliation inherent in the procedure, Art.3 was engaged: *Yankov v Bulgaria* (39084/97) (2005) 40 E.H.R.R. 36, [2003] 12 WLUK 338; *Wainwright v UK* (2007) 44 E.H.R.R. 40.

58. Breach of the relevant PACE Code may constitute evidence that a strip search has been unlawful contrary to Article 8(2) ECHR and section 7 of the Human Rights Act 1998, or a disproportionate means of achieving the aim of the search: *Davies v Chief Constable of Merseyside Police* [2015] EWCA Civ 114 at [29]; *Owens* (supra) at [21].

59. The minimum level of severity in relation to Article 3 ECHR regarding the conduct of law enforcement officers is conduct which diminishes human dignity and which is not strictly necessary: *Bouyid v Belgium* (2016) 62 EHRR 32.

60. The state has a negative obligation to refrain from carrying out searches in a manner which infringes Articles 3 and 8 of the ECHR; the state is further under a positive obligation to ensure, so far as reasonably practicable, that individuals are protected from cruel, inhuman and degrading treatment and from a disproportionate interference with their private life. In order to fulfil that obligation, there must at a minimum be an appropriate legislative and administrative framework which makes for the effective prevention of the risk of such Convention breaches, including appropriate preventative operational measures with suitable supervisory control and monitoring and mechanisms to ensure that such provisions were effectively implemented: *LW v. Sodexo* [2019] 1 W.L.R. 5654 at [41].

61. In *LW* at [46], the High Court held that: "*The mere existence of a legislative and administrative framework, without consideration of whether that framework is effectively implemented, would render the rights guaranteed under the Convention theoretical and illusory".*

62. In *Valasinas v Lithuania* (Application 44558/98), the European Court of Human Rights found a violation of Article 3 ECHR where a male prisoner had deliberately been subject to a strip search in front of a female visitor, including having his genitals touched by the prison guard conducting the search.

(iv) <u>The Public Sector Equality Duty</u>

63. Section 149 of the Equality Act 2010 ("the EA 2010") enacts the PSED and provides as follows:

> *(1) A public authority must, in the exercise of its functions, have due regard to the need to –*
> *(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
> *(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it,*
> *(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*
> *...*
>
> *(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to -*
> *(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
> *(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
> *(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*
> *...*
>
> *(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-*
> *(a) tackle prejudice, and*
> *(b) promote understanding.*
> *(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*
>
> *(7) The relevant protected characteristics are –*
> *...*
> *sex*
> *..."*

64. In *R (Bracking & Others) v Secretary of State for Work & Pensions* [2013] EWCA Civ 1345 (in a summary approved by the Supreme Court in *Hotak v Southwark LBC* [2015] UKSC 30 at [73]) the applicable principles were identified as follows (emphasis added):

"*(1) ...equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.*

(2) An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements…

(3) The relevant duty is upon the Minister or other decision-maker personally….

***(4) A [decision-maker] must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action", following a concluded decision**: per Moses LJ, sitting as a Judge of the Administrative Court, in Kaur & Shah v LB Ealing [2008] EWHC 2062 (Admin) at [23 – 24].*

(5) These and other points were reviewed by Aikens LJ, giving the judgment of the Divisional Court, in R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin), as follows:

i. The public authority decision-maker must be aware of the duty to have "due regard" to the relevant matters;
ii. The duty must be fulfilled before and at the time when a particular policy is being considered;
iii. The duty must be "exercised in substance, with rigour, and with an open mind". It is not a question of "ticking boxes"; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;
iv. The duty is non-delegable; and
v. Is a continuing one.
vi. It is good practice for a decision maker to keep records demonstrating consideration of the duty.

(6) "[G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria."

(7) Officials reporting to or advising Ministers/other public authority decision makers, on matters material to the discharge of the duty, must not merely tell the Minister/decision maker what he/she wants to hear but they have to be "rigorous in both enquiring and reporting to them".

*(8) The combination of the principles in Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 and **the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it**."*

D. GROUNDS FOR JUDICIAL REVIEW

(i) Ground one: the Defendants' guidance is ultra vires and/or breach of statutory duty

65. In the absence of any power to search a person, a police officer in conducting a search will be liable in assault and battery. An officer who conducts an unauthorised strip search exposing intimate body parts will similarly be liable and would in addition create, at the very least, a risk of degrading treatment contrary to Articles 3 and 8 ECHR.

66. That principle is reflected in §1.5 of PACE Code A, which articulates the prohibition against conducting a search of a person without a legal power for the same. That prohibition must apply equally to searches conducted under s.54 and PACE Code C, because the list of search powers in Annex A to Code A is non-exhaustive, and the s.54 power is not contingent upon an arrest: §1.03 of Code A.

67. It is uncontroversial that the source of the power to conduct a strip search is s.54 PACE. The power will likely be exercised during the suspect's detention in police custody. The statutory power is qualified by the mandatory same-sex restriction contained in subsection (9): "*The constable carrying out a search **shall** be of the same sex as the person searched*.". The same-sex guarantee is a statutory duty.

68. However, in their Interim Guidance, both Defendants have purported to create a shadow regime of 'consensual' opposite sex strip searching. Neither the NPCC nor BTP are empowered to create a policy which is in contradiction of and/or in breach of a statutory duty.

69. The BTP Interim Guidance acknowledges that this regime (which is the same as the regime proposed by the NPCC) is "*in contradiction of the requirements of statutory powers*" [§5.3; **PB/240-241**].

70. The Defendants rely upon what is suggested to be a power enjoyed by police officers as ordinary citizens to seek consent to consensual opposite sex strip searching. They rely for that proposition on the judgment of the Court of Appeal in *Centre for Advice on Individual Rights in Europe v SSHD and another* [2019] 1 W.L.R. 3002 at [39] (emphasis added):

*"... **a police force is no more nor less than a number of police officers each of whom has the same powers and rights as an ordinary citizen, so they may, as a matter of vires, do anything that a natural person could do without the use of coercive powers**, including asking questions that a member of the public could lawfully ask. It is true that police officers have particular duties and obligations, and have powers additional to those of members of the public and specific to their office that "authorise" the police to do things that would otherwise be unlawful. However, in our judgment, these duties and powers do not constrain or restrict the powers and rights police officers have as ordinary citizens."*

71. The facts of that case concerned an enforcement operation by the Home Office by which EU citizens would be asked, if they were arrested, about their nationality and the basis on which they were exercising their rights to reside in the UK.

72. It is submitted that this case does not make good the proposition contended for by the Defendants: a police officer is only able to seek consent from a detainee to an opposite sex strip search once he has exercised or is in the process of exercising the coercive power contained in s.54 PACE. Thus, the consent procedure is not constraining a power or right that a police officer has as an ordinary citizen. The Claimant would point to [40] of the same judgment (emphasis added):

*"40... The police, like any other public body, are subject to the constraints of public law; they must therefore act reasonably, and in good faith and in accordance with any other public law duties. **What they do not have to do however is to find some specific police power to enable them to do something ordinary citizens can do.** Nor do we accept that the principle that public bodies must exercise their powers for the purposes for which they are conferred is engaged on the facts. Mr Milford submits, and we agree, that this case does not concern any specific statutory power conferred upon the police. **The issue is a different and anterior one, namely whether the police can exercise the same non-coercive rights and powers as any other natural person**."*

73. No natural person or ordinary citizen has a right or power to seek another person's consent to undergo a strip search in a custody suite. The consent regime is not anterior: it is only capable of being invoked once the coercive power in s.54 is being discharged.

74. By reference to the foregoing, the statute does not empower an officer to conduct a strip search of the opposite sex, consensually or otherwise. Moreover, there is no apparent power

at common law or otherwise to operate a consensual regime "*in contradiction of the requirements of statutory powers*". The consent regime purportedly created by each Defendant is ultra vires and/or is in breach of the statutory duty articulated in s.54(9).

75. The position is not rescued by Annex L to Code C which is in apparent contradiction to the statute following the decision of the UKSC in *For Women Scotland* (supra), as reflected in the concession made by BTP that Annex L is no longer to be followed (§4.4 of its Interim Guidance).

76. The net result is that the position of police officers and trans identifying detainees is subject to uncertainty and vulnerability through ad-hoc exposure to opposite sex strip searches which are contrary to the mandatory protections of primary legislation: all the while the statute mandates a same-sex guarantee in the conduct of strip searches, each Defendant has promulgated guidance which is inconsistent with that, without any apparent power to do so.

77. If the Court accepts that there is no lawful authority for the conduct of opposite sex strip searches because of the mandatory same-sex protections enshrined in PACE, it is submitted that that will be of relevance to the Claimant's submissions on ground two. That is because both Defendants' EIAs are premised upon the operation of the consensual opposite sex search regime. Put another way, the EIAs cannot base themselves upon a consensual search regime that does not/cannot exist as a matter of law.

(ii) <u>Ground 2: breach of the PSED</u>

78. Insofar as it is possible to discern the operation of the Defendants' Interim Guidance, the starting point appears to be that a detainee who asserts that they are of a different sex has the right to request an opposite sex search. At that stage, whilst transgender officers appear to have the ability to opt out of searching procedures altogether, it will then fall on non-transgender officers to refuse to conduct a consensual opposite sex strip search, with all of the attendant difficulties such a refusal will bring.

79. The operation of a 'consensual' opposite sex strip searching regime stands to impact female police officers and trans identifying female detainees, each of whom bears the enduring and inherent vulnerabilities of their sex. Those vulnerabilities are heightened in the custodial setting. In order to comply with the PSED, the Defendants must have "*due regard*" to the consensual opposite sex strip search regime engaging Articles 8 and 3 ECHR. In that

connexion, it is relevant that, in order for the consensual opposite sex strip search policy to comply with Article 8 ECHR, it must operate in accordance with a domestic law. The difficulty at present is that, as acknowledged by the Second Defendant, the policy is "*in contradiction*" to the terms of the statute.

80. Against that submission, put simply, neither EIA has demonstrated any or any sufficient evidence that either Defendant has actually assessed the position of female police officers:

    a. in the case of the First Defendant, beyond recording the existence of a 'no detriment' provision; and

    b. in the case of the Second Defendant, beyond recording the concerns of SEEN Network and Wellbeing/SAME that female officers may feel unable to refuse to search a trans identifying male detainee and asking how the 'no detriment' and the 'no lawful order' provisions will be guaranteed.

81. The Claimant relies in particular on the following propositions:

    a. Equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.

    b. The duty must be "*exercised in substance, with rigour, and with an open mind*". It is not a question of "*ticking boxes*".

    c. General regard to issues of equality is not the same as having specific regard, by way of conscious approach, to the statutory criteria.

    d. The combination of the principles in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 and the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it.

82. It is submitted that neither Defendant's EIA complies with the PSED:

a. Whilst each EIA does, to a greater or lesser extent, record responses or concerns expressed by stakeholders, it is not understood how either Defendant has had due regard to the needs identified in s. 149 EA 2010 in creating the consensual opposite sex strip search policy.

b. Both EIAs lack meaningful assessment of how the risks inherent in the operation of the consensual opposite sex strip search policy will actually be mitigated. It is insufficient, without more, to say 'there will be no detriment to a female officer' if she refuses to conduct a strip search of a trans identifying male detainee (most likely with male genitalia). In the case of both EIAs, neither deals with how the 'no detriment' guarantee can be guaranteed in the employment setting.

c. It is notable that, in the First Defendant's Interim Guidance, it appears to state that Articles 3 and 8 ECHR are irrelevant to police officers conducting opposite sex strip searches. That proposition assumes what it needs to prove: whilst a police officer plainly is not the subject of a search, a female officer's requested participation in the strip search of a trans identifying male detainee's genitalia is capable of exposing her to pressure, indignity and fear.

d. Neither EIA assesses the impact of the policy on female trans identifying detainees. What each EIA does, in effect, is no more than state the detainee's ability to request that they be searched by an officer of their acquired gender (notwithstanding that the consent of any searching officer can be withdrawn at any time). Stating the policy is not the same thing as assessing the impact of it on relevant categories of person i.e., female officers and detainees.

83. The limit of what each Defendant has done in its EIA appears to be that it has simply recorded the observations/concerns of relevant networks. The Defendants' views of the impact of the guidance on both cohort of women is not set out in the EIAs and neither is any attempt to mitigate these impacts. In the circumstances, it is submitted that that is insufficient to demonstrate that either Defendant, in creating a consensual opposite sex strip search regime "*in contradiction with the terms of statutory powers*" has acted with "*a focus upon the precise provisions of the Act*", nor that they "*properly appreciated and addressed the full scope and import*" of the PSED.

(iii) <u>Ground 3: the First Defendant's intent to rely on Annex L is irrational</u>

84. Paragraphs 1-3 of Annex L of PACE Code C purport to permit opposite sex searching of detainees. For the same reasons as the foregoing, Annex L insofar as it creates or permits opposite sex strip searching of detainees is in contradiction to s.54(9) PACE.

85. It is unsurprising, therefore, that the Home Secretary is actively considering her position on Annex L, as communicated in her correspondence with the Claimant on 29 August 2025 [**PB/324**]. No timescale was provided for the consultation period required under s67 PACE to commence or when this process may be concluded.

86. The Second Defendant has accepted that Part V of PACE (ss.54-55) are provisions in respect of which s.9(3) GRA operates to exclude the effect of s.9(1) and has consequently determined to 'disapply' Annex L (§4.4 of its Interim Guidance).

87. However, the First Defendant states that: "*Annex L therefore expressly permits searches to be conducted in a manner which is outside the provisions of the primary legislation*" (§9.2 Response to Letter Before Claim [**PB/308**]). Moreover, that if its Interim Guidance had not been issued, "*the default position would have been to follow … Annex L"* (§6.2 Response to Letter Before Claim [**PB/305**]). A Code of Practice is inapt to contort the meaning and effect of the clear language of primary legislation. Moreover, the position taken by the First Defendant in this respect is at odds with the position of the Second Defendant. This betrays the inherent confusion that is liable to beset police officers in attempting to apply the Interim Guidance. The First Defendant's stated intent to rely on Annex L to conduct consensual opposite-sex strip searches "outside" PACE on the basis that its Interim Guidance is withdrawn or quashed is irrational. Simultaneously, Annex L remains in force, despite the Second Defendant having expressly accepted that it cannot be applied. For these reasons, the Claimant seeks a declaration that the First Defendant's stated intent to default to Annex L is irrational.

(iv) <u>The timing of the claim</u>

88. The Claimant addresses the contention made by the First Defendant in pre-action correspondence that permission ought to be refused on the basis that the outcome for the Claimant would not have been substantially different, had the impugned conduct not

occurred[28]. The First Defendant makes that submission on the basis that Annex L remains in force.

89. The existence of Annex L does not make good the First Defendant's complaint: the First Defendant has tacitly conceded that Annex L to PACE Code C falls to be disapplied following the ruling of the Supreme Court in *For Women Scotland* (supra). It may continue to disapply Annex L.

90. Following the decision of the Supreme Court in *For Women Scotland*, the Second Defendant has accepted that the provisions of Part V of PACE are provisions in respect of which "*s.9(3) GRA operates to exclude the effect of s.9(1) GRA*". The Second Defendant therefore cannot lawfully defer to Annex L in absence of her current guidance.

91. If the Claimant were to succeed in obtaining a quashing order in respect of the Defendants' Interim Guidance, the Claimant would necessarily have succeeded in eliminating the creation of a discrete consensual strip search regime – to use the words of the Second Defendant – "*in contradiction of the requirements of statutory powers*". Given that Annex L is on its face incompatible with ss.54(9) and 55(7) of PACE, neither Defendant can have recourse to it in order to enact a discrete consensual search regime. The 'no substantial difference' test is not met.

92. Finally, in *R (Good Law Project and Runnymede Trust) v The Prime Minister and the Secretary of State for Health and Social Care* [2022] EWHC 298 (Admin), the Court concluded that having regard to the flexible nature of declaratory relief (§131) *"the fact that compliance with the public sector equality duty would not necessarily have made a difference to either decision is not therefore a sufficient answer to the complaint that there has been a breach of that duty"* (§130). Instead, it was appropriate where there had been a breach of the PSED to "mark the fact that there have been breaches of the public sector equality duty in appropriate terms." The court is not required by section 31(2A) of the 1981 Act to refuse such relief (§132).

[28] See section 31(3C)-(3D) of the Senior Courts Act 1981.

(v) <u>The Claimant's previous claim against the First Defendant</u>

93. The decision of the Claimant to dispose of the prior proceedings by way of consent on 17th July 2025 was taken in the following circumstances:

    a. The Claimant's claim in those proceedings was against BTP alone. The NPCC was not an Interested Party[29].

    b. The guidance which was the subject of those proceedings was withdrawn on or before 30th May 2025.

    c. At the time of the disposal of those proceedings by consent on 17th July 2025, the Claimant had come into possession of:

        i. The NPCC Interim Guidance which had formed no part of the claim against BTP.
        ii. An EIA of the NPCC which was new;
        iii. The fresh BTP Interim Guidance which entirely replaced the withdrawn search policy; and
        iv. An EIA from BTP which was new.

94. Against that background, the Claimant had a legitimate concern in avoiding a procedural refusal of that claim due to it being 'rolling judicial review'. It would have been improper for the Claimant within the first claim to have sought permission to add the NPCC as a second defendant, and to amend the claim to incorporate the two new Interim Guidance documents and the EIAs.

95. The Claimant – it is submitted, entirely correctly – determined that the proper course was to withdraw the claim against BTP's superseded search policy and issue afresh in respect of both sets of Interim Guidance and both EIAs. Moreover, the Second Defendant admits at §5.8 of the Reply to the Letter Before Claim that there are differences to the new guidance. However, the Second Defendant downplays these differences. They are material.

[29] The NPCC was notified of that claim but confirmed that it did not consider itself an Interested Party [**PB/539** §21].

96. In that connexion, it is relevant that the Court of Appeal has: *"…deprecated the trend towards what has become known as a "rolling" approach to judicial review, in which fresh decisions, which have arisen after the original challenge and sometimes even after the first instance judgment, are sought to be challenged by way of amendment: see Spahiu, paras. 60-63."*[30] The Court in that case agreed with the words of Coulson LJ at [63] of *Spahiu v. SSHD* [2019] 1 W.L.R. 1297: whilst "*there is no hard and fast rule*", it will usually be better for all parties if judicial review proceedings are not treated as "rolling" or "evolving"; also see the ACO Guide 2024 §7.11.4.

97. Given that the only guidance which the Claimant had issued proceedings in respect of had been withdrawn, it was proper for the Claimant not to engage in what may well have been considered a rolling judicial review by the Court and both Defendants. There has been no abuse of process as the Defendants suggest.

E. REMEDIES SOUGHT

98. The Claimant seeks:

(i) An order quashing the Defendants' guidance;
(ii) A Declaration that the Defendants' consensual strip-searching regime outside of PACE is unlawful;
(iii) A Declaration that the Defendants failed to comply with the PSED;
(iv) A Declaration that the First Defendant's decision that Annex L to PACE Code C operates in default of its guidance is irrational;
(v) Such other order as the Court sees fit; and
(vi) Costs.

99. The Court is invited to grant permission and grant relief, accordingly.

KATE O'RAGHALLAIGH
DOUGHTY STREET
1 SEPTEMBER 2025

[30] *Dolan v Secretary of State for Health and another* [2020] EWCA Civ 1605 at [118]