

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

**Case ID: 2020/0081**

## **Case summary**

### **Issue**

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").

### **Facts**

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.

### **Judgment appealed**

[\[2020\] EWCA Civ 363](#)

## **Parties**

### **Appellant(s)**

Christie Elan-Cane

### **Respondent(s)**

Secretary of State for the Home Department

## **Appeal**

## **Justices**

Lord Reed, Lord Lloyd-Jones, Lady Arden, Lord Sales, Lady Rose

## **Hearing start date**

12 July 2021

## **Hearing finish date**

13 July 2021

### **Watch hearing**

12 July 2021 [Morning session](#) [Afternoon session](#)

13 July 2021 [Morning session](#) [Afternoon session](#)

## **Judgment details**

### **Judgment date**

15 December 2021

### **Neutral citation**

[2021] UKSC 56