

**Gay  
Men's  
Network**



**DECEPTION AS TO BIOLOGICAL SEX  
IN CASES OF RAPE AND SERIOUS  
SEXUAL OFFENCES**

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**Response to the Crown Prosecution Service  
consultation**

**November 2022**

## Executive Summary

- The Gay Men’s Network is a not-for-profit grassroots organisation dedicated to fighting all forms of homophobia and advocating for the interests of male homosexuals.
- Male Homosexuals can be victims of sex by deception offences and “stealthing” (the practice of trans identified females concealing their true biological sex) is a growing issue in homosexual male spaces. We are therefore concerned to protect the interests of homosexual males against sex crime by deception and we believe that everyone should be equal before the law with no special treatment for some defendants and no second-class status for some victims.
- We are deeply concerned that the CPS consultation document is written in the language of gender identity ideology. It speaks about sex being assigned at birth, “genderqueer” identities and imposes upon CPS staff the duty of assessing the veracity of various “gender identities” while simultaneously stating that they cannot be defined. This is incoherent. This guidance uncritically accepts and reproduces highly political and highly contested language.
- The proposed guidance creates a series of hurdles which mitigate against the prosecution of defendants which would have the effect of failing victims of sex crimes by deception. RASSO lawyers are mandated by this policy to consider irrelevant matters suggesting they should weigh against a decision to prosecute.
- Specifically, this guidance would require CPS lawyers to assess whether a Defendant is successfully “living as a man/woman” or whether they have obtained a GRC. These matters depend on offensive and dated stereotypes about how men and women live and are irrelevant to the important factual question of whether a victim of sex crime has been deceived. This exercise is also completely unknown to law and there is no basis for it in Court of Appeal (Criminal Division) authority or statute.
- More worryingly, the guidance engages in “victim-blaming” mandating CPS staff to ask whether a victim of sex crime by deception “closed their eyes” to the obvious. This has deeply disturbing parallels to saying, “she was asking for it”. We consider this sort of rhetoric deeply unfortunate particularly in the context of this category of offending. The

guidance describes itself as “offender centric”. We agree. It is offender centric to the virtual exclusion of fair consideration for the victims of crime.

- This guidance misstates the law in *Regina v McNally* by suggesting a “failure to disclose” cannot amount to a deception. Their Lordships in *McNally* said the opposite. It also misstates the law frequently alternating between suggestions that “active” or “deliberate” deceptions are required to vitiate consent. That is incorrect. The law simply requires deception. The effect of these misstatement is to make prosecutions less likely.
- The cumulative effect of the guidance is to make prosecutions in this area less likely which has long been an objective of gender identity ideologues and their charities. We believe this to be a significant and alarming failing by the CPS.
- We therefore take the view the CPS is undeniably “institutionally captured” by gender identity ideologues and that this guidance will fail victims of crime. We urge a radical and comprehensive re-think reflecting the law in this area and properly weighing in the balance the interests of victims. Please see our full consultation response [here](#).

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# Introduction

## About Gay Men's Network

The Gay Men's Network is a grassroots, not-for-profit organisation of gay men from a diverse range of backgrounds and professions. We have pooled our expertise and resources to come together to respond on this vital issue. Our primary objectives are to fight homophobia in all its forms and to advocate for the interests of gay men in the current social conversation which is often framed as a conflict between women's and trans rights.

## Our approach to this response

In our response we have analysed the relevant case law in this area and have We have analysed the relevant case law, policy and statutes in this area.

Our response is based on the rule of law as enacted by Parliament and interpreted by the Court of Appeal (Criminal Division) and Supreme Court.

We have always considered the fundamental interests of victims of sex crimes by deceptions in our response.

Before responding to the specific questions in the consultation, we provide some general comments about the proposed guidance and the surrounding social and political context, particularly from the perspective of gay men. Our response is based on the following values:

- Everyone should be equal before the law. There must be no second-class victims or special treatment for certain types of defendants
- The proposed guidance should adequately protect victims of sex by deception and reflect the fact that they are often uniquely vulnerable persons by virtue of their age or disadvantages in social function
- The proposed guidance should reflect the law as promulgated by the Court of Appeal (Criminal Division)
- The proposed guidance should be rational, deal in explicable language and concepts and lend itself to practicable tests to be applied by reviewing lawyers

- The proposed guidance should command public respect by being politically neutral
- The proposed guidance should not impose ideological beliefs on employees of the Service contrary to Equality Act law in this area<sup>1</sup>
- The proposed guidance should consider those with protected characteristics who might be affected by this area which includes homosexual males.

The Service will be aware of the wider social context of an ongoing debate as between those who subscribe to the notion of “gender identity ideology” (the belief that humans possess a “gendered soul”) and the rationalist position that biological sex is immutable, observable and important. Our organisation is dedicated to fighting homophobia in all its forms and advocates for same sex attracted males. We therefore adopt the latter, rationalist position. As this position is based in science, the Equality Act 2010 definition of homosexuality and common sense, it is the position we would expect to see reflected in public bodies such as the Service. We note with regret this seems not to be the case and are bound to draw your attention to the grave risk of “institutional capture” by extremist political ideologies.

## Comments on the framing of the consultation

### Institutional Capture

1. Institutional capture is a phrase connoting the corruption of a public or private body by an ideology by way of internal political activism. In this regard the Service ought to be acute to the threat thereof and guard against corruption of language or policy by lobby groups who seek to impose radical ideology on a public who have had no opportunity to vote on the issues involved. The Service should specifically acquaint itself with the strategies frequently employed by gender identity ideologues which often amounts to plans to effect huge social change by “getting ahead of the government agenda” and using more popular political causes as cover to achieve the objectives of gender identity ideologues.
2. In an article analysing such a strategy<sup>2</sup> in *The Spectator* in 2019, James Kirkup considered a typical document entitled “*Only adults? Good practices in legal gender recognition for*

<sup>1</sup> See Forstater v GCD <https://www.gov.uk/employment-appeal-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-ukeat-slash-0105-slash-20-slash-joj>

<sup>2</sup> <https://www.spectator.co.uk/article/the-document-that-reveals-the-remarkable-tactics-of-trans-lobbyists/>

youth<sup>3</sup>". As will become clear from the quotations below, having identified the objective of the document as being to "remove parental consent over significant aspects of a child's life", he went on to describe three strategies; (i) proposing legislation/policy for which there was no public mandate (ii) avoiding press coverage and exposure and (iii) tying potentially unpopular campaigns to more popular policies. In our view this analysis serves as a useful blue-print example of how gender identity ideologues approach the capturing institutions which the Service should study carefully.

## The objective

"In the words of the report: 'It is recognised that the requirement for parental consent or the consent of a legal guardian can be restrictive and problematic for minors.' You might think that the very purpose of parenting is, in part, to 'restrict' the choices of children who cannot, by definition, make fully informed adult choices on their own. But that is not the stance of the report. Indeed, it suggests that 'states should take action against parents who are obstructing the free development of a ßrequired.' In short, **this is a handbook for lobbying groups that want to remove parental consent over significant aspects of children's lives.** A handbook written by an international law firm and backed by one of the world's biggest charitable foundations."

### (i) Strategy 1: Proposing legislation/policy for which there is no public mandate

"Techniques: 'Get ahead of the Government agenda.' What does that mean? Here it is in more detail:

'In many of the NGO advocacy campaigns that we studied, there were clear benefits where NGOs managed to **get ahead of the government and publish progressive legislative proposal before the government had time to develop their own.** NGOs need to intervene early in the legislative process and ideally before it has even started. This will give them far greater ability to shape the government agenda and the ultimate proposal than if they intervene after the government has already started to develop its own proposals."

<sup>3</sup> [https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO\\_v3-1.pdf](https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf)

## (ii) Strategy 2: Avoiding press coverage and exposure

“According to the report, the countries that have moved most quickly to advance trans rights and remove parental consent have been those where the groups lobbying for those changes have succeeded in stopping the wider public learning about their proposals. Conversely, in places like Britain, the more ‘exposure’ this agenda has had, the less successful the lobbying has been:

‘Another technique which has been used to great effect is the **limitation of press coverage and exposure**. In certain countries, like the UK, information on legal gender recognition reforms has been misinterpreted in the mainstream media, and opposition has arisen as a result. . . . Against this background, many believe that public campaigning has been detrimental to progress, as much of the general public is not well informed about trans issues, and therefore misinterpretation can arise.”

“In Ireland, activists have directly lobbied individual politicians and **tried to keep press coverage to a minimum** in order to avoid this issue.

## (iii) Strategy 3: Tying potentially unpopular campaigns to more popular policies

“Here’s another tip from the document: ‘Tie your campaign to more popular reform.’ For example: ‘In Ireland, Denmark and Norway, changes to the law on legal gender recognition were put through at the same time as other more popular reforms such as marriage equality legislation. This provided a veil of protection, particularly in Ireland, where marriage equality was strongly supported, but gender identity remained a more difficult issue to win public support for.”



3. The Service will no doubt regard the above strategies as contrary to the principles of openness, transparency and democratic legitimacy for vast social change. The Service is of course accountable to ministers and parliament and its task is to effectively enforce, not create, proposed guidance (which in effect amounts to practice and policy just as powerful as any law). This being the case, we are bound to query the degree to which the Service is adequately acute or protected against the real threats of institutional capture and policy subversion by extremist lobbying by ideologues. Given the apparent deficits in this area (which we set out below at paragraphs 11-22) we are bound to draw the Service's attention to extremist lobby group activity around the field of sex by deception.

### **Extremist lobbying in the area of "sex by deception"**

4. The service ought to be aware that gender identity ideologues have long identified the area of "sex by deception" as a target for change by lobbying or challenge by way of judicial review. Their apparent objective is this: to enshrine in law or prosecution policy the principle that no person has the right to definitively know the true biological sex of a sexual partner prior to that becoming obvious in an intimate setting. The service will no doubt reflect that this is an extreme position and patently at odds with the ratio in *Regina v McNally*<sup>4</sup>; namely that a deception as to biological sex has the effect in law of vitiating consent.
5. As Leveson LJ put the matter (at paragraph 26) (emphasis added) "the sexual nature of the acts is, on any commonsense view, different where the complainant is deliberately deceived by a defendant into believing that the latter is a male. Assuming the facts to be proved as alleged, M chose to have sexual encounters with a boy and her preference (her freedom to choose whether or not to have a sexual encounter with a girl) was removed by the appellant's deception".

<sup>4</sup> <https://www.bailii.org/ew/cases/EWCA/Crim/2013/1051.html>

6. So that the service has a clear example of lobby group activity in this area, the extremist gender identity ideology organisation “Stonewall” produced a document entitled “Changing Laws: Stonewall’s response” which deals with sex by deception (Figure 1). The Service will note this organisation proposes to challenge prosecution decisions/policies by way of judicial review and even goes so far as to say it will “amend” prosecution policy.

### **Evidence of institutional capture / extremist lobby group success**

7. Against this background of clandestine attempts to subvert the law in this area by way of institutional capture and stated ambitions to “amend” prosecution policy, we regret to observe that the present consultation is apparently replete with evidence of both. We raise the following six examples of serious concern.

## STONEWALL'S RESPONSE:

Stonewall Scotland and Stonewall Cymru will work with the Scottish and Welsh governments to achieve the best possible legislative framework to support the rights of trans people, and to encourage collaborative working with Westminster colleagues.

### GENDER RECOGNITION ACT

Stonewall will continue to lobby the UK Government, devolved administrations, and obtain cross-party support, to reform the Gender Recognition Act 2004 and to ensure that the legislation is entirely fit for purpose and future-proofed. This will include calling for the removal of the demeaning requirement to provide medical evidence and, instead, establishing a simple administrative process. Stonewall is committed to working with trans people and communities to gather and provide information to the Ministry of Justice on developing a self-declaration process, which will subsequently be informed by trans people in the UK and by global best practice. This will make specific provision for non-binary identities.

### EQUALITY ACT

Stonewall will lobby Government for reform of the Equality Act, to include 'gender identity' as a protected characteristic and to remove the use of the terms 'gender reassignment' and 'transsexual' from the Act. Removing current ambiguities in the Act will ensure that all trans people, including those who identify as non-binary, are unequivocally protected and included. It will also signal to trans employees and service users, as well as public bodies and employers, that discrimination of trans people is not acceptable.

In addition, Stonewall will advocate for the removal of all instances of permitted discrimination of trans people from the Act, as well as for updates to the explanatory notes and statutory codes of practice accordingly. Stonewall will lobby political parties in England, Scotland and Wales to include full equality for trans people, and the reform of the Equality Act, as part of their political commitments.

### FAMILIES AND MARRIAGE

The fight for truly equal marriage will continue. While it is encouraging to see those married trans people who have gained legal recognition since the introduction of the Marriage (Same Sex Couples) Act 2013, many more struggle. Stonewall will urge the Government to enact the clause in the 2013 Act that protects the survivor pension rights of the spouse of a trans person. In addition, the support that exists for parties in a hostile divorce because of the spousal veto will be investigated, ensuring that any children receive sufficient protection. In England and Wales, Stonewall will lobby the Government to remove the spousal veto and replace with a mechanism that protects trans people and does not delay access to legal gender recognition. This will bring the process in line with that in Scotland.

### SEX BY DECEPTION

Stonewall will support calls for a judicial review to clarify prosecution policy and guidance, and amend it where necessary with due regard to the trans person's right to privacy.

### RECORDING GENDER

Trans people need to be able to access identification documents matching their identity, including recognition of their gender. As part of this, non-binary people must be able to obtain birth certificates, passports and driving licences, along with all forms of identification, with the option to select an 'X' gender marker. Passports and Identity Documents need to be recognised and respected in other countries. Stonewall will lobby the UK Government, devolved administrations, and political parties for recognition and protection of non-binary people in law, as well as appropriate ways to record gender in all official documents. This includes the removal of gender and gender prefixes from official forms where they are not needed, or to provide additional options to male and female where removal is not possible.

Stonewall will work with the Foreign and Commonwealth Office to help ensure that any changes made to passports and documentation does not leave people unprotected, or at risk, when travelling outside of the UK.

### ASYLUM

Stonewall will continue to work with the Home Office and wider sector to improve decision making, guidance and training on trans asylum claims. This will include lobbying the Government and working with parliamentarians to ensure that trans asylum seekers are not placed in detention where they face serious risks.

Figure 1 Stonewall consultation document mentioning sex by deception in the context of a "trans person's right to privacy"

### Example 1: Original ONS definition of sex and gender indicating institutional capture and the subsequent replacement definition positing the existence of “gender identity”

8. The definition of sex is plainly central to this consultation and area of law. As originally drafted, the Service’s original public consultation contained a definition of sex “borrowed” from the office for national statistics. That definition reads as follows (emphasis added):

“The UK Government defines sex as:

1. Referring to the biological aspects of an individual as determined by their anatomy, which is produced by their chromosomes, hormones and their interactions
2. **Generally** male or female
3. Something that is **assigned at birth**”

We take the position that this definition was plainly incoherent and inappropriate from the outset. The second proposition advances the unscientific ideological belief that there are biological sexes outside of male and female. The third proposition is preposterous inasmuch as it suggests an outside agent (most likely a medical figure) capriciously “assigns” biological sex to persons. This proposition cannot be logically reconciled with proposition one because biological sex is either determined by anatomy or capriciously assigned by a third party. Propositions two and three are in keeping with gender identity ideology and they suggest that the ONS is subject to institutional capture which subsequently appears to have influenced the Service.

9. We register surprise and concern that the incoherence of this definition was not addressed by the Service until midway through the consultation because this obvious instance of ideological dogma corrupting public discourse ought to have been glaringly obvious to those specialising in the area of law this consultation concerns.

10. The service amended the ONS definition thus in late October 2022 (emphasis added):

Although the words “sex” and “gender” can both refer to the state of being male or female, “sex” tends to refer to biological differences, while “gender” tends to refer to social or cultural differences and the way in which an individual perceives themselves. A person’s gender identity therefore may not match the sex they were assigned at birth.

11. It will be apparent that this definition retains the unscientific and extremist suggestion that “gender identity” (or a “gendered soul”) exists and further repeats the suggestion that third parties “assign” sex at birth. These suggestions and the language adopted amount to clear evidence of institutional capture. We respectfully observe that the relevant protected characteristic in law as regards these matters are those of sex and gender reassignment (respectively ss. 11 and 7 of the Equality Act 2010). We also note the government’s recently stated position as regards section 11, namely that it should be read as a reference to the biological sexes of male and female.

#### **Example 2: Consultation definition of “Gender dysphoria”**

12. The consultation defines “Gender dysphoria” thus (emphasis added): ““Gender dysphoria” or “gender incongruence” is a medical diagnosis recognised by the NHS, where a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity”.
13. As above, the Service here adopts the extremist and unscientific position that third parties “assign” sex (rather than observe it) and that “gender identity” exists. It goes without saying that these are highly controversial political positions.

#### **Example 3: Definitions of “gender identity” and “trans”**

14. In the section on “gender dysphoria” the consultation says the following (emphasis added):

*(Regarding the phrase “gender identity”)*

“There are a range of **gender identities**, such as trans man (someone who was assigned female at birth but **lives and identifies as male**) trans woman (someone who was assigned male at birth but **lives and identifies as female**), as well as those who do not identify exclusively as male or female (**non-binary**).”

We make the following observations:

- (i) This definition further repeats the extremist and unscientific statement of belief that gender identities exist.
- (ii) This definition appears to endorse the proposition that one can “live as a male/female”. This suggestion ordinarily depends on regressive stereotypes of how one lives as a man or woman. Many people find it reductive and offensive. This is significant because the Proposed Guidance later asks reviewing lawyers to form opinions as to how successfully a defendant has credibly lived in this fashion. This language is common among gender identity ideologues. We are surprised to see a vital public service adopt it.
- (iii) This definition posits the existence of a category of persons outside the sex binary referred to as “non-binary” persons. Such a category of person is entirely unknown to law or biology. Any definition of this term tends to rely on tired and lazy stereotypes of how men and women dress and behave. We regard the presence of this term in the guidance as the clearest evidence of institutional capture and it amounts to the Service adopting a contentious political position.

15. The same section headed “gender dysphoria” in the consultation says the following (emphasis added):

*(Regarding the word “trans”)*

““Trans” is an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, agender, gender fluid, non-binary and genderqueer.

There are no universally agreed definitions, the use of specific words can be contested, and it is therefore important that information is obtained to understand the preferred terminology of each individual.”

We make the following observations:

- (i) The definition of the word “trans” is almost identical to that promulgated by the political lobby group Stonewall<sup>5</sup> who provide the following definition:

“An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth.

Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, genderqueer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.”

- (ii) The definition depends on the word “gender” which here is a shorthand for “gender identity”. That term is deeply objectionable and controversial for the reasons outlined above.
- (iii) The terms “agender, gender fluid and genderqueer” are not defined and the guidance provides that definitions are in any event of limited use because no definitions are agreed, and the meaning of such words is contested. We regard this statement as a remarkable and dangerous piece of incoherence in a public prosecution policy document. Each of the three terms above is recognised as legitimate only by those who subscribe to gender identity ideology. We also make the point that many homosexuals find the term “queer” and “gender queer” offensive and we are surprised to see it used here.

#### **Example 4: The Service mandating employees to use of preferred pronouns of defendants**

- 16. In the section on “gender dysphoria” the consultation says the following (emphasis added)

<sup>5</sup> <https://www.stonewall.org.uk/list-lgbtq-terms>

“In accordance with the CPS Trans Equality Statement 2019 prosecutors should address trans victims, witnesses, suspects and defendants according to their affirmed gender and name, using that gender and related pronouns in all documentation and in the courtroom. However, as recognised in chapter 12 of the Equal Treatment Bench Book 2021, there may be occasions where it is necessary and relevant to the particular legal proceedings for a person’s gender at birth or their transgender history to be disclosed. In cases where deception as to gender is a live issue such disclosure will clearly be necessary. Prosecutors reviewing sexual offence cases involving trans people need to be aware of, and sensitive to, all the relevant circumstances. Prosecutors should avoid making assumptions and should ensure the police supply as much information as possible to properly inform their decision making and ensure that correct terminology is used for each individual.”

17. We would observe that the use of preferred pronouns may be deeply controversial in many cases. Where a deception as to biological sex is alleged, a victim may justly regard the use of such pronouns or related language as deeply offensive and this could have the effect of retraumatising a victim of crime or conveying to them that the Service is in ideological opposition to their view. We further observe that many members of the public regard court proceedings where phrases such as “her penis” are used as offensive and ludicrous. This guidance mandates the use of precisely this kind of language, and we are surprised that more account is not afforded to the views and feelings of victims in the terminology used to describe suspects and defendants. We further note that the guidance here depends on the phrase “affirmed gender” without the word “affirmed” being defined.

**Example 5: Two instances of contending that “non-binary” “gender identities” exist**

18. In the section headed “Gender Recognition Act” in the consultation the following text appears (emphasis added):

“The Gender Recognition Act 2004 (GRA) provides individuals with the opportunity to have their affirmed gender identity recognised in law. The GRA only offers legal recognition of male and female genders. It does not recognise gender identities outside the gender binary, including non-binary, and is not available to anyone under the age of 18



There is no provision for non-binary people to obtain a GRC that accurately reflects their gender identity. Therefore, a trans person's gender identity should not be considered inauthentic if they have not obtained a certificate."

We make the following observations:

- (i) "Non-binary" status is entirely unknown to law, impossible to define without reference to sexist stereotypes and irreconcilable with the rationalist position that there are two biological sexes.
- (ii) This guidance again posits the existence of "gender identities" which is an unscientific and extremist belief claim based on ideology.
- (iii) The suggestion a GRC could "accurately" reflect the status described above at (i) is incoherent as a matter of logic and amounts to a political statement of belief as identified above in (ii)
- (iv) The use of the word "therefore" is deeply problematic inasmuch as it conflates a situation where obtaining a GRC would be impossible with one where it is possible. The logic can be summarised thus "non-binary people cannot obtain GRCs therefore reviewing lawyers should conclude that where person can obtain one they are nonetheless in the same situation as a "non-binary person" where such is impossible". This is a non sequitur and indicative of the deep logical incoherence upon which much of "queer theory" is based (from which stems the idea of gender identity ideology).

#### **Example 6: False and irrelevant statements as to the quality of "trans healthcare" in the UK**

19. For reasons that are not at all clear, the proposed guidance seeks to place a positive gloss on the provision of "gender medicine" to children and young people in the UK. In the section headed "Gender Recognition Act" the following text appears:

"Note also that persons under 18 cannot apply for a GRC and children under 17 cannot access adult gender dysphoria services or have surgical intervention on the NHS. In limited circumstances, under 18s may be prescribed puberty blockers (from the age of 12) or cross-sex hormones (from around the age of 16). Trans minors only receive such treatment whilst receiving psychological support."

We observe the following:

- (i) Detransitioners in this country are now making vocal and clear complaints as to the marked absence of psychological support surrounding their treatment at Gender Identity Services. Dr Hilary Cass recommended the leading provider of such care (The Tavistock clinic based in the Tavistock and Portman NHS trust) be closed because it was “not safe” and that Dr. David Bell (a former governor) and Mrs. Sonia Appleby (the former safeguarding lead) both raised homophobia as a safeguarding concern. The proposed guidance seems to suggest the service is regularised and operating in a normal and effective fashion. This is not the case at all on the evidence, hence the closure of the Tavistock. Claims that this service was effective and operated with appropriate safeguards and medical standards are deeply political and are most often made by those who support gender identity ideology. Therefore, we take the view that this otherwise irrelevant paragraph’s presence in the guidance is not a coincidence but further evidence of capture.
- (ii) We note also what is said as to age ranges conflicts with some observations of the Divisional Court in Bell and Tavistock<sup>6</sup>.

## Conclusions as to evidence of institutional capture

20. It follows from the 6 examples above and our wider observations that we are forced to take the view that the Service shows clear signs/evidence of institutional capture. The philosophical and linguistic framing of this consultation uncritically accept the existence of “gender identity”, the existence of esoteric and undefined fad identities unknown to law like “non-binary” and it further emphasises the use of suspect/defendant’s preferred pronouns. These are not characteristics of a politically neutral discourse designed to reflect the law in this area or serve the general public, the vast majority of whom entirely reject gender identity ideology.
21. The Service may wish to carefully consider the language and ideological framing of public communications such as this far more carefully in future and give greater consideration to the fact that absence of belief in gender identity ideology is a protected characteristic in law among the public and employees of the Service.

<sup>6</sup> <https://www.judiciary.uk/wp-content/uploads/2020/12/Bell-v-Tavistock-Judgment.pdf>

22. We would also emphasise that law and legal guidance should be precise, clear and accessible to the public. We regret to say parts of the guidance, to which we have drawn attention, are incoherent or utterly inadequate inasmuch as they purport to offer definitions only to suggest that terms cannot be defined. We respectfully suggest this consultation demonstrates vividly that the Service is plainly subject to institutional capture and the consultation as drafted runs the risk of subverting the law in this area as we will go onto identify in Part II of our response.
23. The Crown Prosecution Service should serve everyone equally regardless of their ideological views. It should treat defendants/victims equally before the law and it should not favour one side over another in modern debates. We hope our identification of examples of capture set against the wider context of the typical strategies of extremist lobby groups gives the Service pause to seriously consider whether or not it is independently discharging its vital duties to the rule of law and protection of victims of crime.

# RESPONSES TO CONSULTATION QUESTIONS

**Question 1: Do you think that the language used is appropriate and sensitive to the issues addressed? If not, please identify concerns and share how it can be improved.**

24. As set out in Part I of our response, we take the view that the language used in the consultation and proposed guidance is inappropriate, ideological, insensitive and incoherent. Please refer to paragraphs 11-22 for the 6 detailed examples in which we analyse how the Service is using terms which are associated with support for gender identity ideology.
25. The language in the consultation would be improved by adopting plain English language which reflects reality. By way of example, it should not be said that sex is “assigned” at birth because this suggests the intervention of a third party capriciously deciding sex, (which is absurd). Instead, plain English recording reality such as “sex is observed at birth” should be preferred.
26. As we have pointed out at some length, the Service should also avoid incoherent, faddish and potentially offensive language such as the statement that some people are (apparently) “genderqueer”.
27. We would also caution against any use of the term “gender identity”. This is a deeply contested and fierce area of public debate and those advocating for the existence of this concept can offer no scientific proof of it. Further, the service should also be aware that many homosexual males regard the concept as deeply homophobic because it amounts in many cases (such as at the Tavistock) to telling gender non-conforming men and boys that they were born into the wrong bodies and are in fact girls/women. This is an echo of an old homophobic slur, and the Service can and should acquaint itself with the growing male homosexual political opposition to gender identity ideology. It also gives rise to deep concerns around homophobia as a safeguarding risk generally.

**Question 2: When considering the factors that are relevant to prove deception and lack of consent, does the guidance strike the right balance between recognising the rights of trans persons to live fully in their new gender identity and the need not to put an undue onus on complainants to discover or confirm the gender status of the suspect?**

28. It is not immediately clear how this question relates to the legal guidance the Service proposes to adopt on sex crimes by deception. It is not the role of the Service to form policy in this area and we respectfully suggest this is a question for law makers and not law enforcers. The service should simply consider cases of sex crime by deception, apply the relevant law and the two-stage test in the Code for Crown Prosecutors. Wider policy questions such as this are for elected representatives, not unelected public services. To adopt policy in the fashion implied by this question would plainly leave the Service highly susceptible to Judicial Review.
29. We add to this that the Court of Appeal (Criminal Division) has comprehensively settled the circumstances in which parties do and do not vitiate consent in a line of caselaw culminating in *McNally*. It is for Parliament to make the law, and the Courts to interpret it in order to strike the right balance conceived of by this question. It is therefore not, we would respectfully suggest, a question for the Service.

**Question 3: Do you agree with the evidential considerations that prosecutors must consider? If not, please identify what should be added, removed, or amended.**

30. The proposed guidance on evidential considerations reads as follows (emphasis added):

The Court of Appeal in *R v Justine McNally* [2013] EWCA Crim 1051 determined that “depending on the circumstances, deception as to gender can vitiate consent” [27]. In *McNally*, the court characterised the appellant’s actions as a deliberate deception [26], rather than a failure to disclose, confirming that active deception as to gender falls within the scope of s74 of the sexual Offences Act 2003.

Whether the complainant has been deceived will require very careful examination of the evidence and consideration of all the surrounding circumstances. Prosecutors should ensure that they have sufficient material from the police in order to make this determination.”

31. We disagree with the analysis of *McNally* offered for the following reasons:
- a. The distinction implied as to “active deception” and “failure to disclose” is a false one. As their Lordships made clear at [24] of *McNally* a “failure to disclose” can vitiate consent, depending on the circumstances. The guidance as drafted suggests a “failure to disclose” cannot vitiate consent. This is simply wrong in law.
  - b. The phrase “failure to disclose” derives from HIV status cases such as *R v EB* [2006] EWCA Crim 2945, [2007]. This phrase is not used in *McNally* to refer to deceptions as to biological sex, nor did Leveson LJ qualify paragraph [26] by comparing a “deliberate deception” as against a “failure to disclose”. Unfortunately, the proposed guidance does precisely this. In so doing it takes the words of the Court of Appeal and adds in an inaccurate gloss which is not present in the judgment. In essence, by using the word “rather” above, the guidance could easily be read as saying “Their lordships drew a line between the deliberate deception here and a mere failure to disclose”. They did not and paragraph [24] of *McNally* is a complete answer to this misconception.
  - c. The deception in *McNally* was described as a “deliberate deception” yet the proposed guidance chooses a different word to summarise the case when it concludes that an “active deception as to gender falls within the scope of s74 of the sexual Offences Act 2003”. We respectfully suggest this is a misreading of the case which inaccurately conflates the condom case law of *Assange v Swedish Prosecution Authority* [2011] EWHC 2849 (*Admin*) with the ratio of *McNally*. To be clear, their Lordships at no time in *McNally* suggested that an “active” deception was necessary, they merely characterised the Defendant’s deception as “deliberate”. We register a concern here given the cumulative effect of this point and that made at sub paragraph (b.) above. Should the Service require “active deceptions” rather than “failure to disclose” it will place another hurdle in the way of victims of sex by deception and Defendants will in effect enjoy a privileged status requiring their deceptions to be of greater culpability and ambition than similarly placed defendants facing different deception allegations. This would have the effect of creating a second class of victims and special treatment for defendants claiming various “gender identities”.

- d. In any event, we do not consider it clear or helpful to summarise McNally in the terms the Service does thus: *“deception as to gender can vitiate consent”*. While His Lordship used the term “gender” in paragraph 27 the paragraph immediately preceding that makes clear that the Court is in fact describing deceptions as to biological sex. As the (now amended guidance) makes clear, sex is a biological reality, gender is a social construct. We think it is clearer and more helpful for the proposed guidance to say that a *“deception as to biological sex can vitiate consent”*.
32. It follows from the above that we take the view the “Evidential Considerations” section of the proposed guidance misstates the law in a manner preferential to suspect and defendants making the prosecution of those who commit sex offences by deception more difficult. We are further surprised by the generic nature of the proposed guidance to the effect that any case will *“require very careful examination of the evidence and consideration of all the surrounding circumstances”*. That much could be said of any case, and we are concerned that this section is virtually silent as to victims. The Service may wish to reflect on the unique vulnerability of victims of these offences and choose to reflect that consideration in this section.

#### **Consultation Question 4: Do you agree with the three stages that should be considered when prosecutors are considering the question of deception as to gender?**

33. The three-stage test in the proposed guidance reads as follows:
- 1) Has there been active or deliberate deception by the suspect? If not, the deception will not fall within the scope of s74 of the Act and consent will not be vitiated. However, if there is a deliberate deception, consider the second question.
  - 2) Was the complainant deceived and therefore did not consent? If so, consider the third question.
  - 3) Did the suspect reasonably believe the complainant consented?

## Comments on Q1

34. We take the view this question misstates the law in favour of suspects/defendants by requiring an “active or deliberate” deception. For the reasons we set out above at paragraph 34 (a-d) we take the view this question misunderstands the ratio of *McNally* and creates a class of defendants who receive special treatment inasmuch as their deceptions must be of a high standard of “active or deliberate”. We repeat that the Lordships comprehensively rejected the suggestion in *McNally* that a “failure to disclose” could not, in law, vitiate consent, (see paragraph [24] of the judgment). In modifying the law in *McNally*, the proposed guidance makes prosecutions in this area less likely, which we observe is a campaign objective of those engaged in institutional capture and extremist lobbying on this subject. We should also record here that we take the view this question is so at odds with the law in this area that any refusal to prosecute based on this question would be likely vulnerable to challenge by way of judicial review. We lament that the effect of this question appears to be to reduce protection for victims of sex crimes by deception which seems at odds with the values of the Service and contrary to the rule of law.

35. In determining the answer to question 1 the guidance reads as follows (emphasis added):

*“If a suspect genuinely perceives their gender identity to be different to their birth assigned sex or if their gender identity is in a state of flux and/or emerging, this may be evidence there was not a deliberate deception.*

*The following type of evidence may assist to establish how the suspect perceived their identity:*

*The steps the suspect has taken to live consistent with their gender identity.  
The steps the suspect has taken to acquire a new legal or administrative gender recognition.*

*Possession of a GRC proves that an individual has been legally recognised in their affirmed gender and is strong evidence to show that the individual is living in their affirmed gender. However, a person’s gender identity or affirmed gender is not dependent upon them obtaining a GRC and the vast majority of trans people do not obtain a GRC: see above.”*

36. We take objection to this guidance because:



- a. Whether a victim has been deceived is a question of fact which depends on evaluating what representations were made to them and in what context. This guidance instead asks reviewing lawyers to conduct a pseudo psychological exercise in asking what view the Defendant takes of themselves. That is irrelevant to the question of what representations were made and whether or not they were deceptive. This opens the door to sophisticated Defendants avoiding prosecution by concocting gender identities which, by this proposed guidance, the Service would be bound to investigate and assess. We take the view the law requires investigation of the alleged deception, not the identity of the Defendant.
- b. The proposed guidance requires Service staff to believe such a thing as “gender identity” exists and then conduct the absurd exercise of asking whether the “*steps the suspect has taken to live consistent with their gender identity*” are credible or not. In the case of a Defendant claiming a cross sex identity this is likely to involve reliance on tired and offensive sexual stereotypes associated with mannerisms, clothing and appearance. In the case of a novel faddish identity the exercise becomes impossible. How, for example, is a reviewing lawyer to assess the degree to which a person has taken steps to live consistent with being of non-binary status? We observe that this exercise, in addition to being incoherent and fraught with offensive stereotypes, is completely irrelevant to whether a victim has been deceived.
- c. As regards the proposed guidance in respect of obtaining a GRC we take the view this amounts to a win/win situation for suspects and defendants. Where one is obtained a prosecution is less likely, where one is not obtained that cannot count against a suspect/defendant. We take the view this a wholly irrelevant consideration and the effect of this guidance is (again) simply to make prosecutions less likely. A person could in theory obtain a certificate, conceal that from a partner and commit an act of sexual offending by deception. In this example it is not at all clear why the obtaining of a GRC would be a just consideration mitigating against prosecution.
- d. We note in respect of (a-c) above there is no support in authority, statute of any other source of legislation for the task of investigating and assessing a Defendant’s “gender identity”. This is a burden which the Service has concocted and proposes to place upon itself. This is a task unknown to law and entirely suggestive of institutional capture.

- e. The guidance here now uses “deliberate deception” whereas question 1 asked whether there was a “active or deliberate deception”. As we observed at paragraph 37, we regard the qualifications of “active” and “deliberate” to be wrong in law in any event but in terms of coherence, the Proposed guidance is now swapping qualifying terms as regards deception. This imprecision in terminology is undesirable in legal guidance and apt to cause confusion and inconsistent decision making.

37. The guidance on Question 1 continues in this fashion:

How the suspect perceived their gender at the time of the offence can be a complex issue. The following matters should be borne in mind:

- Gender identity can be fluid and/or emergent for some persons, particularly young persons, who may explore the nature of their identity and/or sexuality.
- A person whose gender identity isn’t the same as their sex assigned at birth may express their gender through their speech, dress, gestures, mannerisms etc, without regarding this as a fabrication, a performance or a deception.
- Some trans people may not always be living in their true gender identity due to safety considerations.
- A person who presents as a particular gender at the time of the alleged offence may subsequently revert to their sex assigned at birth when an allegation is made against them. Any apparent reversion may be for numerous reasons including, but not limited to, pressure to conform to social norms.

38. We take objection to this guidance because

- a. Bullet point 2 construes precisely the sort of visual information by which biological sex is normally conveyed through the lens of gender identity ideology in favour of a suspect/defendant. Speech, dress, gestures, and mannerisms are precisely the sorts of evidence victims rely upon to form a view of a suspect/defendant’s biological sex. The guidance is correct to state that deviation from norms is not necessarily evidence of fabrication and deception, but it is one sided and pro-defendant inasmuch as it does not balance this by saying they could be. This amounts to guidance not to approach matters on a case-by-case basis with reference to the particular facts therein. That is deeply unusual across law generally and in the field of criminal law particularly.

- b. Bullet point 3 is fallacious when contrasted against violent crime and homicide statistics and may have the effect of prompting sympathy for a supposedly oppressed minority by reviewing lawyers. This statement has no proper place in general guidance and should only be considered if it arises on the facts of a particular case. Even where it arises, a fear for safety is not a defence to sex crime by deception. Statements such as this are (again), indicative of institutional capture and special treatment for one class of defendant.
- c. Bullet point 4 again seems to mitigate against regarding this matter as evidence against the suspect/defendant and as with bullet point 2 is liable to the criticism that it is unbalanced. Reversion may or may not be relevant evidence and reviewing lawyers should employ their judgment on a case-by-case basis to make the right decision on the facts of the particular case before them in keeping with their Lordships observations in *McNally* that cases of this nature are highly fact sensitive. The proposed guidance looks at potential evidence in a manner preferential to defendants/suspects in this area. Again, this suggests institutional capture.
- d. "Gender Identity" and "sex assigned at birth" reappear. As we have been at pains to point out, these are ideological belief systems with no proper place in a politically independent public service.

39. The guidance on question 1 continues thus (emphasis added):

"On the facts of the case in *McNally*, the ruling that deception as to gender can vitiate consent applies to situations where a person falsely purports to be of a different gender (*McNally* was a girl who presented herself as a boy, using a male avatar "Scott" online). **Although the courts have not addressed the point, the ruling would appear to be capable of applying broadly to include, for instance, deception as to birth gender/assigned biological sex, gender history or trans status. There is no duty to disclose gender history,** but in some circumstances suspects who are living in a new gender identity at the time of the alleged offending (as opposed to falsely purporting to be a different gender), including those who have obtained a GRC, may still be capable of **actively deceiving** a complainant as to such matters relating to their gender. For example, where a suspect falsely asserts that their gender identity is the same as their birth gender/assigned biological sex; or lies in response to questions about their gender history; or denies being a trans man or a trans woman."

40. We object to this guidance because:

- a. As per Paragraph 34 above we take the view this misstates the ratio in *McNally*. Specifically, the claim that “the courts” have not addressed the points listed is simply incorrect. Leveson LJ did so comprehensively at paras [26-27] of *McNally*.
- b. It is not at all clear that “*There is no duty to disclose gender history*”. While it may be true to say there is no general duty in casual or social situations, this guidance concerns sex by deception and in such circumstances, as pointed out at paragraph 34 of this response the Court of Appeal specifically rejected the submission that a “failure to disclose” could never vitiate consent.
- c. We note the guidance having used “active”, “deliberate” and a combination thereof now returns to the higher standard of “active”. We remark again that *McNally* is not authority for the proposition that a deception must be “active”, nor is it desirable in terms of legal guidance for core terms to change at all or at the rate they do in the proposed guidance.

41. The guidance on Question 1 continues (emphasis added):

“Prosecutors should adopt an offender-centric approach when assessing whether there has been an active or deliberate deception. This involves looking closely at the actions of the suspect before, during and after the alleged assault (see chapter 3 for more details). By analysing the suspect’s behaviour in this way, a prosecutor should fully understand the circumstances and context of the incident.

An offender-centric approach should also allow the prosecutor to determine whether the suspect targeted, manipulated or exploited the complainant, or exerted control or coercion during their relationship. Where there is evidence of this nature, it is more likely that the suspect has actively or deliberately deceived the complainant.”

42. We object to this guidance on the basis it apparently completely excludes the experience of the victim. Victims of sex by deception are often extremely young, vulnerable and far from experienced in intimate matters. By considering only an “offender centric” approach the proposed guidance tips the balance too far in favour of the suspect/defendant. While the proposed guidance goes onto correctly identify targeting/controlling coercive behaviour/manipulation as relevant factors the victims experience of the *deception itself* is entirely absent here, and the guidance repeats the erroneous suggestion that deceptions must be “active or deliberate”. We consider this a telling and serious omission in a policy which has very little to say regarding victims or their experience of serious crime.

43. We note in passing that the Service may wish to consider whether a public facing document regarding the prosecution of offences this serious should properly describe the above as “offender centric”. This may risk giving the impression that the proposed guidance favours the suspect/defendant. We take the view of course that it does, but that is still no reason to use language likely to inflame manners or cause entirely understandable offence.

### Conclusions as to question 1

44. For the reasons set out above we object to the phrasing and guidance on question 1. We would replace the question “Has there been active or deliberate deception by the suspect? If not, the deception will not fall within the scope of s74 of the Act and consent will not be vitiated. However, if there is a deliberate deception, consider the second question” with the simple and more straightforward question “Has there been a deception as to the biological sex of the suspect/defendant?”. That question better reflects the ratio of McNally and is a question of fact inviting reviewing lawyers to focus on the representations made and the wider facts of the case. That is relevant to the real questions of fact and law in any such case and avoids the incoherent and ideological exercise in requiring Service staff to form a qualitative view as to claimed “gender identities”.

### Comments on Question (2)

Was the complainant deceived and therefore did not consent? If so, consider the third question.

45. The guidance for question 2 reads as follows (emphasis added):

“Prosecutors should consider the complainant’s particular characteristics and life experiences, and how these may have impacted on their relationship with the suspect and their understanding of the suspect’s gender. For instance, a complainant who is young, immature, vulnerable or inexperienced in sexual relationships may more easily be deceived, and therefore lack the choice or freedom to consent, especially where there is a disparity in age or maturity between the suspect and the complainant.

When assessing the complainant's account, the following non-exhaustive list of questions may also assist prosecutors, depending on the circumstances of the case:

- Has the complainant closed their eyes to the obvious or wilfully ignored aspects of the suspect's gender? For instance, did the complainant have an opportunity to discover or confirm the gender of the suspect but chose not to avail themselves of the opportunity?
- Is the amount and nature of the contact, including communications between the suspect and the complainant, consistent with the complainant not knowing the suspect's gender and being deceived?
- Is there any evidence that the complainant was exploring their own sexuality at the time of the alleged offending?
- In addition to the issue of deception, prosecutors should consider whether there are any other factors that may affect the complainant's capacity and freedom to consent, such as intoxication by alcohol or drugs."

46. We take objection to the two underlined passages because:

- a. The suggestion that a victim of sex by deception has "closed their eyes to the obvious" is dangerously close to, (if not a paradigm example of) "victim blaming". Further, it is very difficult factually to conceive of what the guidance could possibly be referring to when it speaks about an "opportunity to discover or confirm the gender of the suspect". We regard this piece of guidance as extraordinary and improper given the values and objective of the Service. It is tantamount to asking in a situation of rape whether a victim was "asking for it". We regret very much that the Service chose to propose this as guidance given the wider difficulties and parlous conviction rates in this area. We would rather have hoped that being aware of that situation, the Service might think more carefully about how it speaks about victims of these offences. We urge you in the strongest possible terms to delete this offensive and nonsensical statement from the proposed guidance.

- b. We are concerned that the suggestion that a victim was “*exploring their own sexuality at the time of the alleged offending*” will disproportionately disadvantage homosexuals. The phrase “exploring” in this context most often relates to experimenting with homosexuality and given our organisation and objectives, we are lost as to why a homosexual male exploring his sexuality should be in any different category, logically or morally, from a person who is not. Homosexual males can be victims of sex by deception and the fact they are exploring that element of their sexuality should be completely irrelevant to the question of whether or not they are deceived.

### Comments on Question (3)

Did the suspect reasonably believe the complainant consented?

47. This question deals with the defence of “reasonable belief in consent” and is necessary in any prosecution guidance in this area. Part of the proposed guidance reads:

“If a complainant is deceived and did not consent, it is crucial to consider whether the suspect reasonably believed in consent to sexual activity. Again, an offender-centric approach should be adopted, and the focus should be on the actions of the suspect before, during and after the alleged assault.”

48. We repeat our objection to the one-sided suggestion that a prosecution decision should be “offender centric”. Whether a defendant genuinely reasonably believed a victim to have consented requires, (as a matter of common sense) an examination of both the characteristics and behaviour of the defendant and the same of the victim. As this question directly engages an assessment of how the Defendant viewed the victim, a holistic and comprehensive assessment of both parties according to the facts of the case is required. We would urge the Service, again, to consider very carefully indeed whether or not the proposed guidance ought really to say that it adopts an “offender centric” position.

### Question 5: Do you agree with the public interest factors that are listed?

49. The proposed guidance is that reviewing lawyers should consider the ordinary Code for Crown Prosecutors test, which is unobjectionable, but then goes on to suggest the following factors (emphasis added):

“Other relevant factors to be considered include:

The steps the suspect has taken to live consistent with their gender identity, including whether they have obtained or taken steps to obtain a GRC, depending on eligibility and context.

What is the nature and level of the relevant sexual activity?

What is the nature and duration of any relationship between the suspect and complainant? The longer the deception practiced on the victim, the more serious the offending.

What are the relative ages and maturity of the suspect and complainant i.e. is there a significant disparity in age or maturity?"

50. We take exception to the underlined guidance because:

- a. This consideration is a repeat of Question 1 in the three-stage test proposed. In effect, a defendant's success or failure of "living as a man/woman" (whatever that is taken to mean) is double counted. In the case of a Defendant who satisfies the Service they are so successfully living; this factor is therefore twice deployed against prosecution.
- b. As we have observed at paragraph 39, we regard the proposed exercise of (i) accepting that gender identity exists and (ii) to qualitatively assess Defendants according to stereotypical conceptions of how men and women live to be obnoxious and absurd. We note again that any gender critical employee of the Service will be unable to give effect to this guidance.
- c. Whether or not a person obtains a GRC is immaterial to the question of whether or not there has been a deception as to biological sex. We note again that the possession of this document seems to mitigate against prosecution. We observe that the proposed guidance appears to offer many factors mitigating against prosecution in this area which is unusual for prosecution guidance.



## **Question 6: Are there any further factors in favour of prosecution that should be included?**

51. We are concerned that the proposed guidance seems to entirely neglect homosexual men in circumstances where they may be at risk of sex by deception. We would urge the Service to rapidly acquaint itself with the practice of “stealththing” (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.

## **Question 7: Are there any further factors tending against prosecution that should be included?**

52. As will be apparent from the tenor of our response up to this point, we take the view that the proposed guidance is lopsided and provides reason after reason not to prosecute which we suspect is a direct result of institutional capture and the philosophical and linguistic framing of this consultation which is entirely drafted in the lexicon of gender identity ideology. We note this is in stark contrast to the Service’s policies in respect of all other sexual offences. There being no other available reason, we are driven to conclude this inequality is a direct result of the institutional capture obvious from the consultation.

## Question 8: Do you have any other feedback you wish to share around how the revised guidance could be improved?

53. It follows from our observations that we regard the proposed guidance as completely compromised by institutional capture, riddled with incoherence, shot through with misstatements of the law and unlikely to command public confidence because it appears to tip the balance in favour of Defendants claiming “gender identities” offering them special treatment at the expense of victims of sex by deception who are unlikely ever to see the crimes against them prosecuted if this guidance becomes adopted policy. This is a prescription for special treatment for one class of defendant and second-class status for one class of victims. It is unjust. It will also render the Service susceptible to Judicial Review by victims who will no doubt have standing.
54. We accordingly recommend the entire guidance be rewritten in a manner that reflects the law and is drafted in straightforward language uncorrupted by gender identity ideology. In short, this is an important and serious area of criminal justice policy, and this consultation document, and hence the consultation, is manifestly not fit for purpose. The Service has simply published a document revealing a deep and troubling level of institutional capture that will adversely affect the victims of crime.
55. Given our serious concerns at to institutional capture and a the proposed guidance seeming at every stage to create a class of defendants awarded special treatment and a second class of victims, we would be interested to know who drafted and approved the consultation and what third party involvement took place prior to the consultation.

## Appendix 1: Model Email

Dear Senior Policy Advisor regarding the Deception as to Gender Guidance Consultation,

I wish to respond to the above consultation by offering my support for the consultation response submitted by the non-for-profit organisation, the "Gay Men's Network".

The Gay Men's Network response highlights fundamental issues with the legal guidance you propose to adopt in Chapter 6: (Consent) in cases of Rape and Serious Sexual Offences. Specifically, I agree that the proposed guidance is fundamentally flawed and of serious concern for the following reasons:

It is written in the language of gender identity ideology suggesting that biological sex is assigned (rather than observed) at birth, that each person possesses a "gender identity" (in effect a gendered soul) and that novel identities such as "genderqueer" exists while simultaneously stating they cannot be defined. This is incoherent and ideological, it demonstrates "institutional capture" of a vital public service. The CPS should be politically independent and non-ideological. This language suggests it is neither.

The proposed guidance offers reason after reason not to prosecute defendants claiming cross sex or novel "gender identities". Reviewing lawyers are told to conduct an irrelevant assessment of how well a Defendant "lives as a man/woman" which is completely unknown to law and can only realistically rely on offensive stereotypes. Similarly, the obtaining of a GRC is irrelevant to the question of whether a victim was deceived yet CPS staff are required to take this into account in the Defendant's favour.

The interests of victims are barely mentioned, and the guidance describes itself as "offender-centric". It is precisely this to the complete exclusion of the interests of victims and the advice slips into victim blaming where it asks CPS staff to assess whether a victim "closed their eyes" to evidence. Nothing is said as to the devastating effects this offending can have on a victim's confidence, sense of self or psychological well-being. This is extraordinary.

The legal guidance is incorrect. It suggests "failure to disclose" cannot amount to deceptive conduct. The Court of Appeal (Criminal Division) is quite clear that it can. The guidance is also ill disciplined varying between the (inaccurate) suggestion that deceptions must be "active",

“deliberate” or a combination of both. This amounts to subverting the law and is a serious matter.

Gender identity ideologues have long campaign for sex by deception to effectively be decriminalised. This guidance goes some way to achieving this aim by producing a set of recommendations that in total make prosecutions less likely in an area where conviction rates are already alarmingly low. This is a fundamental failing by the Crown Prosecution Service which now appears more interested in virtue signalling positions in the contentious gender debate than in protecting victims of sex crime by deception.

Accordingly, I offer my support for the consultation response by the Gay Men’s Network.