IN THE HIGH COURT OF JUSTICE **Claim No. _____**

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

B E T W E E N:

THE KING

on the application of

(1) SUPPORT AFTER RAPE AND SEXUAL VIOLENCE LEEDS (SARSVL)

(2) DCD

(3) GFG

Claimants

-and-

COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Defendant

-and-

MINISTER FOR WOMEN AND EQUALITIES

Interested Party

STATEMENT OF FACTS AND GROUNDS

References in the form **[CB/XX]** *are references to the claim bundle.*

A. Introduction

1. In this application for judicial review, the Claimants challenge as unlawful sections of the Code of Practice for Services, Public Functions and Associations, which was issued by the Defendant on 14 July 2026 and came into force on the 5 August 2026 **("the Services Code")**. The sections under challenge contain unlawful misstatements of law as to the ability of service providers to provide

services for men which include trans men, and services for women which include trans women.

2. The issue involves a matter of significant public importance. In effect, the Services Code incorrectly tells service providers that they must never provide services for men and women on a trans-inclusive basis. Rather, where such services are provided separately to men and women, they must always be offered strictly on the basis of "biological sex". As a result, service providers are being provided with incorrect advice about the options available to them as to how they manage their services, with the Services Code advising them to reverse what are in many cases long-standing and successful policies of trans inclusion. The services affected are diverse in nature, ranging from toilet facilities, to women's pilates classes and arts and crafts classes [**CB/209-215**], to specialist services provided to survivors of sexual violence on an individual or group basis [**CB/164-181**]. In turn, trans people are being excluded from using everyday services, including toilet facilities, in accordance with their lived gender on the basis of this erroneous guidance, leading to exclusion, embarrassment, violations of their privacy and unjustified interference in their right to live fully in their acquired gender. Trans people's ability to participate fully in public life on an equal basis with others is thus undermined.

3. By this Claim, the Claimants ask the Court to quash the relevant sections of the Services Code and/or make a declaration that it unlawfully misstates the underlying law, in breach of the Commission's statutory duty to provide accurate advice in its Codes of Practice (**Ground 1**).

4. In the alternative, if the Court concludes that those sections accurately reflect the underlying law, and are not capable of being read down pursuant to section 3 of the Human Rights Act 1998 (**"HRA 1998"**), the statutory framework is not compatible with Article 8 ECHR, read alone or with Article 14, and the Claimants seek a declaration of incompatibility pursuant to section 4(2) HRA 1998 in respect of the relevant provisions of the Equality Act 2010 ("**EA 2010"**) (**Ground 2**).

B. Parties

5. The First Claimant, Support After Rape & Sexual Violence Leeds **("SARSVL"),** is a registered charity and feminist organisation. SARSVL offers women-centred, specialist support services for women and girls in Leeds who have been affected by sexual violence or abuse at any time in their lives. It has long provided services to trans women survivors of rape and sexual violence. It wishes to continue to do so.

6. The Second Claimant is a trans woman with a Gender Recognition Certificate. She has been impacted by trans-exclusionary policies, including restrictions on what toilets she may use, in her day-to-day life.

7. The Third Claimant is a trans woman with a Gender Recognition Certificate. She has also been impacted by trans-exclusionary policies in her day-to-day life. She is blind and often relies on her partner to act as a guide when in public. She faces particular difficulties as a result of the Code of Practice.

8. The Second and Third Claimants apply for anonymity orders to protect their identities. The reasons for seeking anonymity are set out in their witness statements (w/s DCD at §§29-37 [**CB/193-194**]; w/s GFG at §§37-44 [**CB/206-207**]) and in the witness statement of Anna Dews [**CB/216-228**]. Submissions on the issue of anonymity and a draft order are included in the Claim Bundle at **CB/65-73** and **CB/58-64** respectively.

9. The Defendant is the Commission for Equalities and Human Rights ("**the Commission**"). The Minister for Women and Equalities is named as an Interested Party in view of Ground 2 of the Claim.

C. The Challenged Guidance

10. The Claimants challenge §§13.130-133 of the Services Code. The particular passages which the Claimants contend misstate the law are underlined:

"13.130 If a service provider (or a person providing a service in the exercise of public functions) admits trans people to a service intended for the opposite sex, then it can no longer rely on the exceptions set out at paragraphs 13.99 to 13.111. This means that if a service is provided only to women and trans women or only to men and trans men, it is not a separate-sex or single-sex service under the Equality Act 2010.

13.131 A service like this is very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it. A service which is provided to women and trans women could also be unlawful sex discrimination or lead to unlawful harassment against women who use the service. Similar considerations would apply to a service provided for men and trans men.

It is possible to offer a mixed-sex service alongside a single-sex service. A mixed-sex service must be open to all service users.

…

13.133 If a service provider (including a person providing a service in the exercise of public functions) decides only to provide a service on a mixed-sex basis, without any separate or single-sex option, this could be direct or indirect sex discrimination against women who use the service or lead to unlawful harassment against them. This is most likely in contexts like those referred to in paragraph 13.116."

11. §13.144 provides similar guidance, and is challenged on the same basis:

> "If a service provider (including a person providing a service in the exercise of public functions) decides to have a separate or single-sex service and allows trans people to use the service intended for the opposite sex, the service will no longer be a separate or single-sex service under the Equality Act 2010 (the Act). It is also very likely to amount to unlawful discrimination against others (read paragraph 13.131). It is possible to offer a mixed-sex service alongside a single-sex service. A mixed-sex service must be open to all service users."

12. Together, these sentences are referred to as the "**Challenged Guidance**".

13. These sentences fundamentally misstate the law. The correct position in law is that when a service provider decides whether to provide a service separately or differently to men and women, their choices are governed by fact-specific

questions about proportionality and reasonableness. The EA 2010 requires service providers to balance the rights of all those accessing services, and in considering whether an approach is proportionate, the service provider will need to consider whether there was a less discriminatory measure which could have been used without compromising the achievement of their aim. In particular:

a. It may be justifiable to provide a single-sex or separate-sex service on the basis of "biological sex" under Schedule 3 paragraphs 26-28 EA 2010, but this will be subject to a requirement of objective justification, taking into account the rights of others.

b. It may be justifiable to provide a service for men or for women based on the gender a person lives as. Such a service is referred to below as a "trans-inclusive gendered service". Such a service would not be based on "biological sex" and thus would fall outside the qualified exemptions contained in Schedule 3 paragraphs 26-28 EA 2010. To the extent that the admission rules of such a service created a particular disadvantage for a protected group, it would similarly be subject to a test of objective justification under section 19(2)(d) EA 2010.

c. In each case, the conduct will be capable of justification and permissible if it can be shown to be a proportionate means of achieving a legitimate aim. There are no absolute rights in play, only qualified rights, which must be balanced under the law, recognising the equality of rights for all, with no priority automatically being given to any one group.

d. In different factual scenarios, different arrangements will be lawful. It is therefore incorrect to state categorically (as the Commission does) that any mixed-sex service "must be open to all service users".

D. Terminology

14. In this Statement of Facts and Grounds, the following terminology is used:

a. **Trans:** This is used to refer to persons with the protected characteristic of gender reassignment in accordance with section 7 EA 2010, following the approach taken in the Services Code (§2.38).

b. **Cisgender/cis:** This is used to refer to persons who are not trans.

c. **"Biological sex"**: This is used in the sense used by the Supreme Court in ***For Women Scotland v Scottish Ministers*** **[2026] AC 315** ("***For Women Scotland***"), to refer to a person's sex at birth (see ***For Women Scotland*** at [6]). The Claimants consider the use of the word "biological" in this context to be a misnomer, as it may suggest that being trans has no biological aspects or features, and because it overlooks the significant physiological changes that many trans people undergo as part of their transition through hormone replacement therapy and gender reassignment surgery, both of which have profound effects on their biological sexual characteristics. The Claimants place the term in inverted commas to identify that it refers to the term as used by the Supreme Court, and it is used interchangeably with the phrase **"sex recorded at birth"**, which the Claimants consider to be more neutral.

d. **"Lived gender"**: This is used to refer to the gender a person lives as. It may not be the same as the gender a person identifies as (e.g. in respect of trans people who have not yet begun living in their acquired gender). Living as a man or as a woman (as the case may be) for at least two years is one of the requirements for acquiring a gender recognition certificate under section 2 of the Gender Recognition Act 2004 ("**GRA 2004**").

e. A **"biological" single-/separate-sex service**: This is used to refer to a service relying on the exceptions in Schedule 3, paragraphs 26-28, where admission to the service is determined by a person's "biological sex".

f. A **trans-inclusive gendered service**: This is used to refer to a service which is provided for men or women with rules for using the service being based on the service user's **lived gender**, and not their **"biological sex"**: for

example, a men's toilet which could be used by anyone living as a man (including cis men and trans men) but not by anyone living as a woman (including cis women and trans women).

E. Factual background

E.1 The former Code of Practice on Services

15. The Commission first issued a Code of Practice on Services, Public Functions and Associations pursuant to section 14 of the Equality Act 2006 **("EA 2006")** in April 2011, shortly after the enactment of the EA 2010 **("the 2011 Code")** [**CB/259-274**]. The 2011 Code was premised on an interpretation of EA 2010 to the effect that, if a service provider provides single-sex or separate-sex services for women and men, they should treat trans people according to the gender in which they present, unless the service provider can establish that excluding them would be a proportionate means of achieving a legitimate aim (2011 Code, §13.57). This approach was not dependent on the legal sex of the trans person i.e. whether or not they had obtained a Gender Recognition Certificate **("GRC")** under the GRA 2004.

16. This interpretation was defended by the Commission and upheld by Henshaw J in ***R (Authentic Equity Alliance) v Equality and Human Rights Commission*** **[2021] EWHC 1623 (Admin)**. Henshaw J held, in particular, that the guidance accurately reflected the obligations under the EA 2010 to avoid direct and indirect discrimination on grounds of gender reassignment, and was correct in applying the same test to trans people with or without a GRC (per Henshaw J at [8] and [13]–[18]).

E.2 The introduction of the Services Code

17. The Commission held a consultation on an updated Code of Practice for services, public functions and associations between 2 October 2024 and 3 January 2025.

18. On 16 April 2025, judgment was handed down in ***For Women Scotland***. The Supreme Court held that the EA 2010 fell within an exception to the rule in section 9(1) of the GRA 2004 that, when a GRC is issued, a trans person's gender becomes "for all purposes" their acquired gender, and that accordingly, references in the EA 2010 to "sex", "man" and "woman" meant "biological sex", "biological man" and "biological woman" respectively.

19. On 25 April 2025, the Commission published interim guidance advising service providers *inter alia* that where single-sex facilities are provided, trans women should not be permitted to use the women's facilities and trans men should not be permitted to use the men's facilities, as this will mean that they are no longer single-sex facilities and must be open to all users of the opposite sex ("**the Interim Update**"). The Interim Update itself was subject to a number of revisions, before being removed in its entirety from the Commission's website on 15 October 2025 [**CB/275-279**].

20. The Commission's Interim Update was subject to an application for judicial review by Good Law Project along with two trans claimants and one intersex claimant in ***R (Good Law Project and others) v Equality and Human Rights Commission*** **[2026] EWHC 279; [2026] 4 WLR 36**. Swift J granted permission to the individual claimants, but dismissed their claim. However, in his judgment, he disagreed with some of the Commission's analysis of the underlying legal principles. The Commission had sought to justify its conclusion on the basis that the exclusion of trans people from facilities appropriate to their lived gender was necessary for service providers to avoid claims of direct sex discrimination from members of the opposite sex who were excluded. At [61], Swift J held:

> "Whether different treatment is also less favourable treatment is, therefore, a qualitative question. In a case where the provision of separate lavatories labelled male and female was materially similar in terms of the extent of the provision, location, and so on, I consider there would, in principle, be scope for a strong argument that a rule or practice that permitted trans women to use the 'female' lavatory but required other biological men to use the male lavatory would comprise different

but not less favourable treatment on grounds of sex. However, the circumstances of the case would be decisive. (For the purposes of the EA 2010 the lavatory would be mixed-sex, but for the purposes of the Claimants' submission in this case it would still be labelled "women".)"

21. Swift J dismissed the claim on the basis that it was a point that *"may turn on the facts of a situation"*. At [77], he held that:

> "Even though the EHRC's obligation when exercising its power under section 13(1)(d) of the EA 2006 is to provide an accurate statement of the law, the court must apply this requirement recognising that any statement of law will rest on some assumption of fact, even if only generic. Where a body such as the EHRC has issued guidance that rests on factual premises that are permissible, the court should hesitate before concluding that the guidance as issued was unlawful. Thus, I do not consider that the EHRC's approach to [the point] gives rise to any legal error".

22. The individual Claimants in that case, also represented by Leigh Day, have sought permission to appeal to the Court of Appeal and are awaiting a permission decision. They seek to argue *inter alia* that Swift J erred in finding the interim guidance was accurate and contained no material omissions, when this conclusion was on the face of it inconsistent with his own findings as to the law. On 15 October 2026, Andrews LJ adjourned the individual Claimants' application for permission to appeal to an oral permission hearing.

23. From 20 May to 30 June 2025 the Commission undertook a further consultation on its draft Services Code, this time on further revisions it proposed in response to the Supreme Court's judgment in ***For Women Scotland***.

24. On 4 September 2025 the Commission submitted a draft of the proposed updated Services Code to the Minister for Women and Equalities. This draft was not published and it is not known whether any amendments were made as a result of the consultation exercise. Nor is it known whether any further amendments were made as a result of Swift J's judgment in the ***GLP and others*** case, which was handed down on 13 February 2026.

25. On 3 October 2025, the Council of Europe Commissioner for Human Rights wrote to the Chairs of the Joint Committee on Human Rights and the Women and Equalities Committee [**CB/280-281**], stating that steps taken towards implementing the Supreme Court judgment should avoid a situation where a person's legal gender recognition is *"voided of practical meaning"* and *"leaves trans people in an unacceptable intermediate zone"* and expressing concern about *"blanket practices or policies on access to gender-segregated spaces which would require trans people to habitually 'out' themselves."*

26. On 27 February 2026, the Special Procedures of the United Nations Human Rights Council (including the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls) issued a joint statement on the development of the Services Code [**CB/282-284**], urging the UK to ensure that the review of the Services Code had regard to the UK's international human rights obligations. It stated *inter alia* that:

> "These legal regimes uphold the consistent principle that legal recognition that is not accompanied by functional access to rights in everyday life risks becoming hollow. Any framework that were to permit routine exclusion from ordinary public services, introduce discretionary verification of sex by service providers, or otherwise decouple legal status from practical participation in society would raise serious concerns under international human rights law. Allowing service providers to rely on subjective judgment in this way would undermine legal certainty, invite gender stereotyping and arbitrary exclusion, and erode dignity in everyday interactions, both for transgender persons and persons who are not transgender but are perceived not to conform with gender stereotypes. Taken together, such approaches would risk rendering legal recognition hollow by denying meaningful access to rights in practice."

27. On 21 May 2026, the Minister laid the proposed updated Services Code before Parliament in accordance with section 14(7)(a) EA 2006. At this point, it became apparent that the proposed revisions contained similarly flawed statements of legal principles to those contained in the Interim Update. These statements might

have been corrected through Parliamentary scrutiny, but were not. At no point was the Services Code debated in either House.

28. On 9 July 2026, the statutory 40-day period for Parliamentary consideration expired.

29. On 14 July 2026, the Commission issued the Services Code pursuant to section 14(8)(a) EA 2006.

30. On 28 July 2026, the First and Second Claimants served pre-action letters upon the Commission and the Secretary of State for Housing, Communities and Local Government, the Secretary of State who sponsors the Equalities portfolio [**CB/229-243**].

31. On 5 August 2026, the Services Code came into force, pursuant to the Equality Act 2010 (Code of Practice on Services, Public Functions and Associations) (Commencement) Order 2026 (SI 2026 No 788). On this date, the Services Code gained legal effect and time began to run for limitation purposes: see ***R (Amey PLC and Enterprise Managed Services Ltd) v SSHCLG*** **[2020] EWHC 3132 (Admin)**, per Lang J at [45]; applied in ***R (Tax Returned Ltd) v HMRC*** **[2022] EWHC 2515 (Admin)** at [68], [90] and ***R (Gatwick Airport Ltd) v Secretary of State for Transport*** **[2026] EWHC 1733 (Admin)** at [72].

32. On 11 August 2026, the Commission served a response to the pre-action letter upon the Claimants [**CB/245-256**]. On 17 August 2026, the Minister for Women and Equalities also served a response [**CB/257-258**]. On the same day, the Special Procedures of the United Nations Human Rights Council repeated their concerns raised in February 2026 in respect of the new Services Code [**CB/285-288**].

33. Since receipt of the responses, the First and Second Claimants have continued to gather evidence of the impact of the Code, including evidence from other affected individuals and groups. This led to the Third Claimant joining the claim. The First Claimant has also continued to take steps to prepare its organisation for taking a public role in this litigation, in view of the febrile public climate relating to issues

of trans inclusion and the need to ensure the security of its staff, volunteers and service-users.

F. Grounds of challenge

34. The Claimants seek to challenge the Services Code on two grounds.

    a. First, on the ground that the relevant passages are unlawful misstatements of the underlying law.

    b. In the alternative, on the ground that, if the proposed statements reflect a correct interpretation of the EA 2010, then the statutory framework is not compatible with Article 8 ECHR, read alone or with Article 14 ECHR, such that a declaration of incompatibility should be made pursuant to section 4(2) HRA 1998.

F.1 Ground 1: Misstatements of law

35. The Commission's power to issue a statutory code of practice is contained within section 14 EA 2006. Section 14(2) provides that:

> "A code of practice under subsection (1) shall contain provision designed–
>
> (a) to ensure or facilitate compliance with the Equality Act 2010 or an enactment made under that Act, or
>
> (b) to promote equality of opportunity."

36. The power under section 14 is one of the Commission's functions under Part 1 of the EA 2006. In exercising the power, the Commission is bound by its duties under sections 8(1) and 9(1) EA 2006 *inter alia* to "*encourage good practice in relation to equality and diversity*", to "*promote equality of opportunity*", to "*promote awareness and understanding of rights under the Equality Act 2010*" and to "*promote awareness, understanding and protection of human rights*".

37. A failure to comply with a provision of a code issued under section 14 is admissible in evidence in criminal or civil proceedings, and must be taken into account by a court or tribunal in any case in which it appears relevant: see section 15(4) EA 2006.

38. In the circumstances, the Commission is under a duty to provide accurate advice as to the law in its codes of practice. Accordingly, the lawfulness of the Commission's codes of practice falls to be assessed under category (ii) of the three scenarios in which a policy may be found to be unlawful, as identified by the Supreme Court at [46] of ***R (A) v SSHD*** **[2021] UKSC 37; [2021] 1 WLR 3931** i.e. the Services Code will be unlawful if it contains a material misstatement of law or if it contains a material omission: see ***GLP and others v EHRC*** at [21] (there in relation to the Commission's powers under section 13 EA 2006).

39. In terms of the Court's approach to the interpretation of the Services Code, the Challenged Guidance must be read objectively, having regard to its intended audience: see ***R (A)*** at [34]. The intended audience of the Services Code includes members of the public, businesses, charities and other service-providers, large and small, who place weight on what is intended to be an accessible explanation of their core obligations under the EA 2010. It is published in order to "ensure or facilitate compliance" with that Act. Many of them will rely on the Services Code as an accurate statement of those obligations without seeking independent legal advice, particularly where the Services Code informs them that conduct is very likely to be unlawful, or that they must not take a certain course of action. This is particularly likely in circumstances where a failure to comply with a provision of the Services Code must be taken into account by a court or tribunal in any case in which it appears relevant: see section 15(4) EA 2006.

40. In view of the intended audience, the Court should avoid an "over-technical approach", instead considering what these lay readers would take the Services Code to mean.

41. The Challenged Guidance contains the following misstatements of the law and/or material omissions.

<u>i. Error 1</u>: A trans-inclusive gendered service is "very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it" (§13.131 and §13.144)

42. §§13.130-131 of the Services Code, read together, provide that a service for women that includes trans women or a service for men that includes trans men:

    a. falls outside the scope of the single-sex and separate-sex exceptions contained in Schedule 3 to EA 2010; and

    b. is *"very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it"*.

    c. The Services Code then sets out a categorical instruction that *"A mixed-sex service must be open to all service users."*

43. This Challenged Guidance does not specify the form of discrimination that is said to be "very likely" to arise from trans-inclusive gendered services, whether these amount to direct or indirect discrimination against those of the opposite sex who are excluded (or both). The imperative conclusion that follows that *"mixed sex services must be open to all*" suggests that the Commission considers that such services give rise to direct discrimination, as that conclusion admits of no exceptions, indicating that there is no possibility of justification. It is noted that this analysis aligns with the Commission's position in the ***GLP and others v EHRC*** case (at [57]).

44. In reality, for the reasons set out below, on a proper analysis neither direct nor indirect sex discrimination against those excluded is "very likely" to arise, for five reasons:

a. Reason 1: Exclusion from a trans-inclusive gendered service could never amount to direct sex discrimination, because the difference in treatment is because of lived gender, not because of sex.

b. Reason 2: Further or in the alternative, exclusion would rarely amount to direct sex discrimination, because there would be no less favourable treatment.

c. Reason 3: Further or in the alternative, even if direct sex discrimination might arise (which is denied), it would often be capable of justification as positive action under section 158 EA 2010.

d. Reason 4: Further or in the alternative, even if direct sex discrimination might arise (which is denied), a service provider may be able to rely on paragraph 30 of Schedule 3 to the EA 2010.

e. Reason 5: Exclusion from a trans-inclusive gendered service is thus not "very likely" to amount to unlawful indirect sex discrimination either.

45. The Challenged Guidance's conclusion to the contrary is founded on a series of legal errors, namely the implicit assertion that the legal propositions above are incorrect: the Commission has misanalysed and misunderstood the underlying law, which has led to an inaccurate and overly-restrictive interpretation of the effect of the ***For Women Scotland*** judgment. In turn, based on these flawed premises, the Challenged Guidance gives inaccurate and misleading advice to readers.

46. The five reasons why the Challenged Guidance is wrong are explained further below.

a. Reason 1: Exclusion from a trans-inclusive gendered service could never amount to direct sex discrimination, because the difference in treatment is because of lived gender, not because of sex

47. A trans-inclusive gendered service is offered on the basis of a person's lived gender. For example, a service could be provided to "those who live as women" or "those who live as men".

48. A trans-inclusive gendered service for women would admit both "biological" men and "biological" women, and exclude both "biological" men and "biological" women. People would be excluded because of their lived gender. No one would be excluded by reason of their sex.

49. For treatment to be "because of" sex for the purposes of direct discrimination under section 13 of the EA 2010, it must fall within one of the two limbs identified in ***R (Coll) v Secretary of State for Justice*** **[2017] UKSC 40 [2017] 1 WLR 2093** per Lady Hale at [28]-[30] and in ***Essop v Home Office*** **[2017] UKSC 27 [2017] ICR 640** per Lady Hale at [17]:

    a. Either the reason for the treatment must be the person's sex; or

    b. There must be an exact correspondence between the disadvantaged class and the protected characteristic, such that the criterion is in reality a proxy for the protected characteristic, and is thus "indissociable" from it (see ***Lee v Ashers Bakery Co Ltd*** **[2018] UKSC 49 [2020] AC 413** per Lady Hale at [25]).

50. A trans-inclusive gendered service falls within neither of these limbs. The reason for the treatment is not sex, but lived gender: a distinct concept from "biological sex". Nor is there an exact correspondence between lived gender and "biological sex".

51. This conclusion inevitably follows from the Supreme Court's decision in ***For Women Scotland***: the protected characteristic of "sex" in the EA 2010 refers to a person's "biological sex", or sex recorded at birth i.e. something fixed at birth which cannot be changed, and which is independent a person's gender identity or how they live their life. If a service provider provides access to a service based on something which a person can change (e.g. the gender they live as), it is by definition not treating people differently because of their "biological sex".

52. Further, in such a case, applying section 23 EA 2010, the relevant comparator in a direct sex discrimination claim for e.g. a cis man who was excluded from a service provided to those who live as women would be a trans man. The trans man would be of a different "biological sex" to the claimant, but there would otherwise be no material difference between them, as both would be living as men. Under such a policy, both the claimant and the comparator would be excluded and there would be no less favourable treatment of the cis man.

53. It follows that a trans-inclusive gendered service would not give rise to direct sex discrimination against those members of the opposite sex whom it excludes.

54. To the extent that the Commission continues to rely on the argument, put forward in pre-action correspondence, that §13.131 was not referring to a trans-inclusive gendered service as defined above, but only a service 'for women' that included trans men and trans women, or a service 'for men' that included trans women and trans men, the Claimants submit that:

    a. This is an unnatural reading of §§13.130-131, which a reasonable reader would read as addressing trans-inclusive gendered services as defined above; and

    b. It overlooks the final sentence of §13.131, which states unequivocally that "a mixed-sex service must be open to all service users". Read as a whole, the paragraph can only sensibly be read as advising service providers that they may only provide (i) "biological" single/separate-sex services or (ii) fully mixed services open to all, with no alternative options being available (whether organised as a trans-inclusive gendered service or otherwise).

b. Reason 2: Further or in the alternative, exclusion would rarely amount to direct sex discrimination, because there would be no less favourable treatment

55. In order for a person who is not permitted to use the service to establish that they have a direct sex discrimination claim, they must show that they have been subjected to "less favourable treatment" because of sex within the meaning of section 13 EA 2010.

56. In many cases, identical services will be offered to both women and men. By far and away the most common example of such a service provided across the country consists of toilet facilities, where the separate provision is usually broadly equivalent in nature.[1] The Services Code repeatedly highlights the context of toilets when discussing trans people's use of single-sex and separate-sex services (see e.g. §§13.123, 13.124, 13.140, 13.148, 13.170).

57. As Swift J accepted in ***R* (*GLP and others) v EHRC***, different treatment is not necessarily less favourable treatment (see [59]-[61] and the authorities cited therein). As held by Lord Scott in ***Chief Constable of West Yorkshire v Khan*** **[2001] UKHL 48; [2001] 1 WLR 1947 at [76]**, "*There must also be a quality in the treatment that enables the complainant reasonably to complain about it… it suffices if the complainant can reasonably say that he would have preferred not to have been treated differently*" (per Lord Scott). Where two equivalent services are offered, there would be no less favourable treatment in denying access to a man who wanted to access the women's service but had access to an equivalent service appropriate to his gender, even if that denial was on grounds of sex (which it is not). The man would have access to just as good a service, could have no reasonable grounds for complaint for being denied access to the women's service, and so would not have been subject to less favourable treatment.

58. Any hypothetical claim from e.g. a cis man claiming he was discriminated against by not being permitted to use the trans-inclusive women's toilets when equivalent men's toilets were available for him to use would fail for this additional reason.

c. Reason 3: Further or in the alternative, if direct sex discrimination could arise (which is denied), it would often be capable of justification as positive action under section 158 EA 2010

59. The Services Code fails to refer to the important point that service providers may be able to rely on the positive action provisions under section 158 EA 2010 to

[1] And indeed where it ought to be, because unequal provision may well amount to unlawful sex discrimination regardless of the service provider's policies on trans people's use of the facilities.

include trans women in a women's service or trans men in a men's service. This is a material omission.

60. Section 158 provides in material part that:

> "(1) This section applies if a person (P) reasonably thinks that—
>
> (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
>
> (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
>
> (c) participation in an activity by persons who share a protected characteristic is disproportionately low.
>
> (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—
>
> (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
>
> (b) meeting those needs, or
>
> (c) enabling or encouraging persons who share the protected characteristic to participate in that activity."

61. Trans people plainly suffer disadvantages connected to the characteristic of gender reassignment and have needs that are different from the needs of people who are not trans. Those include the need to live authentically and fully in their acquired gender. As Lady Hale held in ***R (C) v Secretary of State for Work Pensions*** **[2017] UKSC 72; [2017] 1 WLR 4127** at [1]:

> " … it does not take much imagination to understand that this is a deeply personal and private matter; that a person who has undergone gender reassignment will need the whole world to recognise and relate to her or to him in the reassigned gender; and will want to keep to an absolute minimum any unwanted disclosure of this history. This is not only because other people can be insensitive and even cruel; the evidence is that transphobic incidents are increasing and that transgender people experience high levels of anxiety about this. It is also because of their

deep need to live successfully and peacefully in their reassigned gender, something which non-transgender people can take for granted."

62. Therefore, it is additionally misleading to suggest that unlawful sex discrimination would be "very likely" to arise from the provision of a trans-inclusive gendered service, in light of the ability of service providers to rely on the applicable positive action provisions. There will be many scenarios where *prima facie* unlawful discrimination, even if it can be established, would be justified under section 158 EA 2010 as minimising the disadvantages suffered by trans people and/or meeting their particular needs through the provision of a trans-inclusive gendered service. In the alternative, the failure to refer to these provisions in these paragraphs when making these assertions was a material omission.

d. Reason 4: Further or in the alternative, if direct sex discrimination could arise (which is denied), a service provider may be able to rely on paragraph 30 of Schedule 3

63. The Challenged Guidance additionally omits to refer to the material point that service providers may be able to rely on the exception in paragraph 30 of Schedule 3 EA 2010 to include trans women in a women's service or trans men in a men's service without discriminating unlawfully. This is a material omission.

64. Paragraph 30 provides that:

> "If a service is generally provided only for persons who share a protected characteristic, a person (A) who normally provides the service for persons who share that characteristic does not contravene section 29(1) or (2)—
>
> (a) by insisting on providing the service in the way A normally provides it, or
>
> (b) if A reasonably thinks it is impracticable to provide the service to persons who do not share that characteristic, by refusing to provide the service."

65. For an organisation like SARSVL, and many other similar services which include trans women in services generally provided for women (or trans men in their services for men), this exception would enable them to operate in a trans-inclusive fashion. SARSVL's services are generally provided only for cis women, who share the protected characteristic of sex, and the number of trans women survivors who use the service is proportionately very small. A woman-centred approach is fundamental to how the service operates, and is embedded throughout the service. It is SARSVL's long-standing experience that it can reasonably and practicably meet the needs of trans women without undermining this approach. If a cis man sought to bring a claim that he had been directly discriminated against on grounds of sex because he had been signposted to an alternative service, it would be open to the organisation to rely on paragraph 30(b) of Schedule 3 to the EA 2010 on the basis that the organisation reasonably considers it to be impracticable to provide him with the service.

66. For this further reason, it is wrong to suggest that the provision of a trans-inclusive gendered service would be "very likely" to amount to unlawful sex discrimination, in light of the ability of service providers to rely on the paragraph 30 exception. In the alternative, failure to refer to this provision in the Challenged Guidance was a material omission.

67. The Code acknowledges that this is the effect of the paragraph 30 exception in respect of services which are generally provided for women or men, at §13.152, and notes that a service operating in the manner described in paragraph 30 does not need to operate according to the rules and principles applying to the single- and separate-sex service exemptions. Yet, in the key sections of the Services Code discussing the possibility of including trans people in services for men and women, the significance of the paragraph 30 exception is not only ignored, but <u>contradicted</u> by the Challenged Guidance. §13.152 and the Challenged Guidance cannot be reconciled, and the Challenged Guidance incorrectly states the law.

e. Reason 5: Exclusion from a trans-inclusive gendered service is not "very likely" to amount to unlawful indirect sex discrimination either

68. Insofar as the Challenged Guidance is to be read as referring to the risk of unlawful indirect sex discrimination arising from the provision of a trans-inclusive gendered service, such a claim would not be "very likely" to succeed.

69. There is an obvious correlation (though not a complete one) between lived gender and "biological sex". People born as male are more likely to identify with the male gender and to live as men, and vice versa with those born as female; trans people are a small minority of the population. Depending on the circumstances, a man who was excluded from a trans-inclusive women's service (for example) may be able to argue that the service's admissions policy put men at a particular disadvantage when compared with women.

70. However, any such alleged indirect discrimination would be capable of justification pursuant to section 19(2)(d) EA 2010. There could be no basis for any suggestion that such a justification would be "very likely to fail". A trans-inclusive gendered service could have any number of good reasons for operating as a service for the benefit of people who live as women. Many gendered services have been successfully provided on a trans-inclusive basis (in accordance with the Commission's previous Services Code) for many years. Such services have long played an important positive role in society, helping to provide people with the particular services they need, with access rules that support them. They can often achieve the aims of single-sex provision while avoiding unnecessary discriminatory impact upon trans people, and avoiding the practical difficulties that can arise when admissions policies are based on "biological sex".

71. Such difficulties include the intrusiveness of having to enquire about a service-user's sex at birth; the difficulties of managing the complaints of other service-users who may speculate about whether another service-user is trans; and the risk of the organisation breaching the EA 2010's prohibition on harassment and the privacy protections under section 22 GRA 2004 and/or data protection legislation

in navigating these issues. For many providers of gendered services, an approach based on lived gender is likely to be far simpler and more practical than an approach based on seeking to enforce strict segregation according to "biological sex", and will reflect the manner in which they have operated successfully for years.

***ii. Error 2*: "If a service provider (including a person providing a service in the exercise of public functions) decides only to provide a service on a mixed-sex basis, without any separate or single-sex option, this could be direct… sex discrimination against women who use the service." (§13.133)**

72. This guidance is erroneous as a statement of the law. In particular, the statement that the provision of only mixed-sex services (without a separate or single-sex option) could amount to direct sex discrimination is wrong in law.

73. The distinction between direct and indirect discrimination is well-established. The prohibition on direct discrimination focuses on treatment of another person on prohibited grounds and aims at achieving "formal equality" of treatment. By contrast, the prohibition on indirect discrimination aims at achieving "substantive equality of results" where the application of apparently neutral criteria produces a disproportionate adverse impact on a protected group: see ***R (Elias) v Secretary of State for Defence*** **[2006] EWCA Civ 1293 [2006] 1 WLR 3213** per Mummery LJ at [119]). As Lady Hale noted in ***Homer v Chief Constable of West Yorkshire*** **[2012] UKSC 15 [2012] ICR 704** at [17], *"The law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic"*.

74. Any mixed-sex service (whether a fully mixed or a trans-inclusive gendered service) would have an access rule that was applied equally to all, regardless of their "biological sex". Men and women using the service would be treated the same: there would be formal equality between the sexes. It follows that the

provision of such a service would not provide any basis for a direct discrimination claim.

75. Where a provision, criterion or practice (PCP) is applied both to those who share and who do not share a protected characteristic, and this is said to impose a particular disadvantage on a protected group, this may in principle give rise instead to a claim of indirect discrimination. Whether an indirect discrimination claim was made out would turn principally on two highly fact-dependent questions: whether a claimant could demonstrate that the PCP placed women at a particular disadvantage; and whether the PCP was objectively justified.

76. The Commission's reliance on ***Earl Shilton v Miller*** **[2023] EAT 5** is misplaced. In that case, the employer provided male and female toilet facilities but the female facilities were manifestly inferior: the building was shared with a playgroup and female employees had to attract the attention of playgroup staff who would check to see if a child was using the toilet before they could use it themselves. The facilities were not suitable if the facilities were needed urgently and in those circumstances female staff were offered the option of using the men's toilets ([2]-[3]). The case was a conventional one of direct sex discrimination because, as HHJ Tayler noted at [32] *"As in the* [*R v Birmingham City Council ex p EOC [1989] AC 115*] *and Coll cases, separate facilities, of a poorer quality, were provided for females than males."* It is not authority for the proposition that providing a single mixed-sex facility for all may amount to direct sex discrimination.

77. The Challenged Guidance is thus erroneous in stating that the provision only of a mixed-sex service could amount to direct sex discrimination.

<u>iii. Error 3</u>: "A mixed-sex service must be open to all service users" (§13.131 and §13.144)

78. The categorical and imperative statement in the Services Code that a mixed-sex service must in all circumstances be open to all service users misstates the law, for

the reasons set out above. It appears to rest on the flawed foundations of Errors 1 and 2 as follows:

a. Error 1: Trans-inclusive gendered services are very likely to cause unlawful discrimination against people of the opposite sex who are excluded.

b. Error 2: Trans-inclusive gendered services could give rise to direct – and therefore unjustifiable – sex discrimination against women who use the service.

c. Therefore, Error 3: If a service is not a biological single-sex service, it is a mixed-sex service, and "must be open to all service users" in order to avoid the putative discrimination identified under Errors 1 and 2.

79. As set out above, the correct position in law is that when a service provider decides whether to provide a service separately or differently to men and women, all their choices are governed by fact-specific proportionality and reasonableness questions. In all scenarios, the EA 2010 requires service providers to balance the rights of those accessing services, and in considering whether an approach is proportionate, the service provider will need to consider whether there was a less discriminatory measure which could have been used without compromising the achievement of their aim:

a. It may be justifiable to provide a single-sex or separate-sex service on the basis of "biological sex" under Schedule 3 paragraphs 26-28 EA 2010, but this will be subject to objective justification, taking into account the rights of others.

b. It may be justifiable to provide a trans-inclusive gendered service for men or for women based on the lived gender of service users. To the extent that the admission rules of such a service created a particular disadvantage for a protected group, it would similarly be subject to a test of objective justification under section 19(2)(d).

c. In each case, the conduct will be capable of justification and permissible if it can be shown to be a proportionate means of achieving a legitimate aim.

d. Further, in any event, many service providers may be able to rely on the positive action provisions contained in section 158 EA 2010 and/or the exception under Schedule 3 paragraph 30 EA 2010 to provide services to men and women which include trans people. Again, this will be contingent on them being able to demonstrate that the inclusion of trans people is a proportionate means of achieving a legitimate aim, or that it would not be reasonably practicable to include cisgender members of the opposite "biological sex" in the service.

e. Different factual scenarios will yield different results. It is therefore incorrect to state without qualification that any mixed-sex service "*must be open to all service users*".

80. In the circumstances, it is plainly an error in law to state categorically that any mixed-sex service "must be open to all".

iv. The relevance of human rights to these errors

81. The legal analysis set out above follows from a conventional interpretation of the EA 2010.

82. However, if there was any ambiguity in the law (which it is submitted there is not), the interpretive duty under section 3 of the HRA 1998 would be engaged.

83. That is because the ability of trans people to access services in accordance with their gender identity engages their rights under Article 8, either read alone or with Article 14.

84. Strasbourg case law has established the right of trans people to personal development and to physical and moral security in the full sense enjoyed by others in society under Article 8 of the Convention:

a. In ***Goodwin v UK*** **(2002) 35 EHRR 18**, the European Court of Human Rights ("**ECtHR**") held at [90]:

> " … the very essence of the Convention is respect for human dignity and human freedom. Under Article 8 of the Convention in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings. In the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable."

b. Further, the Court emphasised the importance of recognising trans people's change of gender:

> "It must also be recognised that serious interference with private life can arise where the state of domestic law conflicts with an important aspect of personal identity (see, mutatis mutandis, *Dudgeon v the United Kingdom* judgment of 22 October 1981, Series A no. 45, [41]). The stress and alienation arising from a discordance between the position in society assumed by a post-operative transsexual and the status imposed by law which refuses to recognise the change of gender cannot, in the Court's view, be regarded as a minor inconvenience arising from a formality. A conflict between social reality and law arises which places the transsexual in an anomalous position, in which he or she may experience feelings of vulnerability, humiliation and anxiety."

c. The treatment of trans people in the context of service-provision in the UK was also considered in the case of ***I v UK*** **(2003) 36 EHRR 53**. In that case, the applicant's complaints included that, in the context of medical care, the hospital's practice might require her to be admitted onto a male ward, the matter being at the hospital's discretion (see [44]). The UK defended the case on the basis that, whilst there may be a breach of Article 8 when a trans person suffers practical and actual detriment and humiliation on a daily basis, the

applicant did not in fact face any such disadvantages because she was "*able to live a female social role, free from State interference*". If she had to be hospitalised, it would be for hospital staff to determine where she should be accommodated. The Government noted that, on the basis of her appearance and identity, she would be likely to be placed on a female hospital ward (at [47]-[48]). Accordingly, the UK submitted a fair balance had been struck. As in ***Goodwin***, the Grand Chamber rejected the UK's arguments. It again noted the "*conflict between social reality and law*" giving rise to "*feelings of vulnerability, humiliation and anxiety*" ([58]) and found the UK to be in breach of Article 8 ([69]-[73]).

d. While ***Goodwin*** and ***I*** refer to trans people who had undergone gender reassignment surgery, the ECtHR has since confirmed that the right to respect for private life under Article 8 applies fully to gender identity as a component of personal identity for all individuals, including trans people who have not undergone gender reassignment surgery or other medical treatment: see ***AP, Garçon and Nicot v France*** **App nos 79885/12, 52471/13 and 52596/13 (ECtHR, 6 April 2017)** at [94]–[95] and ***TH v The Czech Republic*** **App no 33037/22 (ECtHR, 12 June 2025)** at [48].

e. Preventing trans people from using the services which align with their acquired gender therefore engages their Article 8 rights: it prevents them living fully in accordance with their acquired gender; places them in an "intermediate zone", contrary to ***Goodwin***; creates feelings of vulnerability, humiliation and anxiety; and threatens their ability to maintain privacy over their gender history.

85. These rights are protected by a framework of positive obligations:

a. Article 8 may "impose on a state certain positive obligations to ensure effective respect for the rights protected by art 8": see ***Hämäläinen v Finland*** **[2014] BHRC 55** at [62]. This is how the ECtHR has analysed complaints concerning gender identity: see, e.g. ***Hämäläinen*** at [64]; ***AP, Garçon and***

Nicot at [99]-[100]; ***X v Former Yugoslav Republic of Macedonia*** **(app no. 29683/16, 17 January 2019)** at [63]-[65]. When considering such cases, a court must identify whether the importance of the interest at stake requires the imposition of the positive obligation sought. It undertakes a weighing-up exercise to identify a fair balance between the interests of the individual and the interests of the community as a whole: ***Hämäläinen*** at [65].

b. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the state will be restricted. Further, since the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8, and the right to gender identity and personal development is a fundamental aspect of the right to respect for private life, the state has only a narrow margin of appreciation in this area: ***TH v Czech Republic*** at [53]. In addition, gender identity, like sex and sexual orientation, is a so-called "suspect" ground, such that any differential treatment would need to be justified by very weighty reasons: see ***R (SC) v Secretary of State for Work and Pensions*** **[2021] UKSC 26** at [62], [107], [152].

c. The margin of appreciation is also narrowed where the legislation in question was introduced with no consideration of the relevant issues: see ***JR 123's application for Judicial Review*** **[2025] UKSC 8 [2025] AC 1256** per Lord Sales and Sir Declan Morgan at [58]**.**

86. A statutory anti-discrimination framework that permits services with only two binary options i.e. an entirely mixed service open to all regardless of gender, or a trans-exclusionary service operated on a "biological sex" basis, is incompatible with Article 8 and/or Article 14, for the following reasons:

a. Whenever a "biological" single- or separate-sex service is provided, that will interfere with the rights of some trans service-users. When considering the human rights justification for this, the obvious candidate for a less intrusive measure will be a trans-inclusive gendered service. In many cases, the provision of such a service will achieve all the desired aims of a single-sex

service, while also meeting the needs of trans people. This was the position promoted by the Commission in the 2011 Code.

b. The Services Code, however, suggests that the law in all circumstances prohibits this obviously less intrusive measure, and only permits two extremes: a fully-mixed service, or a service based strictly on "biological sex". The Code thus effectively seeks to tie the hands of providers who wish to provide services on the basis of a "middle ground" of trans-inclusive gendered services (and who in many cases have done so successfully for years, in accordance with the Commission's previous guidance).

c. Further, the Services Code adopts this position without any assessment having been undertaken by Parliament of the potential needs that could be served by prohibiting a sensible and practical middle ground, nor of why such needs could justify the hardship that would be caused to trans people by prohibiting service-providers from operating services inclusively.

d. If the Commission's analysis in the Services Code truly reflected the impact of the EA 2010, it would:

   i. Fail to strike a fair balance between the rights of trans people and the rights of the wider community, and

   ii. Amount to a plain case of ***Thlimmenos***-type discrimination (whereby persons who are in a significantly different situation are treated in the same way by the impugned measure – see ***Thlimmenos v Greece*** **(2001) 31 EHRR 15**), because of the failure to treat trans people differently from others of the same sex assigned at birth, despite their manifestly different needs and their different position in society arising from the challenges they face in living in accordance with their acquired gender.

87. Accordingly, the EA 2010 should be construed so as to permit services for men or for women to be provided on a trans-inclusive basis.

88. Further or in the alternative, if the Code correctly interprets the relevant provisions of the EA 2010 on conventional principles of interpretation, those provisions require reading down under section 3 HRA 1998. The Code would in those circumstances, again, misstate the effect of EA 2010, once the statute was "read down" pursuant to the HRA 1998.

v. Authorising or approving unlawful conduct

89. In view of the duty upon the Commission to ensure its guidance to the public on equality matters is accurate, there is no need for the Claimants to demonstrate that the Challenged Guidance "authorises or approves unlawful conduct" (within the meaning of ***R(A) v SSHD***): the relevant test is whether the guidance contained a material misstatement of law or a material omission: see ***R (A) v SSHD*** at [46].

90. However, for the avoidance of doubt, in the alternative, the Claimants submit that the Challenged Guidance does indeed authorise or approve unlawful conduct: namely, unlawful gender reassignment discrimination, and further breaches of section 6 of the Human Rights Act 1998.

91. As the Code notes:

    a. Trans people are likely to be particularly disadvantaged by the provision of "biological" single- and separate-sex services (§13.119). As such they may in principle be able to bring indirect gender reassignment discrimination claims which would require the service provider to demonstrate that an admission rule based on "biological sex" was objectively justified.[2]

    b. A service-provider must be able to demonstrate that the provision of a "biological" single- or separate-sex service is a proportionate means of achieving a legitimate aim (§13.113).

[2] In some cases, trans people may also be able to bring direct gender reassignment discrimination claims: *Croft v Royal Mail* [2003] ICR 1425, though even then the defence of objective justification would in principle be available pursuant to Schedule 3 paragraph 28 EA 2010.

c. This involves considering whether the disadvantage to trans people, and any others who may be disadvantaged, outweighs the benefits of achieving the legitimate aim, and whether there is a less intrusive option than excluding trans people which would be proportionate (§13.120).

92. However, if the Commission has given incorrect advice about the availability of a potentially less intrusive measure (i.e. operating a trans-inclusive gendered service) then service-providers who seek to follow the Challenged Guidance within the Services Code will have approached their assessments of proportionality erroneously: they will have wrongly ruled out an option that was in fact open to them, and may have been capable of striking a fairer balance between the rights and needs of all. Such a service-provider would struggle to justify its approach should a trans service-user bring a claim for gender reassignment discrimination. However, service-providers will be aware that they cannot simply disregard the Services Code. A failure to comply with a provision of a code issued under section 14 is admissible in evidence in criminal or civil proceedings, and must be taken into account by a court or tribunal in any case in which it appears relevant: see section 15(4) EA 2006. For the same reasons, those exercising public functions may struggle to show that the interference in trans people's Article 8 rights was justified in accordance with Article 8(2).

93. Accordingly, the Code authorises service providers to apply an incorrect and unlawful approach to the assessment of proportionality, which will lead to unlawful conduct (namely breaches of the EA 2010 and the HRA 1998).

F.2 Ground 2: If the Code is lawful, the law itself is incompatible with Convention rights and the Court should grant a declaration of incompatibility

94. For the reasons set out immediately above, if the Code gives a correct account of the relevant legislation on conventional interpretive principles, then the EA 2010 itself is incompatible with Articles 8 and 14 and is incapable of being "read down".

95. In those circumstances, the Claimants would accordingly ask the Court to make a declaration of incompatibility pursuant to section 4(2) of the HRA 1998 in respect of paragraphs 26-28 of Schedule 3 to the EA 2010. By establishing a regime allowing for service provision on the basis of "biological sex", without allowing for service provision on a trans-inclusive gendered basis, these provisions fail to strike a fair balance between the Article 8 rights of the Second and Third Claimants and trans people generally, and the wider community. The Claimants acknowledge that in some circumstances, it may be proportionate to provide single- or separate-sex services on the basis of "biological sex". However, for these provisions to make that the only permissible exception to fully mixed sex provision is not compliant with the Convention.

G. Remedies

96. The Claimants seek the following remedies:

a. A quashing order, quashing the erroneous elements of the Challenged Guidance;

b. A declaration that the Challenged Guidance is unlawful because it contains material misstatements of the law and/or material omissions;

c. In the alternative, a declaration of incompatibility pursuant to section 4(2) HRA 1998 that paragraphs 26-28 of Schedule 3 to the Equality Act 2010 are incompatible with trans people's right to private life under Article 8 ECHR, read alone or with Article 14;

d. Such further and other relief as the Court sees fit;

e. Costs.

16 October 2026

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