



Neutral Citation Number: [2026] EWHC 1954 (Admin)

Case No: AC-2025-LON-002926

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/26

Before :

MR JUSTICE LINDEN

Between :

THE KING
(on the application of SEX MATTERS)

Claimant

- and -

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

Defendants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interested Party

Tim Owen KC & Kate O'Raghallaigh (instructed by **Deighton Pierce Glynn**) for the
Claimant

Fiona Barton KC & Robert Talalay (instructed by the **Metropolitan Police Service,**
Directorate of Legal Services) for the **First Defendant** and (instructed by **Weightmans LLP**)
for the **Second Defendant**

Hearing date: 16 June 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE LINDEN

MR JUSTICE LINDEN:

Introduction

1. The Claimant is a charity whose objects are to promote human rights where they relate to biological sex, to advance education about sex and the law, and to promote what it sees as the sound administration of the law in relation to biological sex and equality. Its website states that: “Our starting points are that everyone has a sex, and that everyone has the same human rights. A person’s biological sex cannot change, and it impacts upon their life and relationships with others.”
2. As for the Defendants:
 - i) The First Defendant (“the NPCC”) brings together the leaders of the 45 police forces across the United Kingdom, the British Transport Police, the Ministry of Defence Police and the Civil Nuclear Constabulary, to set direction in policing. It coordinates operational responses to critical national policing issues and shares collective expertise amongst police forces. As part of its work, it promulgates guidance for police forces, often in conjunction with the College of Policing.
 - ii) The Second Defendant is the Chief Constable of the British Transport Police (“the BTP”).
3. In this claim for judicial review the Claimant challenges the “*Interim Guidance – Searching by Transgender officers and employees of the Police and the Searching of Transgender detainees*” issued by the NPCC in May 2025 (“the NPCC Guidance”), and the “*Interim – Transgender and Non-Binary Search Guidance*”, Version 9 of which was issued by the BTP on 30 June 2025 (“the BTP Guidance”). Unless it is necessary to differentiate between these documents, I will refer to them collectively as “the Guidance”.
4. The Guidance is applicable to so called “strip searches” i.e. searches which involve more than the removal of outer clothing but are less intrusive than “intimate searches”. Strip searches include (a) “More Thorough Searches” which require removal of more than a jacket, outer coat, gloves etc, and (b) “Exposing Intimate Parts” (“EIP”) searches, which expose the buttocks, genitals or breasts. There are statutory powers to carry them out under sections 54 to 54B of the Police and Criminal Evidence Act 1984 (“PACE”, or “the 1984 Act”). “Intimate searches” involve physical examination of an orifice other than the mouth, and the statutory power to carry out such a search is set out in section 55 of PACE. Both types of search are also governed by Annex A to PACE Code C, the “*Revised Code of Practice for the detention, treatment and questioning of persons by Police Officers*” dated December 2023.
5. The essential point of contention in these proceedings is that the Guidance provides that, as long as both the suspect and the officer agree, a transgender person may be strip searched by an officer of a different biological sex, whereas section 54(9) of the 1984 Act provides that “*The constable carrying out a search shall be of the same sex as the person searched.*”, and sections 54A and 54B include provisions to essentially the same effect. The Claimant contends, and the NPCC and the BTP do not dispute, that following the ruling of the Supreme Court in *For Women Scotland Ltd v Scottish*

Ministers [2025] UKSC 16, [2026] AC 315 “sex” in this context means “biological sex”, regardless of whether the person has a Gender Recognition Certificate (“GRC”) issued pursuant to the Gender Recognition Act 2004 (“the GRA”). Its case is that a police officer has no power to conduct a strip search other than in accordance with PACE. Applying the principles in *R (A) v Secretary of State for the Home Department* [2021] UKSC 37, [2021] 1 WLR 3931, the Guidance is therefore unlawful because it authorises or encourages strip searches which are prohibited by the 1984 Act.

6. Proceedings were issued on 2 September 2025. Originally, there were three grounds of challenge. These alleged that:
 - i) The Guidance is ultra vires and in breach of statutory duty in that it is contrary to section 54(9) of the 1984 Act (“Ground 1”);
 - ii) In introducing the Guidance, the Defendants failed to comply with the public sector equality duty under section 149 of the Equality Act 2010 (“Ground 2”);
 - iii) The First Defendant’s intention to rely on Annex L to PACE Code C, “*Establishing Gender of Persons for the Purpose of Searching and Other Procedures*”, is irrational (“Ground 3”).
7. Ground 3 was not pursued by the Claimant following the filing of the joint Summary Grounds for Contesting the Claim on 24 September 2025. The NPCC pleads, at [35] of its Summary Grounds of Resistance, that it “does not seek to defend Annex L, and agrees that it is probably unlawful”. The BTP Guidance also states that it, rather than Annex L, applies. I understood that the Defendants’ position was that Annex L is “outdated” in the light of the *For Women Scotland* case, that neither of them intends to rely on it for the purposes of carrying out searches, and that it is for the Home Office to decide whether it will be updated.
8. The Secretary of State for the Home Department pleads in her Acknowledgment of Service that she is neutral in relation to the Claim. She “is currently considering her position in relation to whether and how to update Annex L to Code C”.
9. On 5 January 2026, Johnson J gave permission on the papers in relation to Grounds 1 and 2. However, Ground 2 was withdrawn by consent by order signed on 18 May 2026. Under the single remaining Ground, the issue for determination is agreed by the parties to be the following:

“Whether guidance issued by the First Defendant and Second Defendant respectively is ultra vires section 54(9) Police and Criminal Evidence Act 1984 insofar as such guidance relies upon consent as a lawful basis by which to conduct opposite-sex strip searching by police officers.”
10. Whether this accurately states the issue is, perhaps, open to debate. But the question which I am asked to decide is clear enough.
11. In the run up to the hearing, I noted that the decision in *For Women Scotland* was specifically about the position under the Equality Act 2010 and I queried with the parties whether the position under PACE of a person with a GRC might be different to that of other transgender people. It was confirmed that neither side was submitting that

it is different, or inviting me to decide the point. For the purposes of determining the issue before me I will therefore proceed on the basis that, as is the case, the Guidance does not differentiate between people who have GRCs and people who do not and will make no decision, one way or the other, on the effect of a GRC in this context. I will also assume, without deciding, that the agreed position of the parties as to the effect of the *For Women Scotland* decision in the context of the 1984 Act is correct.

The evidence

Witness statements

12. The following witness statements were filed in relation to the Claim:
 - i) For the Claimant: Catherine Larkman (Director and National Policing Lead and Wales Co-ordinator of Women’s Rights Network Limited, dated 29 August 2025) and Maya Forstater (Chief Executive Officer of the Claimant, dated 31 August 2025).
 - ii) For the Defendants: Vanessa Jardine (Chief Constable of Northumbria Police and NPCC Portfolio lead for LGBTQ+), Rachel Swann (Chief Constable of Derbyshire Constabulary and Chair of the NPCC’s Diversity, Equality and Inclusion Co-ordination Committee), Rebecca Gray (Inspector, Northumbria Police), Sean O’Callaghan (Assistant Chief Constable, British Transport Police) and Vanita Patel (interim Director of People and Culture, British Transport Police), all dated 26 February 2026.
13. These statements provide interesting background to the Guidance, and they express contrasting views as to the desirability of the approach which has been taken by the NPCC and the BTP. There is also conflicting evidence about whether there are concerns amongst women police officers about this approach, and there are differences of view about whether there will be pressure on them to agree to searches which they would not otherwise wish to carry out given, for example, the fact that the search may be necessary for safety related reasons, and the limited time for which a person may generally be detained (the so called 24 hour “detention clock”). There are also views expressed about whether a suspect can consent to a strip search which is not in accordance with PACE.
14. However, although I have read these statements, they were not included on the agreed List of Essential Reading for the hearing. No doubt this was because ultimately the issue for me is one of statutory construction. I am not asked to determine the underlying merits of the approach taken in the Guidance, nor any public law challenge to that approach other than the Claimant’s proposition that a strip search by a police officer of a different biological sex to the person searched is not permitted as a result of the 1984 Act, and cannot be lawful, even if both parties consent.

The NPCC Guidance

15. The NPCC Guidance states that:

“..., police will undertake searches exposing intimate parts (EIP) or more thorough searches in accordance with PACE which states that these searches must be conducted with officers of the same biological sex as the person being searched.

Policing remains committed to serving all members of the public with fairness, dignity, and respect, including the Trans community. The police have a duty to respect Article 8 rights. Therefore, as far as operationally viable, where an individual whose lived in gender is not the same as their biological sex expresses a preference to be searched by an officer of their lived gender, efforts will be made to ensure an appropriate officer is identified to conduct the search. In such circumstances, the search would require the written consent of the authorising officer, the person detained and the particular officer/s conducting the search.”

16. There is then a series of questions and answers under the heading “Additional Information”. These deal, amongst other things, with the position of transgender officers. In short, they may not search a detainee who is of a different biological sex, even if the detainee agrees. This is because:

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

17. However, in the case of a transgender officer and a transgender detainee:

“...if both the officer and the detainee are of the same sex this complies with theguidance. If the officer and the detainee are of different biological sexes, both the officer and the detainee would need to consent with the search.”

18. Transgender officers may be exempted from carrying out searches, and a detainee may refuse to be searched by a transgender officer.

19. The Additional Information then sets out the following questions and answers:

“Can an officer or member of staff refuse to search a trans detainee?”

Yes and there will be no career detriment to the officer or member of staff.

Can a lawful order be given to search a trans detainee?

No

What if a trans detainee consents to the search by an officer of their lived gender but then retracts consent?

The search will then need to be completed by an officer of their biological sex.

...

What if a trans detainee wants to be searched in line with lived gender but no officer can be found who is willing to conduct the search?

The detainee should be placed on a constant watch until a willing officer is found. Should this not occur within a reasonable time or the risk be deemed too great, the search will be completed by officers of the same biological sex.”

20. These provisions, and others which I summarise below, tend to indicate that the risk of pressure on female officers to carry out strip searches on persons of a different sex is not as high as suggested in the Claimant's evidence. The Guidance and the procedure for agreeing such a search protect them from such pressure, and the reality is that if there are difficulties, or there is pressure of time, an officer of the same sex will carry out the search. The Guidance also builds in protections for the person who is to be searched.
21. The NPCC has a detailed consent form which must be signed by the authorising officer, the officer who is to carry out the search and the person who is to be searched if the search is to go ahead. This provides that:

“You have been informed that:

- A statutory power exists which enables police officers to search you.
- A search will be carried out during your period in custody.
- The statutory power of search requires that you are searched by an officer of the same biological sex as you.
- In accordance with force search guidance, you may request to be searched in a manner which recognises and respects your lived gender which you have declared as being different from your biological sex as recorded at your birth.

You have asked that you be treated as a biological [**male / female – delete as appropriate**] for the purposes of any search which takes place in custody.

You understand that the search you have requested can only take place with your consent, the consent of the officer/s allocated to conduct the search and the consent of the authorising officer.

You explicitly provide your consent to this search based on your gender and preference for a search to be conducted by an officer of the sex chosen by you. You understand

- the search will involve the removal of outer clothing/may expose your breasts, buttocks and genitals as far as necessary to identify if you have an article on you for which we have a power to search.
- the search by an officer of the sex chosen by you, is consensual, and in accordance with your wishes in respect of the sex of officer(s) searching you.

You can withdraw your consent at any point.

Upon withdrawal of your consent, or where it is decided by the authorising officer that a search needs to be conducted utilising a statutory power, the consensual search process will cease and the authorising officer will inform you of the grounds for termination of the consensual search process and the statutory power which will be used to conduct a statutory non consensual search. For the avoidance of doubt, a statutory non-consensual search will be conducted by officers of the same biological sex as you.

I confirm that I have read and understood the above information **OR** I confirm that the above information has been read to me and I understand what has been said **[Delete as appropriate]**”

The BTP Guidance

22. This is a more detailed document than the NPCC Guidance but the two are consistent with each other. At [3.1], the BTP Guidance explains that it is applicable to “More Thorough and EIP (Strip) searches conducted outside of the custody environment and those conducted within British Transport Police Custody Suites”. [4.4] also states that the BTP Guidance, rather than Annex L to Code C, will apply.
23. The BTP Guidance states that searches will only be carried out where the PACE criteria for the particular type of search are met. Moreover, searches carried out under statutory powers will be carried out by an officer of the same biological sex as the detainee and in accordance with the other statutory conditions which apply to the use of the statutory power.
24. However, section 5 explains the concept of a “Consensual Search” for the purposes of the BTP Guidance. [5.3] states that:

....where the relevant criteria are present ...above, giving rise to a power of search, the detained person can explicitly request and consent to a search being carried out in a manner which is outside of the requirements of the legal power. For the purposes of this guidance this is referred to as a “Consensual Search”. Specifically, a detained person may consent to be searched outside the statutory requirement that the sex of the person searching is of the same biological sex as the person being searched, i.e. where the detained person indicates a preference to be searched by an officer of a biological sex in contradiction of the requirements of statutory powers. The person must be capable of giving consent and consent should not be sought if the person is deemed unfit through drink or drugs or does not have the relevant mental capacity to decide this.”
25. The BTP Guidance states that the purpose of the consensual regime is to preserve the integrity of the detained transgender detainee, so officers and staff may not propose that the search be conducted outside of the legal regime to enable them to search the detained person. There is also a requirement to notify a person of the rank of inspector if there is to be a consensual EIP search.
26. [5.8] provides that:

“It is important to note that consensual searches cannot be done under compulsion, and force cannot be used (beyond such force as is inherently necessary for an effective search and for which consent has been provided by the detained person). The officer will revert to the statutory power to conduct the search if any person within the interaction withdraws their consent (officer or person being searched).”
27. [5.9] emphasises that in all other respects the requirements which are applicable to strip searches, e.g. the requirements as to locations, the presence of appropriate adults etc, will still apply.

28. Section 6 of the BTP Guidance then makes further provision, including that any officer or member of staff can refuse to carry out a consensual search “with no detriment to their career”. A procedure is set out for ascertaining the biological sex of the suspect. In the case of a detained person who identifies as transgender or non-binary they may be asked about their preference as to the biological sex of the officer who is to carry out the search. If they say that they would prefer an officer of a different biological sex they are to be told that this can only be done by way of a consensual search and with the explicit consent of the authorising officer, the officer who is to carry out the search and the detained person. Any of these parties may withdraw their consent at any time and the search will then be carried out in accordance with the statutory position.
29. [6.12] of the BTP Guidance states:
- “When asked to conduct a consensual search, officers must be informed that they can refuse to perform a consensual search, and they can remove their consent at any point during the search with no detriment to their career or sanction. The detainee should be placed on a constant watch until a willing officer is found. Should this not occur within a reasonable time, or the risk be deemed too great, the search will be completed under the statutory regime. Requests for consensual searches must be documented via the Consensual Search Authority Request template by the authorising officer.”
30. The BTP Guidance includes a “Consensual Search Authorising Officer Form”, which I need not set out verbatim. However, it requires confirmation by the authorising officer that there is a statutory power to carry out the search, that the detainee has requested that the search be carried out by an officer of a different biological sex to theirs, and that the searching officers(s) have been informed that:
- Participation is voluntary
 - Consent can be withdrawn at any time
 - There will be no detriment for refusal”
31. There is then a section of the form in which the authorising officer records their decision – either “I authorise”, or “unable to identify willing officer” or “I do not authorise” - and they are then required to set out a rationale for their decision. The rubric says: “Provide a clear explanation of the factors considered, including legal, operational, and welfare considerations.”.
32. The BTP Guidance also requires there to be a record of the agreement of the officer who is to carry out the search, and there is a detailed declaration which they sign. This includes a declaration that they are aware of the legal requirement that strip searches must be conducted by an officer of the same biological sex as the detainee, and that they acknowledge that their participation is voluntary and that they may withdraw their consent at any time “before or during the search”.
33. Then there is a detailed form which the detained person is required to sign. This records that the detained person has been informed of the position under PACE, and that they have been asked that they be treated as a biological male/female, as the case may be, for the purposes of the search. It also records that they understand that the search which

they have requested can only be carried out with their consent, the consent of the officer who is to carry out the search and the consent of the authorising officer, that they understand the nature of the search and that they consent to it and can withdraw their consent “at any point”.

Legal framework

The background to the Police and Criminal Evidence Act 1984

34. Before the enactment of the Police and Criminal Evidence Act 1984, the powers of the police to carry out searches were governed by the common law which had developed over a number of years. In *Lindley v Rutter* [1981] Q.B. 128 the Divisional Court cited with approval the following summary of the position in from Halsbury’s Laws of England, 4th Ed (1976), Vol.11, para.121:

“**Search of persons arrested.** There is no general common law right to search a person who has been arrested, but such a person may be searched if there are reasonable grounds for believing (1) that he has on his person any weapon with which he might do himself or others an injury or any implement with which he might effect an escape, or (2) that he has in his possession evidence which is material to the offence with which he is charged.”

35. In 1981, the Report of The Royal Commission on Criminal Procedure (Cmnd 8092) (“the Royal Commission Report”) recommended that these police powers and others be put on a proper statutory basis, and this led to the 1984 Act.

The relevant provisions of the primary legislation

36. The preamble to the 1984 Act states that it is, amongst other things:

“An Act to make further provision in relation to the powers and duties of the police, persons in police detention, criminal evidence....”

37. Part 1 of the 1984 Act sets out the powers of police constables to stop and search members of the public. Section 1 enacts a power to stop and search persons or vehicles if an officer has reasonable grounds for suspecting that they will find stolen or prohibited articles, substances etc. These powers may be exercised in public places and places to which the public have access. However, section 2(9) provides, so far as material, that:

“(9) Neither the power conferred by section 1 above nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed—

(a) as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves; ...”

38. Similarly, under Part 3 of the 1984 Act, which deals with “**Arrest**”, section 32(1) enacts a power of a constable to search on arrest “at a place other than a police station, if the constable has reasonable grounds for believing that the arrested person may present a danger to himself or others”. However, section 32(4) provides that:

“(4) The powers conferred by this section to search a person are not to be construed as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves but they do authorise a search of a person’s mouth.”

39. Part V of the 1984 Act deals with “**Questioning and Treatment of Persons by Police**”. Importantly, section 53 provides as follows:

“53.— Abolition of certain powers of constables to search persons.

(1) Subject to subsection (2) below, there shall cease to have effect any Act (including a local Act) passed before this Act in so far as it authorises—

(a) any search by a constable of a person in police detention at a police station; or

(b) an intimate search of a person by a constable;

and any rule of common law which authorises a search such as is mentioned in paragraph (a) or (b) above is abolished.” (emphasis added)

40. Section 54 deals with “**Searches of detained persons**”. Subsection (1) requires the custody officer at a police station to ascertain everything which a person has with them when they are brought to the station after being arrested elsewhere, or after being committed to custody by an order or sentence of a court, or being arrested at the station or detained there. Section 54(3) empowers a custody officer to seize and retain anything which the detained person has with them save that, under section 54(4), clothes and personal effects may only be seized if (a) the custody officer believes that the detained person may use them to cause physical injury, to damage property, to interfere with evidence or to facilitate an escape; or (b) if the custody officer has reasonable grounds for believing that the item may be evidence relating to an offence. There are provisions under section 54(2) and (2A) relating to records of what is found and, under section 54(5), there is a qualified obligation to explain the reasons for the seizure of any item.

41. The balance of section 54 provides, so far as material, as follows:

“(6) Subject to subsection (7) below, a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under subsection (1) above and to the extent that the custody officer considers necessary for that purpose.

(6A) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.

(6B) Subject to subsection (6C) below, a constable may seize and retain, or cause to be seized and retained, anything found on such a search.

(6C) A constable may only seize clothes and personal effects in the circumstances specified in subsection (4) above.

- (7) An intimate search may not be conducted under this section.
- (8) A search under this section shall be carried out by a constable.
- (9) The constable carrying out a search shall be of the same sex as the person searched.” (emphasis added)
42. Section 54A deals with **“Searches and examination to ascertain identity”**. This section was added by the Anti-Terrorism, Crime and Security Act 2001. Section 54A(1) provides for an officer of at least the rank of inspector to authorise the search and/or examination of a person who is detained in a police station for the purpose of: (a) ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or (b) facilitating the ascertainment of his identity. It is noteworthy that, under section 54A(2), a search or examination for purpose (a) may only be authorised if:
- “(a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or
- (b) it is not practicable to obtain such consent
43. A search or examination for purpose (b) may only be authorised if the person has refused to identify themselves or the officer has reasonable grounds for suspecting that the person is not who they claim to be (section 54A(3)).
44. Section 54A therefore presupposes that there can be consent to this type of search or examination, and the section comes into operation to authorise a search or examination in the absence of consent. “Appropriate consent” is defined under section 65(1) according to the age of the person to be searched and it requires (at least) the consent of a parent or guardian where the detained person is aged under 18.
45. Section 54A(5) provides that any identifying mark which is found on a search or examination “under this section” (i.e. on a non-consensual search or examination) may be photographed:
- “(a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.”
46. Section 54A(6) provides that a search or examination under the section, or a photograph taken under the section, must be by a constable. And section 54A(7) provides that:
- “(7) A person may not under this section carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex. (emphasis added)
- (8) An intimate search may not be carried out under this section.”
47. Section 54B, which was inserted by the Coroners and Justice Act 2009, deals with **“Searches of persons answering live link bail”**. Subsection (1) provides that a constable may search any person who is at a police station to answer to live link bail

and any article in the possession of such a person. Under section 54B(2), the constable has a power to seize items found to be in the possession of the person searched on grounds specified in subsection (3). The section goes on to provide, so far as material, that:

“(5) An intimate search may not be carried out under this section.

(6) The constable carrying out a search under subsection (1) must be of the same sex as the person being searched.” (emphasis added)

48. Section 55 then deals with “**Intimate searches**”. It specifies the circumstances in which such a search may be authorised. These are essentially where an officer of at least the rank of inspector has reasonable grounds for believing that the detained person may have an item concealed on them which they could use to cause physical injury, or that they may have a Class A drug concealed on them. Section 55(3A) provides that:

“(3A) A drug offence search shall not be carried out unless the appropriate consent has been given in writing.”

49. Section 55(13A) provides that the consequence of withholding consent without good cause is that a court, judge or jury may, in specified situations including at trial, “draw such inferences from the refusal as appear proper”.

50. Where the intimate search is solely a drug offence search, it is required by section 55(4) to be by way of examination by “a suitably qualified person” i.e. a registered medical practitioner or nurse (section 55(17)). There is no stated requirement as to the sex of the suitably qualified person. Where the search is not solely a drug offence search, it is required to be carried out by a suitably qualified person unless an officer of at least the rank of inspector considers that this is not practicable, in which case it may be carried out by a constable (section 55(5) and (6)). Section 55(7) provides that:

“(7) A constable may not carry out an intimate search of a person of the opposite sex.”

51. Mr Owen KC emphasised the expansive terms of this provision which, he submitted, enacts a ban on the carrying out of intimate searches of persons of the opposite biological sex.

52. There are then specific provisions as to where an intimate search may be carried out (sections 55(8) and (9)) and as to the keeping of records (sections 55(10)-(11)). There are powers to seize items found (sections 55(12)-(13)) and there is provision for an annual report which contains detailed information about the intimate searches carried out in the relevant police area: sections 55(14)-(16).

53. I note that Part V PACE contains a number of other detailed provisions about the duties of officers and the rights of the detained person. These include section 56 which enacts a right to request that a friend, relative, or someone known to them or who is likely to take an interest in their welfare, be told as soon as practicable (as further defined) that they have been arrested and are being detained. Section 57 enacts additional rights for children and young persons to notification of a person responsible for their welfare, and section 58 enacts a right of a person who is arrested and held in custody to consult a

solicitor. These provisions are, in my view, relevant to the question whether there would be any reality to the purported consent of a detained person to a search by an officer of a different biological sex.

54. Part V of the 1984 Act also deals in detail with a range of other procedures including X-rays and ultrasound scans where a person may have swallowed a Class A drug (section 55A), fingerprinting (section 61), impressions of footwear (section 61A), the taking of intimate samples (section 62) and other samples (section 63), DNA profiles (section 63AA et seq) and the photographing of suspects (section 64A). The essential point for present purposes is that the sections which govern these procedures either provide that they may not be carried out without the consent of the detained person (e.g. sections 55A(2) and 62 (subject to section 63B)) or, in most cases, that they may only be carried out in the absence of consent if certain conditions are satisfied (e.g. sections 61(1), 61A(1), 63(1), 63B, 64A). There is also provision, for example, for a person to consent to the retention of fingerprints or DNA profiles which would otherwise require to be destroyed (see sections 63D and 63O). These provisions impose no requirement, one way or the other, about the sex of the officer or the suspect. No doubt this is because, procedures such as X-rays/ultrasound and the taking of intimate samples, which involve a higher degree of intimacy and/or expertise, require to be carried out by registered professionals. Police officers are only authorised to carry out procedures which involve a lesser degree of intimacy or expertise, such as the taking of fingerprints.

55. Finally, section 117 PACE provides:

“117. Power of constable to use reasonable force.

Where any provision of this Act—

(a) confers a power on a constable; and

(b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the officer may use reasonable force, if necessary, in the exercise of the power.”

56. This section applies to section 54 of the 1984 Act: see *Davies v Chief Constable of Merseyside Police* [2015] EWCA Civ 114.

The relevant provisions of the PACE Codes

57. Section 66 of the 1984 Act empowers the Secretary of State to issue codes of practice in connection with the exercise by officers of certain of their statutory powers and “the detention, treatment, questioning and identification of persons by police officers” (section 66(b)). Section 67 enacts further powers of the Secretary of State in relation to codes of practice and an obligation to consult before issuing a code or any revision of a code (section 67(4)). A code or revision of a code does not come into operation “until the Secretary of State by order so provides” (section 67(5)). That power is exercisable by statutory instrument (section 67(6)) and any order bringing into effect a code or revision to a code “may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House” (sections 66(7) and (7A)).

58. Section 39(1)(a) of the 1984 Act provides that it is the duty of the custody officer at a police station to ensure that “all persons in police detention at that station are treated in accordance with this Act and any code of practice issued under it and relating to the treatment of persons in police detention;..”
59. As noted above, PACE Code C is the “*Revised Code of Practice for the detention, treatment and questioning of persons by Police Officers*” dated December 2023. For present purposes it is sufficient to note that:
- i) Annex A deals with “Intimate and Strip Searches” in some detail. As would be expected, it reflects the position in the 1984 Act itself. It therefore states in terms that intimate searches which are carried out by a police officer and strip searches must be carried out by an officer of the same “sex” as the detainee, albeit there are then cross references to Annex L (as to which see, further, below). There is also guidance on the approach to consent in relation to intimate searches. [11(d)] of Annex A requires that a strip search “shall be conducted with proper regard to the dignity, sensitivity and vulnerability of the detainee in these circumstances, including in particular, their health, hygiene and welfare needs”.
 - ii) Annex L, which I note was added with effect from 10 July 2012, deals with “Establishing Gender of Persons for the Purpose of Searching and Other Procedures”. This Annex accepts that the effect of a gender recognition certificate issued under the Gender Recognition Act 2004 is that a person’s acquired gender and their sex are the same (and therefore may be inconsistent with the decision in the *For Women Scotland* case). Annex L goes on to give guidance on how to establish whether the person concerned should be treated as male or female where PACE Codes state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person who is subject to the search or other procedure, or they require action to be taken or information given which may differ according to whether the detainee is treated as being male or female. The essential position under Annex L is that the suspect should not be asked whether they have a GRC. If there is any doubt as to whether the person should be treated or continue to be treated as male or female (as the case may be) they should be treated according to their preference unless it is clear that their expressed preference does not accurately reflect their predominant lifestyle, in which case the latter should prevail. If the person does not express a preference, their predominant lifestyle should also prevail.
60. As noted above, the Defendants do not rely on Annex L as justifying the approach to strip searches in the Guidance, and the Secretary of State pleads in her Acknowledgment of Service that she “is currently considering her position in relation to whether and how to update Annex L to Code C”. However, Ms Barton KC pointed out, in the course of her submissions, that Annex L indicates a view on the part of Parliament that consent has a role to play in this context.
61. It is also relevant to note that [1.5] of PACE Code A – “*Revised Code of Practice for the exercise by Police Officers of Statutory Powers of stop and search*” – dated January 2023 provides, in relation to powers of stop and search under section 1 of the 1984 Act, that:

“An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry.”

62. However, [3.6] of Code A provides that:

“Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it. (See Code C Annex L and Notes 4 and 7.)” (emphasis added)

63. Again, I note that the ability to depart from the general principle by consent is said to be derived from Annex L.

The arguments of the parties

The Claimant’s position

64. Mr Owen’s essential point was that the position under the 1984 Act and Annex A of PACE Code C could not be clearer. There is no requirement for a search to be carried out by an officer of the same sex in the case of stop and search powers under section 1. Nor is there such a requirement in the case of a search on arrest pursuant to section 32. This is because these sections do not authorise the removal of anything more than outer clothing. Where, however, a search will go further there are clear statements in the 1984 Act itself, i.e. in the primary legislation, that it can only be carried out by a person of the same biological sex. These statements are repeated in Annex A to PACE Code C. In the case of strip searches and intimate searches, police officers simply have no power, under the 1984 Act, to carry out searches of people of a different biological sex. On the contrary, such searches are expressly forbidden.
65. Mr Owen described section 54(9) and the similar provisions in sections 54A, 54B and 55 as “same sex guarantees” which amount to statutory duties on the part of police officers. He emphasised the intrusive nature of a strip search and the vulnerable position of the detained person (see, e.g. the decision of the Supreme Court of Canada in *R v Golden* [2001] 3 SCR 679 at [90]) which, he submitted, mean that the conditions for such searches are a matter for Parliament and not the police or citizens. He argued that these provisions are important protections for the detained person, but also for the officer who may otherwise be required to carry out intrusive and potentially unpleasant searches of difficult suspects. He pointed out that the legislation does not make any provision for derogations from these guarantees and, in contrast to other areas of the 1984 Act, nor is there provision for consent in section 54.
66. Mr Owen submitted that there is no power at common law, independent of PACE, to carry out a strip search of a private citizen on the basis of consent, and it is not open to the police to “contract out” of the PACE framework or to create a “shadow regime” for

transgender people. He emphasised that the logic of Ms Barton’s argument is not confined to strip searching: if it is possible, under the common law, to agree to depart from the PACE protections by consent, this principle would apply to a wide range of PACE provisions and would significantly undermine the aims of the statute and the Codes.

67. In this connection, Mr Owen took me to Chapters 1 and 3 of the 1981 Royal Commission Report which, he emphasised, was important context for the Police and Criminal Evidence Act 1984. He submitted that the aim of the 1984 Act was to rationalise and codify police powers and he relied on section 53 which, as noted above, abolished any rule of common law which authorised searches of people in detention at a police station or intimate searches by a constable. He submitted that on the true construction of the relevant provisions of the 1984 Act they extinguished any ability which there might have been to consent to strip searches, and he relied on an account of the position in English law given by in *R v Golden* (supra) at [57]-[58], albeit the Supreme Court of Canada in that case was not concerned with the question whether a strip search may be carried out on a consensual basis.

The Defendants’ submissions

68. Ms Barton’s argument was that, first, a police officer has the same powers and rights as any ordinary citizen as well as additional powers conferred on them which are specific to their office and which authorise them to do things which would otherwise be unlawful. She relied on *R (Centre for Advice on Individual Rights in Europe) v Secretary of State for the Home Department* [2018] EWCA Civ 2837, [2019] 1 WLR 3002 in which there was a challenge to an operational and intelligence partnership between the Home Office and the Metropolitan Police. Under the partnership, European Union and European Economic Area nationals who had been arrested on suspicion of committing an offence, and were in police custody, would routinely be asked questions by immigration officials or the police about their nationality and the basis on which they were exercising their European Union Treaty rights to reside in the United Kingdom. This practice was challenged, in part on the basis that the questioning of arrested persons by police officers was not for lawful policing purposes and was therefore unlawful. The Court of Appeal rejected this challenge. At [38] to [39] Lady Arden JSC said:

“38.....police officers do have power at common law to ask questions of individuals and provide the answers to the Secretary of State in order to assist him in the exercise of his governmental function of enforcing immigration law....First, as a matter of capacity, a police officer has the power to do anything an ordinary citizen can do, including non-coercive questioning of a person in custody; secondly, and in any event, the questioning is for a police purpose.

39 On the first point, a police force is no more nor less than a number of police officers each of whom has the same powers and rights as an ordinary citizen, so they may, as a matter of vices, do anything that a natural person could do without the use of coercive powers, including asking questions that a member of the public could lawfully ask. It is true that police officers have particular duties and obligations, and have powers additional to those of members of the public and specific to their office that authorise the police to do things that would otherwise

be unlawful. However, in our judgment, these duties and powers do not constrain or restrict the powers and rights police officers have as ordinary citizens.”

69. The Court went on to say that this did not mean that police officers were entirely unconstrained by the law:

“40....The police, like any other public body, are subject to the constraints of public law; they must therefore act reasonably, and in good faith and in accordance with any other public law duties. What they do not have to do however is to find some specific police power to enable them to do something ordinary citizens can do.” (emphasis added)

70. Second, Ms Barton submitted that the general rule is that, subject to public interest considerations in certain limited circumstances, physical interference with another person’s body is lawful if s/he consents to it: *F v West Berkshire HA* [1990] 2 AC 1 at 72F-G. Although a strip search would otherwise amount to an assault, there is no policy reason why a person cannot consent to one, such as was identified in *R v Brown* [1994] 1 AC 212 (sado-masochists’ consent to actual bodily harm no defence to charges under sections 20 or 47 of the Offences Against the Person Act 1861).

71. Third, nor does the fact that the context for any consensual search would be that the person was detained in a police station, of itself, mean s/he is legally incapable of giving consent, and that the purported consent of the detained person is therefore necessarily vitiated. Whether there is consent would be a question of fact based on the particular circumstances of the case: see *Freeman v Home Office (No 2)* [1984] QB 524 at 542H-543A, 555G and 557C.

72. Fourth, if that is right, the question as framed by Lord Hutton in *R (Rottman) v Commissioner of Police of the Metropolis* [2002] AC 692 at [75]:

“...is not whether PACE saved the common law power—rather the question is whether PACE extinguished it...It is a well-established principle that a rule of the common law is not extinguished by a statute unless the statute makes this clear by express provision or by clear implication.”

73. Ms Barton’s submission was that Part V of PACE is concerned with the additional, “coercive” search powers of police officers in Lady Arden’s formulation at [39] of her judgment in the *Centre for Advice on Individual Rights in Europe* case (see [69], above). It replaced the existing coercive powers of a constable to search a person whilst they were detained at a police station, and/or to carry out an intimate search, which existed under statute and at common law (see section 53). But it did not, expressly or by implication, affect or extinguish the ability of any private citizen, and therefore any police officer, ‘A’, to search another person, ‘B’, with the agreement of B. There is therefore nothing in law to prevent a police officer and a transgender person of different biological sexes from agreeing that the latter will be subjected to a strip search by the former.

74. Ms Barton highlighted the important role of consent in policing and, by way of a riposte to Mr Owen’s reliance on the Royal Commission Report, she referred me to [3.2] and [3.3] of that Report, which recognised this. She also gave various examples of where common law powers sit alongside coercive powers: see [30] of the Defendants’

Detailed Grounds of Defence. In her skeleton argument she highlighted, by way of example, PACE Code B on “*Searches of premises by police officers and the seizure of property found by police officers on persons or premises*” where, at [5] and [7.1], a power to search premises with consent exists alongside a coercive power to do so, and the power to seize items is not affected by the fact that the search was carried out by consent.

75. Ms Barton was clear that her argument involves the strip search taking place on the basis of consent to the search itself as well, as agreement to it being carried out by a person of a different biological sex. She pointed out that under the Guidance it would only take place subject to all other conditions under PACE being satisfied. But she agreed that this was essentially a voluntary position because the basis for the search taking place was the consent of the parties and, on her proposed analysis, it took place outside the PACE framework. She agreed that the logic of her argument was that an officer and another person could agree to the carrying out of a strip search although none of the other PACE conditions or requirements for the search were met or observed. Indeed, the suspect need not be a transgender person as, on her argument, the ability to agree to a consensual search is enjoyed by all citizens. She also recognised that the logic of her position that there may be “contracting out” of the 1984 Act had potentially wider consequences than just in relation to strip searches.
76. Ms Barton submitted that the key constraint on an agreement to depart from the PACE framework, assuming that there is an agreement which is in principle effective at common law, is where Parliament has indicated, through the terms of the 1984 Act or one of the PACE Codes, that consensual arrangements are not permitted and/or that failure to comply with the requirements of PACE renders an act “unlawful”. She gave, as an example of the former, [1.5] of PACE Code A which, as noted above, prohibits the exercise of stop and search powers where no power to search is applicable, even if the person is willing to submit voluntarily. As an example of the latter, she referred to section 28 of the 1984 Act which states, in terms, that an arrest will not be lawful unless it complies with the requirements of that section (see sections 28(1) and (3)). She also appeared to accept that, more generally, the true construction of a given provision or provisions may be that consensual departures from them are not permitted.
77. Ms Barton initially rejected, and then showed little enthusiasm for, an analysis which meant that there was a more limited detachment of the proposed strip search from the statutory framework which I explored with the parties. This was that the statutory provisions could be seen as enacting powers to search etc which only exist if certain conditions are satisfied (e.g. the search is for a particular purpose, or there are reasonable grounds to suspect etc), together with constraints which serve to protect or give rights to the person searched. For example, under section 54(6) a power to search arises “if it is considered necessary to enable a custody officer to carry out the duty under subsection (1)” etc but, in order to protect the detained person, the search must be carried out by a person of the same biological sex. On this analysis, the power to search arises under the 1984 Act but the protection from being searched by a person of a different biological sex is capable of being waived by the detained person. Ms Barton said that the strength of her proposed approach was that it only worked if the officer also consented, whereas an approach based on waiver of the so-called “same sex guarantee” by the suspect would permit an officer to be ordered to carry out the search.

The European Convention on Human Rights (“ECHR”)

78. Both sides pointed out that there are potential human rights implications according to which of their approaches is adopted. Mr Owen pointed out that strip searching is capable of engaging Articles 3 and/or 8 of the ECHR: *BK v Secretary of State for Justice* [2015] EWCA Civ 1259 at [51(vi)], *Yankov v Bulgaria* (39084/97) (2005) 40 E.H.R.R. 36; and *Wainwright v UK* (2007) 44 E.H.R.R. 40 at [41]-[43]. He also referred to *Valasinas v Lithuania* (Application 44558/98), in which the European Court of Human Rights found a violation of Article 3 ECHR where a male prisoner had deliberately been subject to a strip search in front of a female visitor, including having his genitals touched by the prison guard conducting the search.
79. Mr Owen drew attention to the position of the detained person as well as the possibility that a female officer would find it unpleasant or distressing to search a male to female transgender detained person. Ms Barton acknowledged the sensitivity of a strip search but pointed out that there might be cases (e.g. where the detained transgender person has undergone reconstructive surgery) where the requirement for a same biological sex search was also difficult for the officer (e.g. because a female officer would be required to search a female detained person with male genitalia). Ms Barton also emphasised the dignity of the transgender person and the fact that any officer who did not wish to carry out a strip search of such a person was not obliged to do so and, having consented, was entitled to withdraw their consent if difficulties arose.
80. However, neither side suggested that the ECHR or the Human Rights Act 1998 requires a particular result in the present case. Neither submitted that a requirement that strip searches be carried out by a person of the same biological sex, or the ability to agree to a strip search by a person of a different sex, is either compatible or incompatible with the ECHR in the case of a transgender detained person. It is therefore unnecessary for me to determine this issue.

Discussion

81. Ultimately, Mr Owen appeared to agree that the issue in this case resolves itself into the question whether the terms of the Police and Criminal Evidence Act 1984 and the relevant PACE Codes have excluded or extinguished any ability at common law to consent to a strip search.
82. In his skeleton argument, Mr Owen suggested that what Lady Arden said at [38]-[40] of her judgment in the *Centre for Advice on Individual Rights in Europe* (supra) case about police officers having the same capacity as ordinary citizens (see [68] and [69], above), was context specific. The issue in that case was whether police officers had a power at common law to ask an individual questions and provide the answers to the Secretary of State to assist in regulating immigration. Moreover, the Court of Appeal considered cases such as *Rice v Connolly* [1966] 2 QB 414 and *Steel v Goacher* [1983] R.T.R. 98 which involved, respectively, an officer asking a suspect for his name and address and another one asking a suspected drunken driver to take a breathalyser test. On the facts, they were therefore a long way away from the question in the present case.
83. This argument was not at the forefront of Mr Owen’s oral submissions and, insofar as it was still relied on, I reject it. Lady Arden was clearly stating a general principle. I note that this was based, amongst other things, on the decision of the Divisional Court

in *Collins v Wilcock* [1984] 1 WLR 1172 where the issue was as to what degree of touching of a member of the public by a police officer would amount to an assault. At [42] and [43], she cited passages from the judgment of Robert Goff LJ in that case which also made the point that “a police officer has rights as a citizen as well as his duties as a policeman”. The answer given by the Divisional Court was that the degree of touching which would be permissible by a member of the general public was permissible in the case of a police officer who tapped a person on the shoulder to get their attention. Anything which went beyond this was unlawful unless it was validly done pursuant to relevant police powers.

84. As for Ms Barton’s second proposition, Mr Owen argued in his skeleton that the precise ratio of *R v Brown* (supra) is that the fact that the victim has consented does not afford a defence to a charge under sections 20 or 47 of the Offences Against the Person Act 1861 absent good reason, and the satisfying of sado-masochistic desires does not constitute such a reason. “*Brown* has nothing to do with the exercise of police power” and the ratio of that case cannot “be contorted into a basis for the operation by the police of a consensual strip search regime in breach of a statutory duty. Whether there is a legal basis for a private citizen to consent to a strip search in breach of a statutory duty is a question which engages serious considerations of public policy and not a mechanistic analysis of whether consent can freely be given”.

85. Again, this point did not feature prominently in Mr Owen’s oral submissions. He did not develop arguments of public policy, as opposed to statutory construction, as to why a person cannot consent to a strip search at common law. The principle was stated by Lord Goff in *F v West Berkshire HA* (supra) at 72F-G:

“...as a general rule physical interference with another person's body is lawful if he consents to it; though in certain limited circumstances the public interest may require that his consent is not capable of rendering the act lawful.”

86. Provided the consent is genuine and the search is lawful in all other respects, I do not consider that the public interest requires that the law should refuse to recognise the consent of a person to a strip search which is in accordance with their preference to be searched by a person of a different sex. Under the Guidance, absent such consent the search will be lawfully carried out in any event but not in accordance with the person’s preference. Although a strip search is intrusive, this is not a situation, like *Brown*, where the person is “consenting” to the infliction of physical injury. Moreover, the effect of the ability to consent to a search by a person of the opposite biological sex is to mitigate the distress which the detained transgender person may feel, rather than to increase it. I am doubtful about Mr Owen’s proposition that the “same sex guarantee” was intended to protect police officers as well as detained persons but, even if it was, the Guidance makes clear that it is a matter for the individual officer as to whether they are willing to undertake a search of a person of a different sex and that they may withdraw their consent at any time.
87. As to Ms Barton’s third proposition, Mr Owen’s skeleton argument contended that *Freeman v Home Office (No 2)* (supra) was premised on the doctor in question having the requisite power to carry out the relevant medical procedure in relation to the prisoner. However, in my view this misses the (limited) point which Ms Barton sought to derive from this authority. She relied on the fact that McGowan J and then the Court of Appeal rejected the proposition that the prisoner in that case was, in law, incapable

of consenting to the treatment because he was at all material times in custody. Her submission which, notably, Mr Owen did not ultimately contradict, was that the fact that the person who is to be strip searched is in custody does not mean that they are incapable of giving valid consent. Whether they have genuinely done so will, however, depend on the evidence and all of the circumstances of the case. As I have noted, the 1984 Act includes certain safeguards (the right to a person being notified, additional safeguards for children and young persons, and rights to legal advice under sections 56 to 58) which tend to support the proposition that there may be genuine consent in a given case.

88. So I agree with Ms Barton's analysis thus far. In principle, at common law a detained person may express a preference that they will be strip searched by a person of a different biological sex, and a police officer may agree to do so. This brings me to the fourth, and key, question, which is whether the terms of the 1984 Act nevertheless prevent this.
89. Whilst Parliament may abolish, modify or displace any common law rule expressly or by implication, the starting point is that there is a general presumption that it does not intend to do so. This is sometimes viewed as a wider principle of legal policy that the law should not be altered by a side wind, as opposed to deliberately and by a clear and transparent process: see Bennion, Bailey and Norbury on Statutory Interpretation (9th Edition), Section 25.6.
90. In *R v Secretary of State for the Home Department, ex p Pierson* [1998] AC 538 at 573 Lord Browne-Wilkinson said:
- “It is well established that Parliament does not legislate in a vacuum: statutes are drafted on the basis that the ordinary rules and principles of the common law will apply to the express statutory provisions..... As a result, Parliament is presumed not to have intended to change the common law unless it has clearly indicated such intention either expressly or by necessary implication..... This presumption has been applied in many different fields including the construction of statutory provisions conferring wide powers on the executive.”
91. This is the principle which Lord Hutton applied at [75] et seq of the *Rottman* case (see [72], above). Applying it in the present case, it seems to me that a key answer to Mr Owen's argument is that the relevant parts of the Police and Criminal Evidence Act 1984 for present purposes are concerned with the codification, and placing on a statutory footing, of the *coercive* powers of the police. Section 53 therefore abolished the coercive search powers which existed before the 1984 Act. This is apparent from the terms of section 53 which purports to abolish “certain powers of constables” and laws which “authorise” the officer to search the detained person. By contrast, under Ms Barton's approach, the authorisation of the officer comes from the consent of the person to be searched rather than from legislation or common law powers. And the officer acts on the basis of his or her capacity as a citizen rather than exercising “powers of constables”.
92. But the fact that Part V of the 1984 Act is concerned with the additional powers of police officers *as such* is also apparent from consideration of the other provisions of this Part. The other provisions in Part V deal with the circumstances in which a police officer may authorise or take a given step without the consent of the detained person,

and in one or two cases provide that they are not able to do so without consent. The effect of sections 54(9), 54A(7) and 54B(6) is that the so-called “same sex guarantee” applies to the exercise of these, coercive, powers. The same is true of Annex A to PACE Code C. The relevant parts of the statute are not concerned with the capacity of police officers, as citizens, to enter into consensual arrangements with other members of the public, including in the course of carrying out their work. It follows from this that the common law ability to enter into such arrangements is not inconsistent with, or repugnant to, the relevant provisions of the 1984 Act and the two *can* stand together (see Section 25.8 of Bennion). That being so, the enactment of the 1984 Act did not, expressly or by implication, extinguish the ability of a police officer, at least in principle, to enter into such arrangements.

93. I accept that the words of section 53 would not be decisive if the other relevant provisions of the 1984 Act, individually or cumulatively, showed that any ability to carry out a strip search by consent at common law had been extinguished when the Act came into effect. And I accept that the wording of a particular power under the 1984 Act could demonstrate that there is no room for a consensual arrangement which departs from it, even if there is such room in the case of other statutory powers. My conclusion is therefore limited to the position in relation to strip searches which, absent consent, are authorised by sections 54-54B and Annex A to Code C. I express no view, for example, on intimate searches and the effect of the expansive terms of section 55(7), given that these are not the subject of the Guidance. But one can see that the detailed terms of section 55, and other considerations, may support a different conclusion in relation to this type of search.
94. I have considered Mr Owen’s points that there is no provision for derogation under the relevant provisions of the 1984 Act and/or that the references to consent in some of the sections stand in contrast to section 54. But I find them unpersuasive.
- i) As far as the former is concerned, the issue is whether the terms of the 1984 Act are inconsistent with a continuation of the common law position rather than whether there is provision for derogation from the statute. It is unsurprising that there is no provision for derogation from the exercise of coercive powers.
 - ii) As for the second point, it is true that the references to consent which appear in a number of the sections in Part V are absent from section 54, but I do not read much into this. It is important to bear in mind that some of these sections were added to the 1984 Act and some make reference to consent whereas others do not. Parliament may have taken the view, when the 1984 Act was passed, that it was not necessary to say anything about whether there could be consent to a strip search. The better view is that the ability to consent is assumed in most sections (which only operate if consent is refused or cannot be obtained) and that there is no apparent reason why there should be such an ability in the case of these sections but not others in Part V, such as section 54. This point is illustrated by the fact that section 54A assumes that a person may consent to what may be a strip search, whereas it is not easy to see why this would be the position for searches or examinations which are to ascertain identity, but not strip searches for the purposes identified in sections 54 and 54B.
95. In short, I do not accept that the terms of sections 54 to 54B of the 1984 Act, read in the context of the statute as a whole, extinguish the possibility of a strip search being

carried out on terms as to the sex of the police officer which are otherwise lawfully agreed between the officer and the person to be searched. Nor do I accept that the existence of this possibility is inconsistent with these provisions, or with the aims of the 1984 Act as a whole.

Conclusions

96. For all of these reasons, I accept the analysis put forward by Ms Barton and dismiss the Claim.

Post script

97. This judgment was circulated to the parties in draft on 28 July 2026. On 29 July, a letter to me from the Good Law Project, dated 22 June 2026, was sent through to my clerk by the Administrative Court Office. This said that it was unfortunate that no LGBT+ organisation had presented argument or evidence at the hearing and it requested permission to intervene in the case to make submissions that:
- i) The *For Women Scotland* case does not establish that “sex” in the context of the Police and Criminal Evidence Act 1984, as opposed to the Equality Act 2010, means “biological sex” and/or that the position may be different for people with Gender Recognition Certificates.
 - ii) The court should consider the impact of section 3 of the Human Rights Act 1998 when reviewing the legislation.
98. It was proposed that I grant permission and allow 7 days for written submissions.
99. I decided to refuse this application. Firstly, it came too late. The Good Law Project letter indicates that they were aware of the hearing 6 days before it took place on 16 June. They had a “junior representative” at the hearing who gave no indication of any wish to intervene, and they did not write until 6 days after the hearing. The arguments have been made by the parties and it is likely that they would wish to respond to any written submissions made by Good Law Project. I am not willing to reopen them.
100. Secondly, my judgment keeps open the question of the effect of the *For Women Scotland* case in this context. I also make clear that I have not determined any argument under the Human Rights Act 1998 and, in any event, I note that the Good Law Project does not identify any specific human rights argument which they wish to put forward, or suggest that such an argument would be decisive.
101. It is unfortunate that the 22 June letter did not find its way to me for just over 5 weeks, but my decision would have been the same even if it had come to my attention sooner. In the event of an appeal, the Good Law Project will be able to make any application to intervene to the Court of Appeal.