

Press Summary: Judgment handed down on Friday 25 September 2026

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

Before :

PRESIDENT OF THE KING'S BENCH DIVISION

THE HON. MRS JUSTICE HEATHER WILLIAMS DBE

Between :

THE KING (on the application of SEX MATTERS)

Claimant

- and -

DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

Note: This summary is provided to assist in understanding the decision of the court. It does not form part of the decision or the reasons for the decision. The only authoritative document is the full judgment of the court, which will be published on the National Archives (<https://caselaw.nationalarchives.gov.uk/>).

The claimant, Sex Matters, challenged the legality of guidance entitled *Deception as to Sex* issued by the Director of Public Prosecutions to specialist Crown Prosecutors who prosecute rape and sexual assault cases. Sex Matters argued that this guidance is legally flawed because it is premised on the basis that a suspect's deception as to their asserted gender identity is capable of vitiating a complainant's consent to sexual activity for the purposes of section 74 of the Sexual Offences Act 2003.

The claimant relied upon two specific grounds of challenge: (i) that the Guidance is wrong in law in that a deception as to "gender identity" (in contrast to a deception as to the suspect's sex) is not capable of vitiating consent under section 74 of the 2003 Act because it is not sufficiently related to the nature, purpose or performance of the sexual act itself; and (ii) in terms of gender identity, the Guidance is so unclear as to what may be legally relevant to a Crown Prosecutor's decision-making and at what stage of the analysis, that it presents a misleading picture of the true legal position.

At paragraph 6 of the judgment, the Court emphasised that it was solely concerned with addressing these legal issues. The claimant campaigns on matters of sex in law and policy in the United Kingdom, based on its position that biological sex is real and immutable (a view sometimes termed "gender critical"). There are others, including in the trans community, who

hold different views. It is not the Court's role to express any opinion, one way or the other, on the merits of this wider debate and the Court's judgment is not to be read as providing support for or diminishing the views of either side in this debate.

The Court did not accept either of the claimant's grounds and dismissed the claim.

For the reasons explained at paragraphs 123-134 of its judgment, the Court rejected the proposition that a suspect's deception as to their gender identity could never negate a complainant's consent to sexual activity for the purposes of section 74 of the Sexual Offences Act 2003, whatever the circumstances. The Court stressed at paragraph 157 that its decision went no further than that. The Court did not conclude that a deception as to gender identity *will* negate a complainant's consent to sexual activity; whether or not a particular deception has that effect will depend on the circumstances and the evidence in the case in question.

For the reasons identified at paragraphs 145-153 of its judgment, the Court rejected the complaint that the Guidance presented a misleading picture of the true legal position.

In addition, at paragraph 149-50 of its judgment, the Court doubted the relevance of the "Trans and non-binary persons – experiences" part of the guidance and whether it was appropriate to include that material in guidance whose purpose is to assist prosecutors in deciding whether a suspect should be charged. That part of the Guidance did not however misstate the law or read in context present a misleading picture of the law.

As explained at paragraphs 7, 17-18 and 160 of the judgment, the Court's conclusions on the claimant's grounds were reached by reference to the text of the Guidance which the defendant has indicated it intends to publish. The parties did not invite the Court to consider separately the text of the June 2026 published version of the Guidance and the Court did not do so.