Neutral Citation Number: [2026] EWHC 149 (Admin)

Case No: AC-2025-LON-002809

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/01/2026

Before :

THE HONOURABLE MRS JUSTICE LIEVEN

- -

Between :

SEX MATTERS	**Claimant**
- and –	
THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON	**Defendant**

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- -

Mr Tom Cross KC and Ms Sarah Steinhardt (instructed by **Deighton Pierce Glynn**) for the **Claimant**
Mr Daniel Stilitz KC and Ms Katherine Eddy (instructed by the **Comptroller and City Solicitor**) for the **Defendant**

Hearing date: 17 December 2025

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Approved Judgment

This judgment was handed down remotely at 11.30am on 29/01/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE LIEVEN

Mrs Justice Lieven:

1. The Claimant challenges the current admission arrangements at two of the open-air swimming ponds on Hampstead Heath: (1) the Kenwood Ladies' Pond ("the Ladies' Pond") and (2) the Highgate Men's Pond ("the Men's Pond") (together, "the Ponds"). The Ponds are maintained by the Mayor and Commonalty and Citizens of the City of London ("the Corporation"). The Claimant is a charity which exists to promote sex-based rights.

2. The Claimant was represented by Mr Tom Cross KC and Ms Sarah Steinhardt. The Defendant was represented by Mr Daniel Stilitz KC and Ms Katherine Eddy.

3. This judgment concerns an application for permission to bring judicial review proceedings. The following issues arise:

    1. The date of the decision under challenge and whether the claim is either too late or too early – delay/prematurity;

    2. The Claimant's standing to bring the claim;

    3. Whether there is an alternative remedy;

    4. The Grounds:

        1. Breach of s.29(1) and 13 Equality Act 2010 ("the Act"), involving direct discrimination on the grounds of sex in respect of both Ponds;

        2. Breach of s.29(2) and 13 of the Act on the basis of direct sex discrimination in the provision of the service at the Ladies' Pond;

        3. Breach of s.29(2) and 19 of the Act on the basis of indirect sex discrimination, essentially on the same factual basis as Ground 2.

The Factual Background

4. Throughout this judgment I will refer to "trans women" and "trans men" as people who identify in the opposite gender, without differentiating as to whether they have a Gender Recognition Certificate or not.

5. Since at least 2017 both biological women and trans women have been permitted to swim at the Ladies' Pond and both biological men and trans men have been permitted to swim at the Men's Pond. There is also a Mixed Pond, where anyone can swim. The admission arrangements are consistent with the Corporation's Gender Identity Policy which was adopted some years ago.

6. There is some disagreement between the parties about the precise configuration of the facilities at the Ladies' Pond. However, in broad terms there are changing cubicles and toilets with doors (with an opening at the bottom), a common changing area, a curtained shower area and a communal shower area. There is also a fully enclosed and lockable toilet and shower room.

7. The Men's and Ladies' Ponds are not identical, with the Ladies' Pond enjoying a more enclosed and sylvan location, and the Men's Pond having a diving board and a larger swimming area.

8. On 16 April 2025 the Supreme Court handed down judgment in *For Women Scotland v The Scottish Ministers* [2025] UKSC 16 [2025] 2 WLR 879 ("*FWS"*). The judgment concerned whether trans women with a Gender Recognition Certificate (GRC) fell within the definition of "women" for the purposes of the Equality Act 2010. The Supreme Court held that they did not.

9. In the light of that decision on 9 May 2025 the Corporation published an update on its website stating that it was carefully considering the judgment and awaiting guidance from the Equality and Human Rights Commission (EHRC). On 20 May the Corporation's Hampstead Heath, Highgate Wood and Queen's Park Committee met. At that meeting it was noted that it would be appropriate to review the swimming facilities on the Heath to decide what arrangements would be appropriate in the future.

10. On 30 June 2025 the Corporation announced that it was reviewing its access policies in the light of the Supreme Court's judgment. It stated that it intended to engage with stakeholders and service users to ensure it understood their needs, in order to make properly informed decisions.

11. On 16 July 2025, a Committee Report went to the Hampstead Heath, Highgate Wood and Queen's Park Committee recommending that a formal consultation be undertaken to inform the review. The Committee authorised the conduct of a full consultation process and sought permission from the Corporation's Policy and Resources Committee under urgency procedures. On 18 July 2025, the Corporation wrote to the Claimant to explain that it was intended that the consultation would be opened by September, and the outcome would be considered by the relevant committees of the Corporation in November or December 2025.

12. The Corporation also explained in its 18 July 2025 letter that it considered that the current access arrangements for the Swimming Ponds had been well-publicised, including by the Corporation itself, and in the extensive press coverage of those arrangements. In response to a concern raised by the Claimant in pre-action correspondence that the admissions arrangements were not sufficiently clear, the Corporation agreed to provide further clarity by erecting new signage. On 25 July 2025, the Corporation placed additional notices at the entrance to both Swimming Ponds.

13. The new sign for the Ladies' Pond reads:
"*Those who identify as women are welcome to swim at the Kenwood Ladies' Bathing Pond.*
The Ladies' Pond is open to biological women and trans women with the protected characteristic of gender reassignment under the Equality Act 2010.
The City of London Corporation is preparing a public consultation on the future admissions policy at the Ladies' Pond."

    A new sign in analogous terms was placed at the Men's Pond.

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

15. Mr Stilitz told the Court that the Corporation did not intend to await any final Guidance from the EHRC before making its decision about future access arrangements for the Ponds.

The Claimant

16. Sex Matters is a charity whose objects are to promote human rights based on biological sex, to advance education about biological sex and the law, and to promote the sound administration of the law in relation to biological sex and equality between the sexes. It aims to promote clarity on biological sex in law and policy.

17. The Claimant has submitted a lengthy witness statement from Ms Maya Forstater and a number of other witness statements from women who have or would wish to swim at the Ladies' Pond.

A number of these record incidents concerning or alleged to concern trans women, which the witnesses say they have found upsetting and at times threatening. They say these incidents have put them off using the Ladies' Pond.

18. Some parts of this evidence are disputed by the Corporation, but the detailed nature of the dispute does not matter for present purposes. Ms Forstater fairly accepts that some of the evidence comes from a "somewhat self-selecting group".

The Equality Act 2010 ("the Act")

19. Section 29 of the Act concerns the provision of services, and s.29(1) and (2) state:

"Provision of services, etc.

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

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

(a) as to the terms on which A provides the service to B;

(b) by terminating the provision of the service to B;

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

20. Section 13 prohibits direct discrimination and states:

"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

21. Section 19 concerns indirect discrimination and states:

"19 Indirect discrimination
(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—
age;
disability;
gender reassignment;
marriage and civil partnership;

race;
religion or belief;
sex;
sexual orientation."

22. Section 114 of the Act sets out the jurisdictional provisions in respect of claims. By s.114(1) the County Court has jurisdiction to determine claims under Part 3, i.e. relating to the provision of services and public functions. Section 114(7) states:

"In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so."

23. Schedule 3 sets out a series of exceptions in respect of services and public functions. Paragraph 26 provides for the provision of separate services for the sexes. Paragraph 27 provides for single sex services.

Delay/Prematurity

The Submissions

24. The Claimant submits that the Corporation made a formal decision on 16 July 2025 to accept the Officer recommendation that the current arrangements should remain unchanged pending the consultation. That was a justiciable decision. This was underscored by the placing of the new signage on 25 July 2025, as an indicator that a new decision had been made.

25. Mr Cross relies on *Inclusion Housing v Regulator of Social Housing* [2020] EWHC 346. At [69] Chamberlain J said:

"A decision-maker is under no obligation to reconsider a final decision once it has been communicated. If, having received Inclusion's letter of 31 January 2019, the regulator had written back to say 'We have made our decision and will not be reconsidering it', time would run from the date of the earlier decision. A claimant cannot in general start time running again by writing a letter asking the decision-maker to reconsider and then treating the refusal to reconsider as a new decision. But where a decision-maker, in response to a request to reconsider, chooses to conduct an internal review – and, as here, tells the requester that it is holding off publishing its final decision while it gives 'serious consideration' to the points made – the position is different. The matter can be tested by asking what would have happened if, having received the regulator's email of 1 February 2019, Inclusion had issued a judicial review claim. The regulator would, surely, have been entitled to respond that the claim was premature because there was an internal review underway. The internal review could presumably have resulted in a different outcome. The internal review was, on the regulator's evidence, not complete until 8 February 2019 and not communicated until 12 February 2019, when the regulator sent Inclusion the final version of the RJ. In these circumstances, the final RJ was a separate, challengeable decision; and time to challenge it began to run at the earliest on 8 February 2019. The claim form was filed within 3 months of that date."

26. In my view this passage assists the Corporation more than the Claimant. The situation in the present case is that the Corporation is in the process of carrying out the equivalent of the internal review in *Inclusion Housing*. Therefore, on Chamberlain J's analysis, with which I agree, a challenge is premature until the review process is completed. I return to this point in my conclusion on prematurity.

27. Mr Cross alternatively submits that this is a challenge to a continuing act or state of affairs. If there has been no fresh decision, but the continuing decision is unlawful, then a party may be

permitted to challenge that continuing decision. He relies on *R v Birmingham City Council ex p Equal Opportunities Commission* [1989] AC 115 *("EOC").* In that case the Council had set higher entrance requirements to grammar schools for girls than boys. This issue had been going on for many years, and the Council's attention had been drawn to it, see Lord Goff at 1191B. However, the House of Lords considered that the ongoing discrimination was unlawful and did not seek to impose a time limit on when the challenge should have been brought.

28. If it is necessary to extend the time limit for judicial review to be brought then Mr Cross submits that there are good reasons to do so. This is a case where the Claimant is seeking to vindicate the rule of law and the prospective nature of the relief sought strongly militates in favour of granting an extension, see *R v Warwickshire CC ex p Collymore* [1995] ELR 217, where Judge J allowed a challenge to an ongoing education policy, in reliance on a passage from *R v Westminster CC ex p Hilditch* [1990] COD 207 where Nicholls LJ said:

    "If the policy is unlawful, prima facie it should be discontinued. The mere fact that the policy has been in place for nearly 3 years is not a sufficient reason for the court countenancing its continuing implementation for the indefinite future. There is here good reason for extending time for the making of application for judicial review, at any rate so far as the relief sought is directed at restraining the further implementation of the allegedly unlawful policy."

29. He further submits that there is good reason for the delay. Although the Supreme Court in *FWS* were necessarily stating the law as it must always have been, the EHRC itself had misunderstood the law in the Act and had misstated the law in its Guidance on single sex spaces. Therefore, the fact that the Claimant did not challenge any earlier decision on access to the Ponds is wholly unsurprising.

30. The Corporation's position is that no decision has been made in respect of changing admission criteria for the Ponds. The current admission arrangements have remained unchanged and unchallenged since 2017 (at least). The decision of the Committee on 16 July 2025 was simply to keep the current arrangements until the consultation exercise was complete. The new signage was erected because the Claimant in a letter dated 18 July 2025 argued that the existing signage was unclear. There was no change in the substantive admission arrangements as set out in the new sign.

31. Mr Stilitz submits that the passage in *Inclusion Housing* at [69] set out above is helpful to the Corporation because it shows that where a decision is under review it is premature to bring a challenge.

32. He submits that the Corporation is undertaking a major consultation exercise, and it would be contrary to good administration to cut across that exercise now. He says that the Claimant is in effect trying to pre-empt the consultation and narrow the scope of the Corporation's decision making. It would be wrong for the Court to interject itself into the decision-making process at this midpoint.

33. In respect of any proposed extension of time, Mr Stilitz submits that it would be wrong to do so on the basis of *FWS.* As a matter of legal principle that case did not change the law. Further and in any event, *FWS* was not concerned with trans people who do not have a GRC, and the Supreme Court emphasised that it was not answering wider questions than that specifically before it. Further, again, the Claimant did not even bring the challenge within three months of the *FWS* judgment.

Conclusion on delay/prematurity

34. In my view the Corporation has not made a fresh decision which is amenable to judicial review, but rather it is in the process of so doing. Therefore, the Claimant is premature in bringing a challenge at this point in the decision-making process.

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

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

37. There is no bright line rule in this area, and each case will to some degree turn on its own facts. However, there is some analogy with *R (Eisai) v NICE* [2008] EWCA Civ 438, where the challenge was brought to part of the decision making process. The Court said at [70] that if the challenge had been made at an earlier stage it would have been brought prematurely, before the outcome of the appraisal was not yet known and therefore the final outcome remained uncertain. The position here is similar. There is, in my view, no reason here not to allow that decision making process to run its course.

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

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

40. For the same reasons it would be wrong to allow an extension of time on the facts of this case. The rule of law can be fully vindicated by an in-time challenge to a fresh decision, if so advised, when the Corporation has made such a decision. The Corporation has been clear it intends to do so relatively shortly and does not intend to await any further Guidance from the EHRC. To the degree that *FWS* has changed understanding of the effect of the Act, that will doubtless be an important element of the Corporation's decision making, and it is important that they are given the opportunity to consider both the consultation responses and their legal advice, rather than the court intervening prematurely in that process.

Standing/Alternative Remedy

41. The Corporation argues that the Claimant does not have standing to bring this claim. The issue is connected to the Corporation's argument that judicial review is not the appropriate remedy, and if the Corporation's access arrangements are to be challenged under the Act, then it should be done in the County Court by an individual who is affected.

42. Mr Stilitz submits that the obvious and appropriate person to bring a discrimination claim such as this is a man or woman who claims to have been discriminated against. Firstly, this is a discrimination claim and the obvious and appropriate person to bring any such claim is someone alleged to have suffered the unlawful discrimination, and to have been treated less favourably than the (actual or hypothetical) comparator relied upon in each case.

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

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

45. The Divisional Court in *Good Law Project* said at [31]-[34]:

"31. We do not consider that either of the Claimants before us has standing to pursue the indirect discrimination claims. First, this is not a case where all members of the public are equally affected. There were individuals, directly and personally affected by the decisions under challenge, who would be capable of bringing proceedings alleging unlawful discrimination: those who were considered (or perhaps feel that they should have been considered) for appointment to one of the posts in question but were not appointed. This is not a fanciful point. The facts of cases such as Coker and Osamor (see below for consideration of this case) demonstrate that individual complainants can and will come forward. The two applicants in that case were perfectly able to bring proceedings under the discrimination legislation which preceded the Act and rightly did so in the appropriate forum, which is the Employment Tribunal.

32. Second, the question of standing so far as it concerns the Claimants' discrimination challenge in this case, must be closely related to the statutory definition of indirect discrimination. By section 19 of the Act, indirect discrimination is defined in terms of the application by person "A" of a "provision, criterion or practice" to a person (referred to in the Act as "B") in relation to a relevant protected characteristic of B's (see section 4 of the Act , including race and disability) which puts B (the person with a protected characteristic) at a particular disadvantage. The obvious person to bring legal proceedings is therefore that person B.

33. These two points, taken together, strongly point to the conclusion that the Claimants before us do not have the sufficient interest of the sort referred to by Lord Reed in the passages we have set out above.

34. Third, there is no practical consideration pointing in favour of a conclusion that these Claimants should be recognised to have standing to bring this claim before this court. In fact, practical considerations point in the other direction. The Employment Tribunal – where the relevant cause of action more appropriately exists – is far better suited than the Administrative

Court to adjudicate on disputes of fact likely to be material to the outcome of any discrimination claim. It has procedures appropriate to the task. Moreover, the Employment Tribunal is a specialist tribunal."

46. In *R (Rights Community Action) v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 359 [2024] PTSR 817 I held that a community group did have standing to challenge a planning decision. At [61] I said that there is no simple test that if an individual is more directly affected then the group necessarily has no standing for judicial review. It is important to look at the nature of the challenge and the interest of the group in question, when determining whether the group has standing.

47. Applying that approach here, it is in my view highly relevant that the Claimant's claim is for a breach of s.29 of the Act. By s.114(1)(a) the County Court has primary jurisdiction over discrimination claims concerning the provision of services to the public contrary to s.29. Although s.114 does not bar any judicial review, the County Court provides an alternative remedy expressly contemplated by Parliament. It is only in exceptional circumstances that the court will entertain an application for judicial review where there is a convenient and available alternative, see *R (Watch Tower Bible and Trust Society v Charity Commission* [2016] EWCA Civ 154 [2016] 1 WLR 2625 at [19]:

"19 These principles are not in dispute and can be summarised briefly. If other means of redress are "conveniently and effectively" available to a party, they ought ordinarily to be used before resort to judicial review: per Lord Bingham of Cornhill in Kay v Lambeth London Borough Council [2006] 2 AC 465, para 30. It is only in a most exceptional case that a court will entertain an application for judicial review if other means of redress are conveniently and effectively available. This principle applies with particular force where Parliament has enacted a statutory scheme that enables persons against whom decisions are made and actions taken to refer the matter to a specialist tribunal (such as the First-tier Tribunal (General Regulatory Chamber) (Charity)). To allow a claim for judicial review to proceed in circumstances where there is a statutory procedure for contesting the decision risks undermining the will of Parliament; see per Mummery LJ in R (Davies) v Financial Services Authority [2004] 1 WLR 185, paras 30—31; per Lord Phillips of Worth Matravers MR in R (G) v Immigration Appeal Tribunal [2005] 1 WLR 1445 at para 20; and per Moore-Bick LJ in R (Willford) v Financial Services Authority [2013] EWCA Civ 677 at [20], [23] and [36]. I would also refer to the helpful and comprehensive summary of the relevant principles by Hickinbottom J in R (Great Yarmouth Port Co Ltd) v Marine Management Organisation [2014] LLR 361, paras 35—72."

48. In *R (Davies) v Financial Services Authority* [2003] EWCA Civ 1128 [2004] 1 WLR 185 at [31] Mummery LJ said:

"31. The legislative purpose evident from the detailed statutory scheme was that those aggrieved by the decisions and actions of the authority should have recourse to the special procedures and to the specialist tribunal rather than to the general jurisdiction of the Administrative Court. Only in the most exceptional cases should the Administrative Court entertain applications for judicial review of the actions and decisions of the authority, which are amenable to the procedures for making representations to the authority, for referring matters to the tribunal and for appealing direct from the tribunal to the Court of Appeal."

49. The Claimant submits that it is well placed to bring the judicial review as it represents those who are deeply concerned about the access arrangements at the Ponds, and it has specific knowledge and experience of these issues. It is unlike the Good Law Project, which brings legal challenges in a wide range of different areas of concern, and does not have equivalent expertise around one issue. It is representative of an identifiable group in society affected by the matter in question and therefore falls within what the Court was contemplating in *Good Law Project* at [21].

50. The test is merely whether the Claimant has a "sufficient" interest and as Lord Reed explained in *Walton v Scottish Ministers* [2012] UKSC 44 [2013] PTSR 51 it is not necessary to show that the Claimant has a better right than any other claimant. The focus is on the distinction between "*the mere busy body and the person affected by or having a reasonable concern in the matter to which the application relates":* see [92].

51. Mr Cross points to a number of cases where the Court has permitted a representative body to bring a judicial review where there were plainly individual claimants who could have brought the case. In *EOC* the Equal Opportunities Commission successfully challenged Birmingham City Council's discriminatory education policy, although parents could have brought the challenge. Similarly in *R (European Roma Rights Centre) v Immigration Officer at Prague Airport* [2002] EWHC 1989 the Court rejected an argument that a campaign group should not be allowed to advance a discrimination argument.

52. Further, the Claimant, being a group and not an individual, could not bring a claim in the County Court. Therefore, if the Claimant has standing then there is no alternative remedy open to it.

53. Mr Cross submits that there are strong reasons why the Claimant, rather than individuals, is the appropriate legal person to bring the claim. A number of the witnesses have explained that they are concerned about the publicity and potential adverse effects if they were to bring the claim in their own name. Further, the Claimant is both in a better position financially, and has the relevant experience and expertise, to bring this claim on behalf of those affected, namely Pond users as a class as well as the general public.

54. In *R (MM) v Secretary of State for Work and Pensions* [2012] EWHC 2106 Admin, Edwards-Stuart J allowed a claim of discrimination for failure to make reasonable adjustments for disabled benefit claimants to proceed as a judicial review even though they could have claimed as individuals in the County Court.

Conclusion on Standing

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

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

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

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

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

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

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

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

63. Although there is, again, no bright line test for whether a group has standing, in my view a local community group challenging a planning decision, such as was the case in *Community Rights Action*, is much more likely to have standing than an interest group in a discrimination claim. In the latter case there is a need to consider facts relating to individual claimants, rather than generic issues raised by the community.

64. Mr Cross relies on the *EOC* case, where the EOC was held to have standing to bring the claim. However, the EOC itself (the precursor of the EHRC) had a statutory interest in the issue which puts it in an entirely different category from the considerations in the *Good Law Project* case.

65. For all these reasons I conclude that the County Court is the appropriate forum. This conclusion is necessarily entirely independent of the conclusion on delay/prematurity.

The Grounds

66. In the light of my conclusions on the preliminary issues it is not necessary to consider the merits of these grounds in any detail. However, it is relevant that in my view the Grounds are not so obvious or overwhelming as to outweigh any arguments about the challenge being premature. As Mr Stilitz submits, the Corporation wishes to consider legal advice about the effects of *FWS* in the light of the outcome of the consultation. In my view this is an appropriate course given the complex and highly sensitive issues at stake.

67. Mr Cross suggested that it would be helpful for this case to proceed because the impact of *FWS* could be considered and applied to the facts of the case, and that would then assist in the application of the Act to other situations. However, these issues are necessarily fact and context specific and therefore the determination of the Grounds would be of limited value in different contexts.

68. There is therefore no reason to depart from my conclusions on delay/prematurity and on standing/alternative remedy. I therefore refuse permission to bring judicial review proceedings.