

Briefing for Parliamentarians, 25th November 2024

The Police and Criminal Evidence Act 1984 (PACE) provides on searching that officer(s) “shall be of the same sex as the person searched”. Previous guidance from the National Police Chiefs’ Council (NPCC) allowing officers to search based on their “lived gender” was withdrawn in January 2024. The NPCC and several police forces are now reviewing their guidance.

BTP’s policy on searching

In November 2024 British Transport Police (BTP) produced its latest [Transgender Search Policy](#). It interprets “sex” to include sex on a gender-recognition certificate (GRC). That means male officers who hold GRCs will search female detainees – even when this is a strip-search (according to the Equality Impact Assessment a detainee can object to any individual officer, but the policy does not say this). GRCs do not require any surgery or hormone treatment. Such officers are highly likely to be identifiable as male.

Sex Matters is preparing to take a judicial review of this policy and has sent a pre-action letter to BTP explaining the grounds for legal challenge, including that the policy breaches Article 3 – the absolute prohibition against subjecting people to inhuman or degrading treatment. The European Court of Human Rights has ruled that this includes being forced to undress in the presence of someone of the opposite sex.

A recent [independent report](#) into custody by Manchester Police found that strip-searches caused severe distress: “They are a profound invasion of people’s privacy and bodily autonomy. They are often experienced as humiliating and degrading.” This is particularly true for women. Being searched by a male person who identifies as a woman will, for many women, be just as traumatic as being searched by any other man. The experience will not change because the officer has a certificate stating his “acquired gender” as female.

Sex Matters argues the policy is unlawful on four grounds:

1. **The policy violates human rights.** It is a violation of Art 3 ECHR for a male officer to strip-search a woman. The practice of not telling women the sex of an officer, or lying to her that the officer is female, is also a violation of Article 8 (privacy) and Article 10 (in relation to freedom to receive information).
2. **The policy amounts to indirect discrimination and harassment against women** because it places women at risk of fear, humiliation, indignity and harassment. Women are more vulnerable and subject to greater taboos about physical modesty, and men are far more likely to perpetrate sex crimes, including physical assault, voyeurism and exposure. Cross-dressing can be a sexual fetish.
3. **The policy frustrates the purpose of legislation.** The requirement in PACE for the officer carrying out a search to be of the same sex as the person searched must be understood as a reference to actual sex, unmodified by a GRC; BTP’s policy is therefore an error of law or *ultra vires* (beyond its authority). PACE also requires full recording of events relating to detainees; misrecording the actual sex of an officer carrying out a search breaches this important safeguard against mistreatment of detainees.
4. **BTP’s [equality impact assessment](#) is inadequate.** No consideration has been given to the impact on people with the protected characteristic of sex, when it is clear that women will be more seriously harmed than men. Nor is adequate attention paid to the protected characteristic of belief.

What the government needs to do

- Instruct British Transport Police to withdraw the policy and immediately state that detainees will be searched under statutory powers **only** by an officer or staff of the same biological sex (and **not** sex modified by a GRC).
- Undertake an urgent review of the searching policies of all police forces to ensure they are lawful.

For more information, see sex-matters.org/BTP-searching
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