

Sexual Intimacy, Gender Identity and 'Fraud'

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Normative Assumptions:

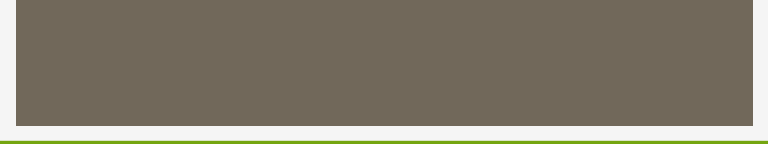
- 1. Non-disclosure of gender history vitiates consent ('the consent claim').
- 2. Inadvertent sexual intimacy with trans people is harmful ('the harm claim').
- 3. Non-disclosure of gender history is deceptive ('the deception claim').

UK Prosecutions (2012-2016):

- ***R v Barker*** [2012] unrep (30 mths)
- ***R v McNally*** [2013] EWCA Crim 1051 (3 yrs)
- ***R v Wilson*** [2013] unrep Edinburgh (probation + 240 hrs of Com Service)
- ***R v Newland*** [2015] unrep (8 yrs)
- ***R v Lee (Mason)*** [2015] unrep (2 yr susp)
- ***R v Staines*** [2016] unrep (39 mths)
- ***R v De La Cruz*** [2018] unrep Edinburgh (3 yrs)

Objections to Criminalisation:

- 1. Criminalisation produces legal inconsistency and is potentially discriminatory
- 2. Sexual Autonomy should not be viewed as an absolute right
- 3. There are compelling public policy reasons against criminalisation.



A white woman and a man of mixed race, who outwardly appears white, meet in a wine bar. They flirt with each other. The woman invites the man to her apartment where mutually satisfying sex takes place.

Subsequently, the woman discovers the mixed-race background of the man and claims to feel violated. She reports the matter to the police and requests that the man be charged with rape on the basis of his failure to disclose his racial background.

Legal Messages:

- Do not go around assuming people to be of a particular race or ethnicity.
- Assume everybody to be cis and, if your unreasonable assumption fails to accord with reality, feel free to channel your sense of outrage through the criminal law.



The End