

## Permission to appeal decisions

16 November 2020

**Permission to appeal decisions from the UK Supreme Court:**

**R (on the application of McConnell) (Appellant) v Registrar General for England and Wales (Respondent), UKSC 2020/0092**

**R (on the application of YY (by his litigation friend Clare Brooks)) (Appellant) v Registrar General for England and Wales (Respondent)**

*On appeal from the Court of Appeal Civil Division (England and Wales)*

Mr Alfred McConnell is a transgender man and holder of a gender recognition certificate, who gave birth to a son, YY. The Registrar General for England and Wales decided that Mr McConnell had to be registered on the birth certificate of his son as his "mother."

Mr McConnell applied for judicial review of that decision. His primary claim was for a declaration that as a matter of domestic law he was to be regarded, and hence entitled to be registered, as YY's "father", or otherwise "parent" or "gestational parent." His secondary and alternative claim, on the basis that domestic law requires his registration as "mother," was for a declaration of incompatibility under section 4 of the Human Rights Act 1998 on the ground that the domestic regime is incompatible with his and/or YY's Convention rights under articles 8 and 14 of the European Convention on Human Rights.

**The issues are:**

1. Whether section 12 of the Gender Recognition Act 2004 should be interpreted as having both retrospective and prospective effect.
2. Whether sections 9 and 12 of the Gender Recognition Act 2004 are incompatible with the appellants' rights under articles 8 and 14 of the European Convention on Human Rights.

**On 9 November 2020, it was determined that permission to appeal be REFUSED because the applications do not raise an arguable point of law which ought to be considered at this time bearing in mind that the cases were the subject of judicial decision and reviewed on appeal.**

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# **R (on the application of Elan-Cane) (Appellant) v Secretary of State for the Home Department (Respondent), UKSC 2020/0081**

*On appeal from the Court of Appeal Civil Division (England and Wales)*

The Appellant was born female but underwent several operations that were successful in achieving the desired status of "non-gendered." From 1995 onwards the Appellant has been in contact with Government Departments to seek to persuade the Government that a passport should be issued to the Appellant without the necessity of making a declaration of being either "male" or "female". This could be achieved by a third box being added to the passport application form allowing a person to mark that box with an "X" indicating gender "unspecified". The Government refused to do so but conducted internal reviews to consider whether policy change was required. Its position throughout the proceedings has been that the current passport policy should not be considered in isolation, but as a part of a more fundamental review, which has begun but has not yet been completed.

The Appellant filed judicial review proceedings challenging the Government's passport policy. The judicial review was dismissed by the High Court and Court of Appeal. The Appellant appeals to this court.

## **The issues are:**

1. Whether the Court of Appeal was wrong in its conclusion that Her Majesty's Passport Office's Policy that (i) an applicant for a passport must declare their gender/sex as being either male or female and (ii) a passport will only be issued bearing a male ("M") or female ("F") indicator in the gender/sex field on the face of the passport and will not be issued with an "unspecified" ("X") gender marker does not unjustifiably breach articles 8 and 14 of the European Convention on Human Rights ("ECHR").

**On 10 November, it was determined that permission to appeal be GRANTED, except in relation to grounds 5 (failure to analyse Art 14 separately) and 7 (failure to address public law challenge).**