

Statement for the Claimant

Witness: Dennis  
Kavanagh

Statement: 1

Exhibits: DK/1-DK/3

Date: 3 July 2025

**IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT  
B E T W E E N :**

**CLAIM: AC-LON-2025-000781**

**THE KING**  
**on the application of**  
**SEX MATTERS** **Claimant**  
**and**  
**DIRECTOR OF PUBLIC PROSECUTIONS** **Defendant**

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**WITNESS STATEMENT OF DENNIS KAVANAGH**

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I, Dennis Kavanagh, of the Gay Men's Network, 71-75 Shelton Street, Covent Garden WC2H 9JQ will say as follows:

1. I make this statement in support of Sex Matters' application for judicial review against the Defendant. The facts stated within this statement are within my own knowledge and belief save where otherwise stated.
2. In this statement I shall provide information about:
  - a) the work of the Gay Men's Network ('GMN');
  - b) GMN's response to the CPS consultation in November 2022;
  - c) GMN's concerns about the current CPS guidance:
    - i) Deception as to sex in the current climate
    - ii) Confusion and misinformation
    - iii) Terminology

## **GAY MEN'S NETWORK**

3. I am a non-practising barrister and one of the three founders and Directors of the not-for-profit private limited company Gay Men's Network. We founded the organisation in autumn of 2021 and were incorporated in April 2022. The company number is 13940153. We are an advocacy group committed to representing the interests of gay men, rooted in the reality of being same-sex attracted.
4. Our beliefs can be expressed in the following four principles, which are at the core of the advocacy work we do:
  - i. Homosexuality is normal.
  - ii. Homosexuality is exclusive by definition and by nature.
  - iii. Homosexual men should be free to live their lives without being disadvantaged, shamed or persecuted on the basis of being same-sex attracted.
  - iv. We have a duty to honour those who paved the way before us, and to ensure a better tomorrow for those following behind us.
5. We focus on engaging with law and policy makers in relation to legislative and policy proposals which are relevant to the above interests. We also volunteer to support other gay men who seek to uphold their rights and interests as same-sex attracted men, when they are confronted with homophobia in its many forms. Our 'Manifesto' is exhibited to this statement at **Exhibit DK/1**.
6. One of the earliest pieces of work we did as GMN was to respond to the public consultation on the government's Conversion Therapy Ban Bill. A number of the government's amendments to the Bill recognised and adopted our recommendations which arose from concerns about how the bill could be applied. Since then, we have made a number of submissions to the UK government and international bodies such as the UN, in its call for evidence on modern homophobia in the UK. We have also sought to engage with charities and private companies when their actions and position appears to conflict with the interests of gay men.

### **GMN's response to CPS consultation**

7. GMN responded to the Crown Prosecution Service's consultation on its guidance on Deception as to Gender (as it was then called) published in September 2022. Our response is exhibited to this statement at **Exhibit DK/2**. The title of our response is

“Deception as to Biological Sex in Cases of Rape and Serious Sexual Offences”. It is dated November 2022.

8. It is a lengthy response given the number and gravity of the errors and misconceptions that appeared in that document. We draw out below only those issues which remain relevant to the current iteration of the Guidance as served on Sex Matters on 6 June 2025.

### **GMN’s concerns about the current CPS Guidance on Deception as to Sex**

#### ***Deception as to sex in the current climate***

9. Deception as to sex for the purposes of sexual activity is a growing issue for male homosexual victims. The practice of trans identifying females concealing their sex, colloquially known as ‘stealthing’, is a known issue in homosexual male spaces. In our response to the CPS’s consultation we drew their attention to this (page 32):

*We would urge the Service to rapidly acquaint itself with the practice of “stealthing” (trans identified females entering single sex male sexual spaces), concealing their genitals and engaging in sexual contact with unwitting homosexual males. The service should know this is a subject discussed within the trans identified female community and that we are aware of guidance which appears to be official from a health body advising such persons on how to conceal their biological sex from homosexual men.*

10. The health body to whom we were referring is Clinic Q<sup>1</sup>. Relevant excerpts of their publication directed at trans identifying females (trans men) is exhibited at **Exhibit DK/3**. Following criticism about the lawfulness of this advice on social media from myself and others, they removed this guidance from their website. However, it sits within a broader context in which the centrality of biological sex to sexual orientation is downgraded and even presented as intolerance.
11. Consent by deception as to sex has been identified by some trans supporting lobby groups and charities as a target for reform with the ultimate aim of removing the right of the victim to obtain information concerning the sex of their potential partner prior to sexual contact. For example, Stonewall’s publication ‘Changing Laws: Stonewall’s response advocates a position in favour of amending “prosecution policy” (presumably like the one under challenge) to focus on the trans person’s right to

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<sup>1</sup> <http://cliniq.org.uk/>

privacy in order to “*achieve the best possible legislative framework to support the rights of trans people*”. We provided the CPS with a copy of this campaign agenda with our response to the consultation (see **Exhibit DK/2**, page 10). It is no accident that the definition of “trans” given in the CPS guidance in 2022 is almost word for word that of Stonewall. The consultation document from September 2022 seemed to share Stonewall’s position; the section entitled “Evidential considerations” advised that a suspect’s trans identity, if genuine, should be treated as evidence that a deception as to sex was not deliberate, and that trans suspects had no duty to disclose “gender history” (by which they meant “sex”). These passages were removed after the consultation was closed, but much of the same section has been retained as “Trans and Non-Binary Experiences”. To the extent that the CPS’s guidance has, inadvertently or not, furthered any third-party agenda to *change* the law, that is clearly outside of its proper role and remit.

### ***Confusion and misinformation***

12. We are concerned that any guidance which implies there should be a downgrading of culpability when the act of deception as to sex is carried out by a trans identifying person will create a second-class status for some victims of rape, including those men for whom the GMN seeks to advocate. It is likely to weaken the State’s response to serious sexual offending of this nature which serves no legitimate purpose.
13. We are concerned that the lack of clarity in the guidance at a number of points will create or underscore misunderstanding of the rights trans identifying people have in this most intimate of contexts, namely, whether or not they have a right to privacy which trumps the right of their sexual partner to make an informed choice about sexual activity, in particular by reference to the biological sex of their partner. If the guidance could be read or understood to mean that there is a special status afforded to those alleged perpetrators because of their trans identifying status, that could lead to many people fundamentally misunderstanding the nature of liability for this serious crime with serious implications for both suspects and victims.
14. Law and policy must be precise, clear and accessible to the public. Incoherence or ambiguity in this most intimate of spheres in the current context is likely to be misinterpreted or even exploited by those who seek to further an agenda of radical reform of the law that prioritises the suspect’s privacy over the rights of victims to give or withhold consent freely.

## **Terminology**

15. We remain concerned about the frequent use of the term 'gender identity' as an equivalent of sex throughout the guidance. As we said in our consultation response (at page 19) this is a heavily contested concept. Further there is no stable definition of the term. Attempts to do so have led to an unpredictable list of faddish labels such as "genderqueer" (which many in the gay community find offensive). What is included as a 'valid' gender identity is highly subjective and prone to frequent change as labels fall in and out of fashion.
16. Moreover, the very concept of gender identity is part of a belief system that only some people adhere to. It is metaphysical or quasi-religious in nature, based as it is on some version of an inherent essence or soul of a person that exists separately to the material reality of the body. If the guidance were to direct prosecutors to consider the 'soul' of a suspect or victim, one might rightly say that souls are part of a person's belief system and not facts, and the language used by the DPP should reflect that. In our view, the language adopted by the DPP should not be anything other than a neutral exposition of the relevant law, and belief systems should be recognised and described as such. Where belief systems are relevant to the offending at issue, that relevance should be identified clearly and guidance should not stray beyond those limits.

## **Conclusion**

17. The GMN supports the intervention of the court to quash this guidance as it is likely to lead to serious errors by prosecutors. Further, it may contribute to a mistaken view of the criminal law in this area which is likely to be harmful to the wider public including to those we represent.

### **Statement of truth:**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: Dennis Kavanagh  
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(DENNIS KAVANAGH)

Dated: 4 July 2025  
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