RESERVED JUDGMENT

EMPLOYMENT TRIBUNALS

Claimant: LS

Respondent: NHS England

Heard at: Leeds Employment Tribunal

Before: Employment Judge Deeley, Mr Q Shah and Mr M Brewer

On: 16-20 March 2026 (in public), 23 and 31 March 2026 (in chambers)

Representation
Claimant: Ms N Cunningham
Respondent: Mr S Cheetham KC

RESERVED JUDGMENT

1. The claimant's complaint of indirect discrimination in relation to sex under section 19 of the Equality Act 2010 succeeds and is upheld.
2. The claimant's complaints of indirect discrimination in relation to:
   2.1 religious belief; and
   2.2 disability;
   fail and are dismissed.
3. The Tribunal reached the following conclusions on the claimant's complaints of harassment under section 26 of the Equality Act 2010:
   3.1 Allegation 1 - the respondent's policy of permitting trans women to use female only facilities: the claimant's complaint of harassment related to sex and to gender critical belief succeeds and is upheld;
   3.2 Allegation 2 - the respondent's Trans Equality Procedure:
      3.2.1 the claimant's complaint that the Trans Equality Procedure had the purpose of violating her dignity or creating the Proscribed Environment on the grounds of her gender critical belief fails and is dismissed;

3.2.2 the claimant's complaint that the Trans Equality Procedure had the effect of violating her dignity or creating the Proscribed Environment on the grounds of her gender critical belief succeeds and is upheld.

REASONS

INTRODUCTION

Tribunal proceedings

1. We considered the following evidence during the hearing:

   1.1 one joint file of documents, together with additional disclosure documents (which were accepted into the file without objection from either party);

   1.2 witness statements and oral evidence from:

      1.2.1 the claimant;

      1.2.2 Ms Vivien Hodgskiss (previously Head of People Strategy, now Deputy Director of Operational Services, People and OD);

      1.2.3 Mr Philip Goodfellow (previously Head of Corporate Services, now Deputy Director of Estates and Facilities & Customer Contact Centre); and

      1.2.4 Mr Peter McCurry (Director of HR Business Partnering, Employee Relations and Policy).

2. We also considered the helpful opening note and skeleton argument, oral and written submissions made by both representatives.

Adjustments

3. We reminded both parties and their witnesses that they could request additional breaks during the hearing at any time if required and frequent breaks were taken throughout the hearing.

Terms of address

4. The hearing of this claim attracted some public interest, due to the sensitivities surrounding the questions of gender identity and biological sex in the public arena. The use of language relating to these issues is sometimes perceived as controversial. The Equal Treatment Bench Book (updated February 2026) states:

   "If possible, using the individual's name instead of a pronoun where these pronouns are contested, or alternatively, the gender-neutral pronoun of "they" may help minimise offence towards, or the undermining of, an individual's personal identification, while also not validating and giving it undue weight over the perceptions of others."

5. The witness evidence regarding the background to this claim included reference to a transgender individual, who worked for the respondent until January 2023. The parties agreed that they would refer to them as "**Person X**". The Tribunal adopted the use of gender-neutral pronoun of 'they' when referring to Person X. Neither party objected to the use of that pronoun by the Tribunal.

6. The parties and their representatives used different terminology during this hearing to describe transgender individuals. The claimant's Amended Grounds of Claim referred to Person X as a "transwoman". Her representative used the term "trans identifying man". We adopted the terminology of the Supreme Court set out in paragraphs 6 and 7 of its judgment in **For Women Scotland Ltd v Scottish Ministers** [2025] I.C.R. 899:

   "A person who is a biological man, i.e. who was at birth of the male sex, but who has the protected characteristic of gender reassignment is described as a 'trans woman'. Similarly, a person who is a biological woman, i.e. who was at birth of the female sex, but who has the protected characteristic of gender reassignment is described as a 'trans man'."

Anonymity order and restricted reporting order

7. The identity of the claimant is subject to Anonymity and Restricted Reporting Orders issued at the second preliminary hearing of this claim. All observers of the hearing and anyone reading this judgment must not publish any identifying matter in a written publication available to the public include it in a relevant programme for reception in Great Britain in relation to the claimant. Identifying matter means any matter likely to lead members of the public to identify those persons as being a party to or otherwise involved with these proceedings or as being the person(s) affected by or making the allegation. The publication of any identifying matter or its inclusion in a relevant programme is a criminal offence. Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

8. A member of the press requested to inspect a copy of the witness statements and the hearing file on the second day of the hearing. The parties agreed to provide a copy of the witness statements. The respondent noted that the hearing file included references to Person X's name and stated that they were unable to contact Person X to ask for their views. We discussed the possibility of redacting the file and/or making other orders, such as a restricted reporting order for Person X. The member of the press subsequently withdrew her request on the basis that she would not be present physically at the hearing by the time any redacted hearing file could be prepared.

Tribunal procedure

9. The claimant applied to exclude the respondent's witnesses who had not yet provided oral evidence from the hearing, whilst the respondent's other witnesses provided evidence. The respondent objected to this application. We rejected this application on the basis that:

   9.1 the Tribunal's normal process in England and Wales is for witness statements to be exchanged in advance of the final hearing and for witnesses to be present throughout the evidence of both sides. This is different to the normal process in Scotland, where statements are not exchanged in advance and it is more common for witnesses to be excluded from the hearing until they have given evidence;

   9.2 detailed witness statements had been served for each of the respondent's witness in this case. The majority of the factual issues in this case were

not in dispute. We concluded that it was unlikely that any of their evidence would be 'tainted' by listening to evidence of other respondent witnesses.

10. The claimant's representative raised concerns at the end of the third day of the hearing that she had not been permitted to put certain questions to Mr Goodfellow during cross-examination. Those questions related to the respondent's employment policies and the respondent's internal update on Supreme Court's decision in *For Women Scotland.* We noted at the start of the fourth day of the hearing that it was appropriate for the Tribunal to limit questions to those that are relevant and those which a witness is able to provide evidence on. We noted that Mr Goodfellow heard the claimant's grievance appeal before the Supreme Court reached its decision in *For Women Scotland.* We also noted that Mr Goodfellow's day to day role related to managing the respondent's estates and that questions regarding post-2019 matters relating to the respondent's employment policies may be better put to Mr McCurry. This was because Mr McCurry's role was Director of HRBP, ER and Policy and he had referred expressly to the Supreme Court's decision in *For Women Scotland* in his witness statement.

11. We did not have a copy of the claimant's representative's written submissions on this issue at the start of the fourth day of the hearing because these had not yet been forwarded to us by the Tribunal's administration at that time. We offered to adjourn, read the submissions and reconsider our position if appropriate. The claimant's representative stated that she did not wish us to do so and continued with her cross-examination of Mr Goodfellow. She later asked us to read the submissions after the end of Mr Goodfellow's evidence. The Tribunal read the claimant's representative's submissions on this issue. We asked if the claimant representative wished the Tribunal to consider any further application. The claimant's representative stated that she did not, but that she wished her submissions to be noted. The claimant's representative did not raise any further concerns during the remainder of the fourth and fifth days of the hearing.

CLAIMS AND ISSUES

12. The claimant summarised her claim in her Amended Grounds of Claim as follows:

"3. The essence of this claim is that the Respondent, as a matter of policy and practice, allows female-only toilets, changing facilities, and showers at the Claimant's workplace to be used by biologically male individuals who it considers to be female but who the Claimant considers to be biologically male assert a female identity."

13. The complaints to be considered during this hearing were set out in the Annex to the summary of the second Preliminary Hearing of this claim held by Employment Judge Tegerdine on 15 June 2025.

14. We discussed the list of issues (i.e. the legal questions for the Tribunal to decide) with the parties at the start of the hearing. The claimant's representative stated during the second preliminary hearing that the claimant was considering applying to amend her claim to include matters that post-dated her claim form, however the claimant did not make any such application either before or during this hearing.

15. The respondent conceded both group and individual disadvantage for the purposes of the indirect sex discrimination complaint. The respondent's representative noted that the claimant had pleaded her indirect religious

discrimination claim as relating to Muslims as a whole, rather than Muslim women in particular. However, the respondent conceded that Muslim women (but not Muslim men) would be disadvantaged by the PCPs pleaded. The claimant pleaded her indirect disability discrimination on the basis of "Women with PTSD relating to male sexual violence" and the respondent conceded disadvantage on this basis.

16. The respondent also confirmed in its submissions that it was not raising any time limit points. This meant that we did not need to reach a decision on those particular issues.

17. The revised list of issues is set out below. This list contains the legal questions that the Tribunal had to decide at the conclusion of this hearing. The issues in this case relate to the period between the claimant's return from maternity leave in August 2022 and the date on which the claim was presented to the Tribunal (14 April 2024).

LIST OF ISSUES (LEGAL QUESTIONS FOR THE TRIBUNAL TO DECIDE)

Indirect discrimination on the basis of sex, religious belief and disability (s19 of the Equality Act 2010)

1. The claimant relies upon the following PCPs:

a. PCP1: allowing trans women to access female-only facilities; and

b. PCP2: permitting trans staff to access single-sex facilities provided for the opposite sex.

It is common ground that:

i) R applied a policy (PCP1) of allowing trans women to access female-only facilities; and

ii) that R applied PCP2 being permitting trans staff to access single-sex facilities provided for the opposite sex.

2. The respondent <u>accepted</u> that PCP1 and PCP2 put the following groups as a whole (and the claimant as an individual) at a particular disadvantage compared with others who did not share the protected characteristic in question:

a. Women;

b. Women who were Muslims (but not necessarily Muslim men); and

c. Women with PTSD relating to male sexual violence.

3. Was PCP1 or PCP2 a means of achieving any of the following aims:

a. sensitively, balancing the competing rights of its employees and visitors;

b. respecting the gender identity of its employees and visitors;

c. adhering to the Equality Act 2010;

d. adhering to guidance / published good practice advice in relation to provision of single-sex facilities;

e. allowing access to appropriate single-sex and gender neutral toileting, showering, washing and changing facilities, as far as reasonably possible within the confines of the Respondent's estate and/or lease; and/or

f. adhering to the provisions of the Respondent's lease?

4. The claimant accepts that aims (a), (b), (c) and (e) are legitimate aims. The Tribunal needs to decide whether:

a. aim (d) is legitimate; and

b. aim (f) is legitimate?

5. Was PCP1 and/or PCP2 a proportionate means of achieving those aims, or any of them?

Harassment on the basis of (i) sex; (ii) philosophical belief (gender critical belief) (s26 of the Equality Act 2010)

11. Was the respondent's policy of permitting trans women to use female-only facilities unwanted conduct related to (a) sex or (b) gender critical belief?

12. Did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

13. Was the respondent's Trans Equality Procedure unwanted conduct related to gender critical belief?

14. Did it have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

Remedy

16. What if any declarations of discrimination should the tribunal make?

17. What if any compensation should be awarded to the claimant for injury to feelings?

18. What recommendations should be made for the purpose of obviating or reducing the impact on the claimant of any discrimination found?

RESERVED JUDGMENT

FINDINGS OF FACT

Context

18. This case is dependent on evidence based on people's recollection of events that happened some time ago. In assessing the evidence relating to this claim, we have borne in mind the guidance given in the case of *Gestmin SGPS -v- Credit Suisse (UK) Ltd* [2013] EWHC 3560. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable. Everyone believes that their own memories are more faithful than they are in reality. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all.

19. The process of going through Tribunal and other proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to the parties. It was said in the Gestmin case: *"Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*

20. We found the evidence of the claimant and the respondent's three witnesses to be honest and credible throughout these proceedings. All witnesses (including the claimant) gave their evidence to the best of their recollection and stated when they were unable to comment on and/or could not remember certain events.

Background

21. The respondent is an executive non-departmental public body, sponsored by the Department of Health and Social Care. The respondent has a wide range of statutory functions, responsibilities and regulatory powers, focused on supporting and overseeing the wider NHS. The respondent's staff do not carry out frontline clinical duties.

22. The respondent was and continues to undergo a period of organisational change. The respondent merged with NHS Digital and Health Education England in or around 2023/2024. The Secretary of State for Health and Social Care announced on 13 March 2025 that the respondent would be abolished by 2027 and that a two year transition programme will take place.

23. The respondent's employees are based in seven regions, including the North East and Yorkshire. Most of the respondent's Leeds based employees are based in a single large office. In 2022, the respondent's main Leeds office was at Quarry House, moving to Wellington Place during 2023. A small proportion of the respondent's Leeds based staff also work from offices elsewhere in the region. The majority of the respondent's staff have worked on a hybrid basis since 2022 (i.e. working part time from the office and part time from home). The most common hybrid working pattern consisted of employees spending 40% of working hours in the office and 60% of working hours at home.

24. The claimant has been employed by the respondent since 1 October 2017, most recently as a Senior Programme Manager. She was still employed in that role with the respondent as at the date of the hearing of this claim. The claimant was originally based at the respondent's offices at Quarry House in Leeds. The Quarry House building was owned by the DWP, who sublet floors to other tenants including the respondent.

25. The ground floor of Quarry House included a leisure centre, which was operated by a third party and open to members of the public. The leisure centre facilities included a sports hall, swimming pool, gym and gym class facilities that were open before, during and after normal office hours and at the weekends. The ground floor "dryside" changing rooms (which included the shower facilities referred to in this claim) were accessible by staff and visitors of the respondent, the DWP, any of the tenants based in Quarry House and any leisure centre users. We did not hear any evidence on the Quarry House swimming pool changing facilities as part of this claim.

26. The respondent started its office move from Quarry House to Wellington Place in Leeds in April 2023. HMRC is the leaseholder of the Wellington Place site. The facilities at Wellington Place are accessible by staff and visitors of HMRC, the respondent and any other tenants of the building. Members of the public cannot access the Wellington Place facilities unless they are visiting the building for meetings or events organised by HMRC, the respondent or any other tenants.

27. The claimant's team moved to the respondent's offices in Wellington Place in Leeds on 7 November 2023. However, the claimant accepted that she could have chosen to work from Wellington Place from mid-July 2023 before her team's official move.

28. The claimant took two periods of maternity leave during the time of the events relevant to this claim:

    28.1 from 2021, returning in late August 2022; and

    28.2 from 29 November 2023, returning in November 2024.

29. The claimant was on maternity leave at the time her claim was presented to the Tribunal on 14 April 2024, following ACAS early claim conciliation from 2 February to 15 March 2024.

Claimant's protected characteristics

30. The claimant relies on four protected characteristics under the Equality Act 2010 for the purposes of her claim. The respondent accepts that the claimant had each of these protected characteristics:

    30.1 sex;

    30.2 religious belief (Islam);

    30.3 disability (PTSD related to male sexual violence); and

    30.4 philosophical belief (gender critical belief).

31. The claimant set out matters relating to her religious belief at paragraph 12 of her Amended Grounds of Claim:

"a. The Claimant considers it improper to expose most parts of her body to any male who is not her husband. She considers it particularly improper to be naked in the presence of any male who is not her husband. She required a changing room and showers in Quarry House for the purposes of exercise and, in line with the Claimant's religious beliefs, these facilities were unsuitable.

b. She does not consider it religiously improper to be naked in the presence of other females, regardless of their religion.

c. She considers that there is a general religious obligation on her, subject to certain exceptions at certain times, to pray five times a day at specified times. This generally includes times during her working hours, when she will take a short break to fulfil her prayer obligation.

d. On certain occasions, prior to prayer, she considers that she is obliged to perform a fuller form of ablution ('Ghusl'). Ghusl may be required prior to prayer during working hours from time to time, depending on the Claimant's personal circumstances, the day of the week, and other matters. Of relevance to this claim, in practical terms Ghusl requires her to be naked and to wash her entire body. She is able to perform Ghusl, if required to do so in the workplace, by taking a shower. She considers this particularly improper in the presence, or potential presence, of any males, but has no objection to doing this in the presence of other females, regardless of their religion. If the appropriate facilities are not available then Ghusl could not be performed which then impacts the ability to pray.

e. The lack of adequate facilities has a direct impact on the ability of Muslim women to exercise [e.g. run to work in the claimant's case] *which is detrimental to them."*

32. The claimant states at paragraphs 14-17 of her Amended Grounds of Claim that her PTSD arises from male sexual violence. She states that:

"16. The Claimant fears that, if she put herself into an intimate environment, such as a bathroom or changing facility, where a male may be present, she would be putting herself at risk of being sexually assaulted by that male. She addresses this by avoiding that situation and only using such facilities where they are either female only or entirely private i.e. nobody else can enter when she is inside.

17. For the avoidance of doubt, this fear is a symptom and a trigger of the Claimant's PTSD. It is not directed at any specific male colleague of the Claimant and is not directed at Person X."

33. The claimant stated at paragraph 18 of her Amended Grounds of Claim in relation to her gender critical belief:

"The Claimant believes that sex is a binary characteristic i.e. either female or male, that this is defined at birth, and that it is not capable of change. She accepts that, from a legal point of view, gender (not sex) is capable of reassignment and that gender reassignment is a protected characteristic.

34. The claimant also describes her gender critical belief at paragraph 9 of her witness statement as follows:

"I view my "gender-critical" position as the middle ground where everyone's rights are respected and accommodated. I do not care what a male wears for work as long it is work appropriate. However, it is not reasonable to allow men who say they are women and be allowed access to women's spaces, prisons, categories

for scholarships, sports or boards – their exclusion is the reasonable middle ground for the reasons of safety, dignity and comfort of women."

35. The claimant further clarified her position at paragraph 7 of her Amended Grounds of Claim stating:

"a. The Claimant is an experienced healthcare professional and considers herself to be an advocate for proper healthcare provision for trans people, of whatever gender, in accordance with their legal rights;

b. The Claimant also considers herself to be an advocate for the legal rights of females in the workplace;

c. The Claimant would reject any suggestion that she is transphobic. She does not object to working with, or socialising with, or generally sharing non-intimate space with trans people;

d. Whilst, as set out below, the Claimant experiences anxiety at the prospect of encountering males in the specific setting of what she considers should be female-only environments, she does not otherwise object in any way to working, socialising, or sharing non-intimate space with males;

e. Although the matter has not arisen in this case, the Claimant would not object to sharing the Respondent's female-only facilities with a trans person who she considered to be female;

f. While this matter arose in practice following an individual within the Respondent ('Person X') making it known that they, having previously been male, now identified themselves as female and intended, pursuant to the Respondent's relevant policy, to use female-only facilities, this claim is not motivated by any hostility to Person X;

g. The Claimant is unaware of Person X's gender reassignment status i.e. whether or not a Gender Reassignment Certificate has been obtained. The Claimant bases her claim on the Respondent's policies and practices, which would equally well apply to any other trans individual who was born male and who the Claimant may encounter at work. The Claimant is aware that Person X no longer works for the Respondent."

36. The claimant stated in oral evidence that she had spoken to Person X during one or two online video meetings in 2021 (i.e. before Dr Montgomery sent the email announcement regarding Person X's new gender identity). The claimant confirmed that she had not seen or met Person X since 2021. She also stated that she believes that Person X left the respondent's employment in January 2023, although she only found this out several months later when she looked on LinkedIn.

Respondent's workforce

37. The respondent stated that:

37.1 its total number of employees was as follows (excluding secondees and contractors, totalling around 1000–1400 additional staff):

37.1.1 October 2022 –19,499;

37.1.2 October 2023 –16,764;

37.1.3 April 2024 –16,128;

37.2 of its total employees:

37.2.1 around 63% were female as at the end of January 2026;

37.2.2 around 1067 were Muslim out of a total headcount of 15,817 employees as at the end of January 2026 (approximately 7%).

37.3 its total number of employees based at various Leeds office (excluding secondees and contractors, totalling around 300-400 additional staff) consisted of:

37.3.1 October 2022 – 4,536;

37.3.2 October 2023 – 3,862;

37.3.3 April 2024 – 3,679;

37.4 Assuming that there were similar ratios of female and Muslim employees in the Leeds employee population compared to the respondent's national employee population as at the end of January 2026:

37.4.1 October 2022 – around 2,858 female employees, of whom around 200 were Muslim women;

37.4.2 October 2023 – around 2433 female employees, of whom around 170 were Muslim women;

37.4.3 April 2024 – around 2,317 female employees, of whom around 162 were Muslim women.

37.5 According to its 2023 staff census, twenty-four of its employees across all of its offices stated that they were transgender, of whom less than five stated that they were trans women. Assuming similar ratios applied to its Leeds office in October 2023, there were around five to six transgender employees in Leeds of whom one or two were trans women;

37.6 the respondent did not hold data on the number of staff (of any gender) who suffer from PTSD as a result of male sexual violence.

38. We concluded that the number of staff who fell within the categories of women, Muslim women was significantly higher than those who were transgender and/or trans women.

39. We were not provided with any statistics on the proportion of women with PTSD resulting from male sexual violence within the general population. We were provided with a copy of a report prepared by Professor Jo Phoenix (Professor of Criminology at the University of Reading) dated 29 September 2025 for an unrelated Employment Tribunal claim: Hutchinson and others v Durham and Darlington NHS Foundation Trust (Case number 2501192/2024). The respondent did not object to the claimant's reliance on this report.

40. Professor Phoenix's report was not prepared for the purposes of this claim. Paragraph 2 of the report states that it was prepared for the purposes of expert witness evidence relating to an issue raised in Hutchinson. Professor Phoenix records the purpose of her report as follows:

"2. I understand that my expertise is required only in relation to Issue 8(b) in the Agreed List of Issues, that being:

> *It is disputed whether women are generally more sensitive than men to being compelled to undress in front of a person of the opposite biological sex and therefore more likely to suffer fear, distress, and/or humiliation caused by the application of the PCPs.*
>
> *3. To address Issue 8(b), I have been asked to provide expert opinion in relation to the following two questions.*
>
> *a. Are women generally more sensitive than men to being compelled to undress in front of a person of the opposite biological sex?*
>
> *b. Are women more likely than men to suffer fear, distress and/or humiliation if compelled to undress in front of a person of the opposite biological sex?*
>
> *4. For the purposes of this report, I am interpreting the phrase 'compelled to undress' as per the letter of instruction: "as encompassing a requirement to change clothes in a communal changing room shared with a member of the opposite sex".*

41. These are not questions that this Tribunal had to consider because the claimant is not a clinical staff member (e.g. a doctor or nurse) who was required to change into/out of scrubs for work. However, the report included various statistics, which Professor Phoenix states show that:

    41.1 a significantly higher number of sexual offences recorded by the police were committed against women during both years than were committed against men for the years ending March 2021 and March 2022 (data compiled by Professor Phoenix from the Office for National Statistics in 2023 relating to Sexual offences prevalence and victim characteristics, England and Wales); and

    41.2 the self-reported prevalence of sexual assaults for females aged 16-59 was around four times higher than that for males (Professor Phoenix refers to data from the Crime Survey of England and Wales, Office for National Statistics 2017).

42. We note that:

    42.1 the statistics set out by Professor Phoenix do not state the biological sex or the gender identity of the perpetrator of the sexual offences referred to; and

    42.2 the report does not contain any data on the proportion of women who were subject to sexual offences who then developed PTSD.

43. We concluded from Professor Phoenix's report that it was likely that there were more female employees than male employees in the respondent's workforce who had been subject to sexual offences. However, we were unable to estimate the numbers of female employees who had developed PTSD as a result of male sexual violence from the report.

Introduction of the respondent's Trans Equality Policy and Procedure

44. The respondent decided to draft its Trans Equality Policy and Procedure (the "**TEP**") in or around 2017. The respondent stated that they had unfortunately lost access to the bulk of the documentation and correspondence relating to the drawing up of this policy, due to the passage of time and the transition and merger of the respondent with other organisations.

45. Ms Vivien Hodgskiss was employed as Head of People Strategy in 2017 and continued in that role until November 2019 when she moved to a different internal role. She co-chaired the respondent's Policy Sub-Group alongside the Unison Assistant National Officer for Health.

46. Ms Hodgskiss explained that the original TEP was drawn in line with the respondent's standard process, which involved engaging with employee network groups and consulting with trade unions. Ms Hodgskiss stated that at that time the respondent was a Stonewall Diversity Champion and had regular discussions with Stonewall regarding how to support their LGBTQ+ staff in the workplace. She noted that the respondent made submissions up until 2022 (for the 2023 listings) with a view to being included in Stonewall's "Workplace Equality Index" during that period of time.

47. Ms Hodgskiss recalled that Stonewall provided the respondent with an initial template policy, which the respondent amended with input from the National Officer for LGBT equality at Unison. The respondent then discussed the draft TEP with the co-chairs of the NHS England LGBT+ network and made further revisions to the draft TEP.

48. The respondent also engaged with the employee network groups that existed in the organisation at the time, namely:

    48.1 the DAWN network (in relation to disability);

    48.2 the BAME network; and

    48.3 the LGBT+ network.

49. The respondent did not have any dedicated staff networks for women or for people of faith at that time. However, Ms Hodgskiss stated that feedback from women would have been captured through feedback from the other networks and the trade unions.

50. Ms Hodgskiss believed that an Equality Impact statement must have been prepared when the TEP was drafted. However, she no longer had a copy of this document. She noted that the respondent may not have documented a formal Equality Impact Assessment in the same format that it does at present because the respondent's practice on documenting such assessments has changed over the years.

51. Ms Hodgskiss stated in her witness statement:

    "10. When reviewing and drafting the policy, our aim was to create a positive working environment for all staff, and this policy focused on the experience of trans staff in the workplace, who traditionally had suffered disadvantage and had particular issues to navigate in the workplace around transitioning. At the forefront of our minds was our duties to all employees but in particular our duty to respect the gender identity of our trans colleagues and promoting inclusion in the workplace, in line with our Equality and Diversity policy."

52. Ms Hodgskiss and Mr McCurry also gave evidence regarding their concerns around potential discrimination claims from trans staff if they were not permitted to use the facilities that corresponded to their gender identity. Mr McCurry stated in his witness statement:

"The Trans Equality Policy and Procedure really emphasises the need for an individual and tailored approach for supporting trans employees in the workplace. It is my understanding that while it does not state there is a right for trans-employees to access single-sex facilities of their chosen sex at section 4.11.1 [p.160], it does advise that this be allowed. My understanding is that the position set out in section 4.11.2 in relation to it not being acceptable to require trans employees to only use the unisex or disabled facilities was included in light of the legal position in Croft v Royal Mail (2003) which indicated there may be a time when a trans women could use the female facilities and that permanent refusal in respect of the choice of a trans woman to use female facilities could be an act of discrimination. I appreciate that the legal position has moved on since then, however I understand that this case, and the comments made in it, was part of what formed the rationale for the policy and I don't think it is fair to say that the law in this area has always been clear and obvious for employers to navigate."

53. Mr McCurry also stated that the respondent is considering its position in the light of the Supreme Court's decision in *For Women Scotland*. However, he confirmed during cross-examination that the respondent has not yet started its review of the TEP.

54. The working draft of the TEP was referred to the respondent's National Partnership Forum, attended by the respondent's Acting Director of People and OD, the Deputy Director of People and others along with trade union National Officers (including from Unite the Union, UNISON and the Royal College of Nursing) and local representatives. Further amendments were made to the policy and it was approved at the National Partnership Forum in July or August 2017. The policy was then issued after executive HR sub-group final review and sign-off.

55. The TEP was issued on 1 October 2017 which, coincidentally, is the same date that the claimant started working for the respondent.

Feedback channels for respondent's policies

56. Ms Hodgskiss and Mr McCurry explained that there were channels for the respondent's employees to raise any issues regarding the wording of the TEP (and any other policies) after it was issued. Employee feedback could be provided through formal HR channels. In addition, anonymous feedback could be provided through the Freedom to Speak Up Guardian or through the Employee Voice page on the intranet. Ms Hodgskiss noted that this function was used to provide feedback by staff, which led to changes in the respondent's Respect at Work (bullying and harassment) policy. However, Ms Hodgskiss noted that no feedback was provided from women raising similar concerns to the claimant regarding the TEP at any time before she moved roles in November 2019. Mr McCurry noted that these feedback channels were still available to employees when he joined the respondent in 2024.

Wording of the respondent's Trans Equality Policy and Procedure ("TEP")

57. The claimant quoted paragraph 4.11 and paragraph 6.5 of the respondent's TEP at paragraphs 28 and 30 of her Amended Grounds of Claim and at paragraph 28 of her witness statement. Those paragraphs stated:

"4.11 Single Sex Facilities

4.11.1 The individual and the main contact should agree the point at which the use of facilities such as changing rooms and toilets should change from one gender to the other. It is advised that these facilities should be accessed according to the full-time presentation of the employee in the new gender role, irrespective of their stage of transition.

4.11.2 It is not acceptable to insist that a person who is trans or transitioning should use only the toilets that are meant for disabled people, or unisex toilets, unless these are the only facilities available or they are preferred by the trans person.

…

6. Colleague Support

…

6.5 Colleagues who have particular religious beliefs or cultural views may claim that their 'protected characteristic' of 'religion or belief' under the Equality Act (2010) allows them to refuse to work, or share facilities with a person who is trans. There is no hierarchy among protected characteristics (i.e. one protected characteristic is not more important than another) and – as such – an individual's religion or belief must not be used to discriminate against another person because of their protected characteristic. If a situation was to arise where an individual refused to work with a trans individual this would constitute as illegal discrimination and, as such, NHS England would deal with this matter in accordance with the Disciplinary Policy and Procedure.

…"

58. The claimant gave evidence on her view of paragraph 6.5. She said that her reading of paragraph 6.5 (in combination with paragraph 4.11) was that it amounted to a 'silent threat'. She said the 'silent threat' was that anyone who objected to the use by trans women of female single sex facilities on religious or cultural grounds could be subject to disciplinary action. The claimant accepted that she had not in fact faced disciplinary action when she raised her concerns with the respondent regarding the TEP. She said that at one point she felt that *"there was something going on behind the scene"'* when she received a letter stating that she was at risk of redundancy. However, she accepted that letter was sent to her as a result of an administrative error, as set out in more detail later in this judgment.

59. We concluded that the claimant had misread paragraph 6.5. Paragraph 6.5 of the policy states that a refusal to work with a trans individual would amount to discrimination and would be dealt with as a disciplinary matter. Paragraph 6.5 does not say that disciplinary action would be taken if an employee refused to share facilities with a trans individual. In any event, the claimant did not face disciplinary action when she raised her concerns regarding the TEP from November 2022 onwards.

60. The claimant's representative also raised other provisions of the TEP during cross-examination, including:

*2. **Definitions***

2.1 "Trans" is an umbrella term used 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, gender-queer, gender-fluid, non-binary, gendervariant, cross-dresser, genderless, agender, non-gendered, third gender, two-spirit, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.

…

3. Legal Framework

3.1 The Equality Act (2010)

3.1.1 The Equality Act (2010) protects people on the basis of gender reassignment (also known as 'gender identity') from direct and indirect discrimination and harassment. This includes discrimination by association and discrimination against people perceived to have the protected characteristic of gender reassignment/gender identity.

3.1.2 The Act also places a proactive duty on public organisations through the Public Sector Equality Duty to promote equality of opportunity, foster good relations and eliminate unlawful discrimination between people who have the protected characteristic of gender reassignment/gender identity and people who do not.

…

3.3 Gender Recognition Act (2004)

3.3.1 The Gender Recognition Act (2004) allows for those who have changed their gender role permanently to obtain a gender recognition certificate (GRC). Anyone with a GRC will be legally recognised 'for all purposes' as their new gender status, giving them specific protection in law…

3.3.2 Many trans people do not apply for a GRC. Employment rights do not depend on whether a person has a GRC and, as per the Act, this is not needed to change gender markers at work.

…

4.10 Dress and Appearance

4.10.1 In the absence of a formal dress code, NHS England encourages freedom of expression and promotes professionalism. Trans and transitioning individuals therefore have flexibility in relation to their gender presentation, providing this is appropriate for their local work environment.

4.10.2 The organisation recognises that there will be occasions where flexibility is required regarding dress and appearance during transition in both surgical and non-surgical situations and will take a reasonable approach to accommodating such requests. An agreement to work away from the office (e.g. working from home) may also be an option during such periods.

61. The claimant's representative cross-examined Ms Hodgskiss on the respondent's definition of 'trans' under the TEP. Ms Hodgskiss accepted that the definition in the TEP was broad. She stated that the respondent relied on advice from the LGBT staff network, Stonewall and the UNISON National Officer when drafting the definition of 'trans'. She stated that:

"The policy refers to supporting people who present full time as trans gender – that's the focus of the policy. This is all about supporting individuals in the workplace who are trans – normally individuals presenting in a gender that is not their biological sex."

62. Ms Hodgskiss accepted during cross-examination that the respondent had no way of 'policing' whether or not any individual presented full time as the opposite sex. The claimant's representative highlighted a photograph accompanying a case study in the GIRES Transgender Policy Guide for Employers (the "**GIRES Guide**") which depicted a trans woman who had a beard. Ms Hodgskiss accepted that the TEP stated that trans individuals had flexibility in how they dressed and that a trans woman could choose to dress in a conventionally masculine style.

63. The claimant's representative spent some time cross-examining the respondent's witnesses on the GIRES Guide and other documents at the links at paragraph 7 of the TEP. Paragraph 7 stated:

"7. Supplementary Guidance Documentation

7.1 The following guidance documentation may be helpful for individuals who are trans or transitioning and for key stakeholders involved in offering support.

GIRES Transgender Policy Guide for Employers

Stonewall's Introduction to Trans Inclusion in the Workplace

UNISON Trans Workers Rights Factsheet"

64. We note that the claimant did not refer to the wording of the GIRES Guide, the Stonewall document or the UNISON document in her grievance or grievance appeal. She did not refer to any of those documents in her Amended Grounds of Claim or in her witness statement. She also did not refer to the wording of those linked documents when being cross-examined. We concluded that the claimant did not read any of those documents at the time that she received Dr Montgomery's email regarding Person X's transition on 10 October 2023 or at any time before presenting her claim.

65. The claimant's representative asked Ms Hodgskiss about certain parts of the GIRES Guide. Ms Hodgskiss accepted during cross-examination that the TEP referred to the links to the GIRES Guide and other documents as a source of guidance. She stated during cross-examination that she was 'surprised by the content' of the GIRES Guide, particularly where it stated that if non-trans staff felt uncomfortable with trans staff using single sex facilities, then they should use gender neutral or disabled facilities.

66. The claimant's representative did not cross-examine Ms Hodgskiss on the contents of the Unison factsheet or the Stonewall document. We note that both documents contain similar wording to the TEP. For example, the Unison factsheet stated:

"Single sex facilities

It is increasingly common for at least some changing and toilet facilities to be available to all, irrespective of gender. Where facilities are single sex, transgender workers should be able to use them according to the gender in which they attend work. For workers who are transitioning, the employer and worker should agree the point at which the use of single sex facilities should change from one sex to

the other. This will usually be the point at which the person begins to live permanently in the gender with which they identify."

67. The Stonewall document stated:

"FACILITIES

Trans people are frequently denied access to spaces, facilities, events and groups that are gender specific. This can particularly affect trans women accessing 'women-only' spaces. Reasons given for this exclusion include a belief that trans women 'aren't real women', and a concern that other members of a group would feel uncomfortable with the presence of someone that they perceive to be a man.

…"

68. The Stonewall document also provided suggestions regarding the provision of gender neutral or unisex toilets and changing areas:

"You should allow anyone to access facilities, spaces and groups which align with their gender identity.

You should work with your estates or office management team to implement gender neutral or unisex toilets and changing areas.

…

TOP TIPS:

• Consult with your estates or office management team and trans employees to determine how you can introduce gender neutral toilets

• Gain buy-in for gender neutral facilities from your senior management team or board

• Plan and effectively communicate the use of these facilities, paying particular attention to the signage to be used and utilising line managers in the process

• When you send communications about gender neutral facilities, do not solely place the emphasis on trans people for the reason for change – this reinforces the idea that trans people should use separate facilities

• It is not only trans or non-binary people that may wish to use gender neutral facilities, there are many people who do not identify as trans who value privacy and non-gendered spaces."

Incomplete review of the TEP during 2022

69. The respondent started a review of the TEP during August 2022, led by Mr Erk Gunce (HR and OD Equality Diversity and Inclusion Manager). This review was never completed. We saw a copy of the draft Equality and Health Inequalities Impact Assessment dated 27 September 2022, the front page of which stated in the proposal section:

"Improvements to the Trans Equality Procedure undertaken collaboratively by the LGBT+ Staff Network and the CEO, CDO and COO, HR Business Partner team."

70. The review of the TEP was ongoing in November 2022, as stated in emails exchanged between Ms Zinnia Kingston (then Head of HR and OD Policy) and Ms Sybil Fisher (then Diversity and Inclusion Manager) regarding the Equality Impact Assessment for the TEP from 2017. Mr McCurry did not work for the respondent

at that time. However, he stated in his oral evidence that he understood that the review of the TEP was put on hold because the draft Impact Assessment was not adequate for the review.

71. We also note that Ms Fisher's email dated 21 November 2022 stated:

"…my memory is Viv [Hodgskiss] *leading on it as she was a HRBP or Head of at the time. I remember her doing engagement with the LGBT+ Network but am really not sure of beyond that.*

However from 2018 onwards I did lead on the Gender Neutral Toilets project. While this didn't have a formal EIA done, I did definitely engage with the relevant staff networks (DAWN, Muslim, Women's and LGBT+ Networks) and Trade Unions as well as Estates and Comms."

72. Ms Fisher provided some further information in her email dated 18 January 2023 (with text underlined for our emphasis) when she stated:

"I think there's been confusion again, but I'm attaching the trail with Zin which should give you the background. Essentially I wasn't involved in the development of the Trans Equality Policy, Viv Hodgskiss was, although later on I led on the EDI in the Workplace Policy.

I did lead on the Toilets for All project for staff and visitors to NHSE, which had substantial engagement with all networks (BAME, LGBT+, Muslim, Women's and DAWN as well as Trade Unions) as well as academic partnerships via Around the Toilet. Trans equality was a big part.

I have handed all this over a number of times as I went on maternity leave just before the EDI roles in the central HR and OD team were removed during the NHSE-I merger (April 2020). At that point, were it not for Covid, one of the key priorities for the new EDI function was to harmonise the Trans Equality Policy across NHSE and I and that would have involved an EIA…"

…

I wish I could help more however the modern desktop upgrade has stopped access to the G Drive where this was all filed. I don't know if files can be recovered, or exist elsewhere…"

Claimant's return from maternity leave (August 2022) and office attendance

73. The claimant returned to work from her first maternity leave on 24 August 2022. She had previously worked from 8am to 4pm (five days per week). The claimant opted for a hybrid working pattern on her return. The respondent's minimum requirement for staff to attend the office was 40% at that time. However, the claimant agreed with the respondent that she would only be required to attend the office for 25% of her working time. The claimant also chose to change her hours to 8am to 6pm (four days per week). This meant that the claimant's minimum attendance in the office was one day per week under her flexible working arrangement.

74. The claimant said that she did not go into the office as much as she had planned or wanted to when she returned to work because she struggled to balance her new working hours with caring for her child. The claimant stated:

"I struggled with the return to work stage – my child was getting up many times per night – I was only getting a couple of hours' sleep…So it was helpful for me that I could work from home as per my hybrid arrangement – I could sleep longer and start at 8am. I always felt that this was temporary – it was my return to work transition."

75. The claimant also said that in August 2022 she was part of a legacy team, most of whom were based in London. The claimant moved to Mr Mitchell Briggs' team in late September 2022. Mr Briggs was based in Leeds. However, he also worked under a flexible working/hybrid arrangement which meant that he mainly worked from home.

76. The claimant stated during her evidence that she recalled attending Quarry House on five occasions from October 2022 (when she received Dr Montgomery's email re Person X's transition) to November 2023. She stated that she attended Wellington Place on two occasions in November 2023, before she went on maternity leave in late November 2023. The first occasion was on 7 November 2023 when the claimant picked up her building pass and went on a building tour. The second occasion was when attended the office for half a day to attend a team day. She did not have any difficulties in accessing the gender neutral or accessible toilets on those dates.

77. We also note that the hearing file contained logs prepared by the claimant of dates on which she attended the office and dates when she had difficulties in accessing gender neutral or accessible toilets following her return from maternity leave in Autumn 2024. Those logs relate to a time period that took place after the events relating to this claim.

Online learning module

78. The claimant completed an online learning module after at the end of August 2022, which included the following question:

"…you have been told by the project lead that during these meetings Sharon, a 54 year old trans employee, is not allowed to use the female bathrooms. What kind of discrimination has been displayed here? Make a selection from the options below and click submit….

- *Age*
- *Sexual Orientation*
- *Gender confirmation"*

79. The claimant said in her witness statement that she: *"thought that the expected answer did not make sense, but I discounted it as a mistake that simply needed correcting. I considered raising it with the team who had created the content, but I did not raise it with anyone at the time and I forgot about it."*

Email from Dr Montgomery re Person X – 10 October 2022

80. On 10 October 2022, Dr Ursula Montgomery (Director of Primary Care) emailed around three hundred staff in the directorate regarding a colleague's transition. Dr Montgomery's email was headed: "*Primary Care Group to read please Monday 10th October: an introduction to [X]".* The email stated:

"I am writing to let you know that our valued colleague [X]*, is transgender and is transitioning at work as of today. She asks to be called with she/her pronouns and*

to use a new email address, which should be available imminently on system distribution list.

[X] *says that you can support her by coming to say hi if you see her, using the right name and pronouns, and otherwise by carrying on as normal. I recognise that during these early days, people may occasionally, out of habit, use 's former name or pronouns so please don't feel worried if this happens. I know that as part of our PCG* [Primary Care Group] *ways of working, we appreciate the importance of using correct names and pronouns.*

I wanted to highlight a couple of points from Trans Equality Procedure as I realise there might be some immediate questions that spring to mind. As an organisation we have established and written down procedures to support trans individuals. This includes agreeing a main support contact, affirms the organisation's commitment to trans people using the single sex facilities they wish (Clause 4.11.1), having flexibility in relation to their gender presentation with regards how they dress (clause 4.10.1) and confirms that all members of staff should use their new name and pronouns (Clause 6.1).

If you have any further questions about this news, you are encouraged to contact either:

- X's line manager […]
- NHS England's Human Resources, Diversity and Inclusion liaison, Erk Gunce […]
- You can also get in touch with me […]

We are working with Erk to schedule a Trans Awareness Workshop for Primary Care Group members. Please keep an eye out as this will be a great opportunity to learn more about transgender issues and ask questions.

…

And please see here for the relevant organisational policies:

- *Trans Equality Policy*
- *Trans Equality Procedure*
- *Respect at Work Policy*
- *Equality, Diversity and Inclusion in the Workplace Policy*

Thank you for taking time this morning to read through and note these important changes with immediate effect."

81. The claimant stated that she read Dr Montgomery's email and accessed the link to the TEP. The claimant said that:

"The effect of the Policy wording, email and EDI training left me in a position where I felt scared and intimidated. There was an expectation that I should be content with sharing facilities with males irrespective of stages of transitioning and objecting to that was unspeakable and supposedly a 'transphobic' view. The scale of these demands was extremely worrying – it covered the whole organisation and allowed for no concessions."

82. The claimant stated at paragraph 31 of her witness statement:

"I had never agreed to share single-sex facilities with biological males, no matter how they identified. As a woman, I had never wanted to do that in the past because of safety, privacy and dignity from the opposite sex. I have PTSD caused by sexual trauma, so sharing such facilities with males would cause extreme distress, crying, freezing or fleeing and emotional flashbacks. The reference to disciplinary action felt like a direct threat towards my job if I did not comply with the Policy. My Islamic faith requires me not to share such personal spaces with men. I found the Policy wording about religion and 'hierarchy of beliefs' offensive and dismissive and it had direct implications on me. Lastly, I believe that biological sex is real and immutable. I do not believe that trans-women are women. These are gender critical beliefs that clearly could not be expressed under the Policy."

83. The claimant did not state in her witness statement or during her oral evidence that she read any of the other documents contained in the links to Dr Montgomery's email or the other documents contained in the links set out in the TEP. As stated earlier in this judgment, we have therefore concluded that she did not read those documents until after she presented her claim to the Tribunal.

"Coffee and Learn: Trans Awareness" online session – 9 November 2022

84. The claimant attended an online Trans Awareness session on 9 November 2022, run by the respondent's staff network in collaboration with the respondent's HR and OD team. Mr Erk Gunce (HR, OD and Equality, Diversity, Inclusion Manager) attended the session. The presentation part of the session was attended by over 100 staff members and forty-four people (including the claimant) remained online for the question and answer session.

85. The claimant raised concerns during the session that from her perspective, the respondent's decision to allow trans women to use female only facilities had effectively turned those facilities into mixed sex facilities. She referred to a Swedish study which she stated showed that there is a higher rate of offending by men than women regardless of any gender transition.

86. The claimant did not mention her PTSD because she (understandably) considered this to be inappropriate in a public session.

Emails after Trans Awareness session on 9 November 2022

87. The claimant emailed Mr Gunce shortly after the session and asked what the consultation had taken place before the respondent introduced the TEP. Mr Gunce did not reply to that email. However, we have seen copies of internal emails between Mr Gunce and other members of the HR team on or around 9 November 2022 (including those sent to Ms Kingston and Ms Fisher referred to above) regarding the claimant's questions.

88. Mr Gunce's email to his HR colleagues is set out below (Mr Gunce's wording is in black and italic font and the parts of the claimant's email that he quoted are indented in blue and italic font):

"The staff network, in collaboration with our HR & OD team, have run a trans awareness session today for one of our teams, and I subsequently received the following email from one of the participants:

> *Thank you for organising the learning session on trans and non-binary. I'd like to know what the process/discussion/consultation of cis-women, religious minorities and ethnicities was when NHSE formed its trans policy and the*

> *decision not to exclude trans persons from single 'opposite sex' facilities like toilets and changing rooms when gender neutral facilities have also been offered. There seems to be complete lack of consultation on that and I'd like to clarify if that was the case, since you mentioned it was something not considered necessary.*

The same employee, during today's training run by the staff network, asked a question about safety in toilets and quoted a Swedish study about trans people using toilets, asking us whether we are consulting on safeguarding issues and made references to "offending people". Just to clarify, unlike what the employee has suggested in their email, I did not say that consultation was not necessary. To the contrary, I talked about our Equality Impact Assessment processes which would have included an assessment on all protected characteristics as well as our various approval processes such as trade union consultation etc before a policy gets finalized. I can clarify this point in my response, also explaining the various consultative processes policies go through before being finalized as well as point out the fact that trans people being required to use gender neutral facilities would not always be inclusive since, for example, a trans woman is not non-binary.

I am conscious of the psychological safety of our LGBT+ staff network members who run the trans awareness session and what the implications might be if we are asked questions suggesting our trans employees create safety risks to other employees or the issue being referred to as a "debate". My response was that there is currently no safeguarding concerns in NHS England about trans people accessing single sex spaces or any evidence that they pose a risk to other employees. I have separately reached out to Christina to try and speak to her tomorrow as I would benefit from some support on how to handle any such questions or comments in the future especially considering that gender critical beliefs have recently been deemed as protected under the Equality Act, under case law.

We do have 3 more trans awareness sessions running over the next few weeks, open to the entire organisation, so I would appreciate steer from Christina (and from yourself as well Ronnie as appropriate) on how to handle such questions if they are posed in the future, to be mindful of our duties both towards trans people and any potential employees with gender critical beliefs, also bearing in mind that our trans equality procedure (both current one, and the improved one we are currently working on) clearly affirms the organisation's commitment to trans people using the single sex facilities they wish (Clause 4.11.1), having flexibility in relation to their gender presentation with regards how they dress (clause 4.10.1) and confirms that all members of staff should use their new name and pronouns (Clause 6.1).

…"

89. The claimant did not see Mr Gunce's email at the time of the events of which she complains. She saw this email after she presented her claim form as part of these proceedings.

90. In the meantime, the claimant spoke with her new line manager (Mr Briggs) regarding her PTSD and the impact that this had on her. She told Mr Briggs that she wished to challenge the TEP but was concerned about doing so. Mr Briggs offered to support the claimant and later attended grievance meetings with her.

91. The claimant sent a further email to Mr Gunce on 17 November 2022. She stated in that email: *"if you could please 'let me know where I can find single-sex, not mixed-sex, toilet and changing room facilities. This is particularly important for women who have experienced sexual assault and have PTSD, or those who are from religious minorities."*

92. Mr Gunce responded on 21 November 2022 and stated that he was seeking further information. The claimant chased again for a response. She then sent what she described as a 'more formal email' to Mr Gunce on 12 January 2023. The claimant complained about Mr Gunce's delay in responding to her and said that she was considering taking matters further. The claimant and Mr Gunce exchanged further emails on the subject. Mr Gunce provided the claimant with the contact details for Mr Matthew Baker (the respondent's nominated ACAS liaison contact) and the claimant discussed the process for raising issues with Mr Baker.

93. On 9 February 2023, the claimant received a letter by email from Ms Helen Bullers (Acting Director of People and OD, whose responsibilities included employment policies such as the TEP). The letter stated that the claimant's role was at risk of redundancy. The claimant checked with her team and no one else had received a letter. She spoke to Mr Briggs, who assured her that it was most likely an administrative mistake. HR also said it was an administrative error. The claimant accepts that the letter was sent to her by mistake, but states that at the time the letter left her fearing that it was sent in retaliation for the concerns that she had raised regarding the TEP. We accept that the claimant was worried at that time, but concluded that her concerns were dealt with swiftly by the reassurance from Mr Briggs and from HR. We also note that during this period, the respondent was going through a significant period of organisational change affecting many staff as a result of its merger with NHS Digital and with Health Education England.

Grievance and grievance appeal

94. The claimant has not raised any specific complaints regarding the handling of her grievance and grievance appeal. However, we mention these matters here because they are relevant to the context of her harassment complaints.

95. The claimant raised a grievance dated 13 April 2023. There was a considerable period of delay in dealing with her grievance. The respondent investigated the claimant's grievance and finalised its investigation report on 8 September 2023. The claimant's grievance was heard by a panel on 30 November 2023 and was rejected. The claimant received an outcome letter dated 23 January 2024, which she appealed on 5 February 2024. The claimant's grievance appeal was heard on 3 May 2024 and she received an outcome letter dated 24 May 2024. The outcome letter partially upheld some elements of the claimant's appeal. However, it rejected the majority of her appeal points.

96. The claimant was questioned during the grievance appeal hearing on her views on whether or not a trans woman who had *"full reassignment surgery and looks to a full extent as a female"* should be able to use the women's facilities. The claimant stated:

    "I think it depends if they pass or not. Trans women do use female facilities, some look more obviously more male than others and I recognise that it's possible that I may have been in the same toilet as a trans woman and not recognised that they

are trans. I feel the policy has been made with this small minority within a minority in mind. To fully pass as a female is very rare."

97. During cross-examination on this point, the claimant explained that she was trying to be 'polite' and that *"I didn't try to advocate that some trans women who theoretically pass should be able to use their facilities."* She stated that:

"It's a bit nuanced – when I said that I may have been in same toilet as trans woman and not recognised that they are trans – what I meant is that when go into female facilities and look superficially at someone – then of course theoretically possible that bene in same space as trans woman without realising. But that to me is due to a fleeting encounter and not looking properly. I don't really believe a male can fully look like a woman – even if this notion of – [Claire Panniker] – grievance appeal panel chair] *referred to full reassignment surgery – I did not agree with* [Ms Panniker] *on that day and still don't agree with her that a male can look to full extent as a female.*

98. We concluded that the claimant did not accept that trans women's ability to use women's single-sex facilities should depend on whether they 'pass' as female or not. We note that our conclusion is consistent with points that had previously discussed during the grievance appeal hearing. For example, the claimant was asked:

"At what point do you consider a trans woman to be a woman?"

99. The claimant responded:

"Never, human beings can't change sex. I think you are asking about the GRC [Gender Recognition Certificate]. I understand GRC was originally developed for other purposes and not for facilities. For things like passport, pensions and other purposes of documentation. I don't think GRC is enough to change someone's biological sex. GRC doesn't require someone to actually undergo treatment, they only have to declare an intention. Even if the person has undergone surgical or hormonal changes, there is no definition of what the changes must be, and in any case GRC doesn't do anything in terms of changing their biological sex. The definition of surgery is really broad, it doesn't actually require the person to change surgically their private parts, it could be facial surgery."

100. The grievance appeal outcome letter stated in relation to the shower facilities at Quarry House:

"…had your office remained at Quarry House, one recommendation of this grievance outcome letter would have been that NHSE works with you and the Landlords of Quarry House to identify whether and, if so, how we could have provided you with access to secure, single occupancy, showering facilities. We would have needed to recognise that our ability to do so would have been influenced by the fact that we are one of a number of tenants in this building and do not own it. For example, we would have wanted to explore whether we could enable you to use the showers at certain times on your own; or whether it was possible to install locks so we could make a shower area private; or consider if there were any arrangements that could have been made with the Leisure Centre."

101. The grievance appeal noted that the facilities at Wellington Place consisted of unisex single occupancy lockable showers.

102. We note that as part of the process, the respondent prepared a detailed investigation report and the claimant attended a series of meetings to discuss her concerns during the grievance and grievance appeal process. We concluded that the claimant's concerns were discussed with her in detail at each stage of the process. The claimant stated during cross-examination:

"The grievance process itself has been polite and I did not receive any criticism and was not shut down in those interviews by any panel members. But I felt that everyone lacked insight throughout the investigation because how can you tell a rape victim that she should go elsewhere in the gender neutral toilets because she does not want to share facilities with a male."

103. In the meantime, the claimant engaged in ACAS early claim conciliation from 2 February 2024 to 15 March 2024 and presented her claim to the Tribunal on 14 April 2024.

Quarry House provision

104. Mr Goodfellow stated that in September 2022 the respondent occupied the fifth floor, half of the fourth floor and one wing of the second floor at Quarry House. He explained that the respondent had the use of 556 desks in November 2022, reducing to 401 desks by November 2023. Mr Goodfellow also noted that the vast majority of staff at Quarry House had opted for hybrid working. This meant that they spent around 40% of their working hours in the office. Other staff members, like the claimant, had flexible working arrangements which meant that they were required to spend less than 40% of their working hours in the office.

105. Mr Goodfellow gave the following unchallenged evidence regarding footfall at Quarry House during 2022/2023:

"43. Overall, there was a low full-time office usage and around 15% of staff in the office generally – this was around 75 people on-site at any one time. Therefore, in reality there were generally large, dispersed teams in a very large building but there was low office attendance generally, and so there were more than enough facilities available for staff to use, even on 'busier' days of office attendance."

106. Mr Goodfellow noted in his witness statement that the facilities at Quarry House in 2022/2023 consisted of the following:

"44. In terms of the layout and facilities, on each floor:

a. Separate male / female toilet facilities were provided, with lockable units and washbasins, in traditional multi-occupancy facilities with separate cubicles.

b. In addition, as per the Investigating Officer report, a group of single sex single cubicle facilities with single hand basins were available. Notable was the lockable external door directly onto the corridor which provided a single sex toilet with a sink and lockable external door. This provided a single occupancy space that cannot be shared with anyone. This style of facility was found on the same floor that LS worked on in Quarry House (rooms 5W46, 5W47 and 5W48).

c. Accessible/gender neutral single occupancy and lockable toilets were also provided on each floor."

107. The claimant attended Quarry House on six or seven occasions from late August 2022 (when she returned from maternity leave) until her team moved to Wellington Place on 7 November 2023. The claimant could have worked from Wellington

Place from July 2023 onwards, had she wished to do so. The claimant had a tour of the Wellington Place building on 7 November 2023 and attended a team day at Wellington Place. She did not attend Wellington Place on any other date before presenting her Tribunal claim on 14 April 2024. However, the claimant stated that she would have attended the office more regularly if she had felt able to use the female only facilities. For example, the claimant stated that she wished to run to work because this helped her to manage her PTSD symptoms. She also stated that her other opportunities to exercise were limited because of her need to care for her young children.

108. We accept that the claimant was not aware of the single occupancy facilities available on the fifth floor until the investigation report for her grievance was produced in September 2023.

109. As we stated earlier in our judgment, there were no shower facilities in the areas of Quarry House that the respondent occupied. The respondent's staff were able to use the ground floor communal showers at Quarry House's dryside changing rooms. These were divided into men's and women's dryside changing rooms. The showers themselves consisted of one single open space – there were no cubicles or locked doors. The dryside shower facilities at Quarry House were accessible to the staff of the DWP and any other tenants of the building, together with anyone using the third party operated leisure centre (which was open to members of the public).

110. The claimant also stated that she was pregnant during 2023 and had an increased need to use the toilet during the working day.

Wellington Place provision

111. Mr Goodfellow set out the facilities provided at Wellington Place in his witness statement:

"51. A proportion of these facilities are provided in four main toilet areas on each floor, with each toilet area containing 7 lockable units with a further two gender neutral cubicles outside both the male and female toilet areas.

a. Each floor has 4 sets of 'traditional' multi-occupant toilets with seven lockable cubicles and a bank of sinks in a communal area; these are designated as male or female. Behind these doors designated 'male' or 'female' before reaching the traditional multi-occupant toilets, there are two individual, lockable gender neutral, single toilets (including the sink) that open into a self-contained area.

b. There are also four separate disabled/accessible toilets on each floor.

c. In addition, there are also four changing/showering facilities in the basement of the building, which are gender-neutral, single-occupancy, self-contained and lockable. As mentioned above, these open into a short communal corridor behind a door that leads out into the basement. There is also a single, lockable shower unit in the basement, and one single lockable shower on each floor.

52. NHSE staff are also able to access the toilet facilities on other floors, via the lift lobbies."

112. Mr McCurry stated in his witness statement his views that:

"22. I believe that, as an organisation and specifically in relation to Wellington Place, we are abiding by the 1992 Regulations in providing the sufficient facilities

…, but that we also provide facilities over and above what the 1992 Regulations describe as sufficient.

23. We are also abiding by our obligations under the Equality Act 2010 by having a variety of alternative accessible facilities, both single-sex and unisex, that employees can choose to use subject to their individual circumstances, needs, views/beliefs and protected characteristics. Therefore, if a trans woman does not feel comfortable using the facilities of their biological sex (e.g. if they have fully medically and socially transitioned and their physical physiology no longer aligns with their biological sex) they have the option of using the unisex facilities or single occupancy facilities. Likewise, if an individual, for whatever personal, medical or religious reasons wants to ensure their absolute privacy there is the option to use the accessible and/or unisex single occupancy facilities. We have tried to balance the respective positions by ensuring everyone has a choice of facilities to opt in or opt out of rather than excluding any one group from any facility.

24. In our view, this appropriately strikes the balance of aims in relation to our legal obligations, adhering to the Equality Act 2010 (including the [Public Sector Equality Duty]*) and our important values of inclusion for all our staff and respecting the gender identity of our staff and visitors.*

113. The claimant stated as part of her grievance meeting with Mr Chris Hobson that she was happy with the changing and showering facilities at Wellington Place, based on the tour of the facilities that she had been on at that time. She did not use those facilities on either of the two occasions that she attended Wellington Place before going on her second maternity leave on 29 November 2023.

114. The claimant stated during the hearing that her opinion had changed since using the Wellington Place facilities on her return to work from her second maternity leave in November 2024:

"I recognise there is an improved offer, and the reason for this is because there are clearly individual rooms and lockable and they are unisex. So, yes, I appreciate the offer is much better now. With the toilets, obviously the policy has not changed at all and trans women who are male are able to access female toilets in Wellington Place, and that's where I feel discrimination is taking place. I am using the gender-neutral toilets. Is this a sufficient facility for me? I referred to health conditions, I need to think about whether I would need more choice. I don't agree with the idea that if you don't agree with trans women using the cubicle female toilets, then use the gender-neutral toilets. That's discriminatory to me."

115. The claimant also stated in her witness statement that she had run to work on her shortly after returning from maternity leave on 11 November 2024. She said that she had opened an unlocked door to a changing cubicle and found that a man (who was fully dressed) was inside. She raised concerns with Mr Goodfellow and suggested labelling one set of changing rooms as male and the other as female. She said that this incident triggered her PTSD.

116. We note that the events in November 2024 took place after the claimant submitted her claim and do not form part of this Tribunal claim.

RESERVED JUDGMENT

RELEVANT LAW

117. The Tribunal has considered the legislation and caselaw referred to below, together with the parties' helpful written and oral submissions. We have not produced the parties submissions in full in the interests of brevity, but we have considered the points that both sides as part of this Judgment.

INDIRECT DISCRIMINATION – SECTION 19 OF THE EQUALITY ACT 2010

118. Section 19 of the Equality Act 2010 (the "**Act**") provides:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice discriminatory in relation to a relevant protected characteristic of B's if –

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) It puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

119. Section 19(3) of the Act sets out the relevant protected characteristics, including disability, sex and religion or belief. There is no provision for indirect discrimination relating to a combination of protected characteristics. Section 14 of the Act does contain provisions relating to direct discrimination only based on a combination of protected characteristics. However, section 14 of the Act has never been brought into force.

120. The respondent accepts that:

120.1 it applied the two provisions, criteria or practices (known as "**PCPs**") alleged by the claimant;

120.2 there was group disadvantage suffered by women, Muslim women and women with PTSD arising from male sexual violence; and

120.3 the claimant herself suffered disadvantage as a result of the PCPs.

121. We have therefore not set out the law on PCPs and group/individual disadvantage for the purposes of indirect discrimination.

Objective justification

122. The key issue for the Tribunal to decide under the claimant's indirect discrimination complaint is whether or not the respondent can justify the disadvantage caused by the PCPs. The respondent has accepted the matters set out at section 19(2)(a) to (c) of the Act. The burden is then on the respondent to show that either (or both) of the PCPs that they applied were a proportionate means of achieving a legitimate aim.

123. The justification put forward by the employer for an indirectly discriminatory PCP is judged at the time when the measure was applied to the claimant, not at the time when the PCP was introduced — Schönheit v Stadt Frankfurt am Main and another case 2004 IRLR 983, ECJ, and Cross and ors v British Airways plc 2005 IRLR 423, EAT.

124. It does not follow that the employer is prevented from relying on considerations that were not in contemplation at the time of the PCP's application (see Health and Safety Executive v Cadman 2005 ICR 1546, CA). However, the burden of proving a particular aim was legitimate becomes more onerous when the reasons for that aim were not in the mind of the discriminator when the discriminatory act was committed (R (on the application of Elias) v Secretary of State for Defence 2006 IRLR 934, CA).

125. Public bodies are also required to undertake monitoring and impact assessment as part of their obligations under the public sector equality duty imposed by section 149 of the Act. The extent to which a public sector employer has complied with the duty may be taken into account by a tribunal when considering whether a PCP applied by that employer is objectively justified. Section 149 of the Act provides:

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

126. Section 149(7) of the Act sets out the relevant protected characteristics, including disability, gender reassignment, sex and religion or belief.

127. The EAT provided an overview of the main principles on objective justification in City of Oxford Bus Services Ltd t/a Oxford Bus Company v Harvey EAT 0171/18 at paragraphs 22-24 of its judgment (with our underlining for emphasis):

(1) Once a finding of a PCP having a disparate and adverse impact on those sharing the relevant protected characteristic has been made, what is required is (at a minimum) a critical evaluation of whether the employer's reasons demonstrated a real need to take the action in question (Allonby).

(2) If there was such a need, there must be consideration of the seriousness of a disparate impact of the PCP on those sharing the relevant protected characteristic, including the complainant and an evaluation of whether the former was sufficient to outweigh the latter (Allonby, Homer).

(3) In thus performing the required balancing exercise, the ET must assess not only the needs of the employer but also the discriminatory effect on those who share the relevant protected characteristic. Specifically, proportionality requires a balancing exercise with the importance of the legitimate aim being weighed against the discriminatory effect of the treatment. To be proportionate, a measure must be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so (Homer).

(4) The caveat imported by the word "reasonably" allows that an employer is not required to prove there was no other way of achieving its objectives (Hardys). On the other hand, the test is something more than the range of reasonable responses (again see Hardys).

23. When carrying out the requisite assessment there is, however, a distinction between justifying the application of the rule to a particular individual and justifying the rule in the particular circumstances of the business. In Seldon, the Supreme Court observed as follows:

> *"There is therefore a distinction between justifying the application of the rule to a particular individual, which in many cases would negate the purposes of having a rule, and justifying the rule in the particular circumstances of the business" (paragraph 66).*

24. This was a point that the Supreme Court also made in Homer:

> > *"As the EAT said, an ad hominem exception may be the right answer in personnel management terms but it is not the answer to a discrimination*

claim. Any exception has to be made for everyone who is adversely affected by the rule" (paragraph 25).

…

26. As for how an employer might demonstrate that a particular rule is justified to the requisite evidential standard, in Homer in the EAT, Elias J had considered that it would be an error to think that:

"concrete evidence is always necessary … Justification may be established in an appropriate case by reasoned and rational judgment" (paragraph 48).

27. In Hardys, the Court of Appeal offered the following practical guidance:

"32. … The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary.

33. The statute requires the employment tribunal to make judgments upon systems of work, their feasibility or otherwise, the practical problems which may or may not arise from job sharing in a particular business, and the economic impact, in a competitive world, which the restrictions impose upon the employer's freedom of action. The effect of the judgment of the employment tribunal may be profound both for the business and for the employees involved. This is an appraisal requiring considerable skill and insight. …"

Legitimate aim

128. Paragraph 4.28 of the EHRC Employment Code of Practice on Employment (the "**EHRC Code**") states that for an aim to be 'legitimate':

"The aim of the provision, criterion or practice should be legal, should not be discriminatory in itself and it must represent a real, objective consideration."

129. An employer who shows that an indirectly discriminatory measure was imposed when pursuing a laudable (and otherwise reasonable) policy is not enough to meet this test (Greater Manchester Police Authority v Lea 1990 IRLR 372, EAT). The aim must be directly linked to the need of the employer.

130. We also note that in R (Age UK) v Secretary of State for Business, Innovation and Skills (Equality and Human Rights Commission and another intervening) 2010 ICR 260, QBD, the High Court held that an individual employer seeking to justify particular practices or treatment in reliance on social aims has a much more rigorous task than a governmental body (in that case an EU Member State introducing legislation designed to implement a Directive).

Proportionality

131. The test for deciding proportionality has to be read in the light of the EU Equality Directives and must thus comply with the pre-Brexit jurisprudence of the ECJ interpreting those Directives. The Supreme Court in Chief Constable of West Yorkshire Police and anor v Homer 2012 ICR 704 stressed that, in order to be proportionate, an indirectly discriminatory PCP had to be both an appropriate means of achieving a legitimate aim and 'reasonably necessary'

132. Paragraphs 4.30 and 4.31 of the EHRC Code states (with our underlining for emphasis):

4.30 Even if the aim is a legitimate one, the means of achieving it must be proportionate. Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. An Employment Tribunal may wish to conduct a proper evaluation of the discriminatory effect of the provision, criterion or practice as against the employer's reasons for applying it, taking into account all the relevant facts.

4.31 Although not defined by the Act, the term 'proportionate' is taken from EU Directives and its meaning has been clarified by decisions of the CJEU (formerly the ECJ). EU law views treatment as proportionate if it is an 'appropriate and necessary' means of achieving a legitimate aim. But 'necessary' does not mean that the provision, criterion or practice is the only possible way of achieving the legitimate aim; it is sufficient that the same aim could not be achieved by less discriminatory means.

HARASSMENT – SECTION 26 OF THE EQUALITY ACT 2010

133. Section 26 of the Act provides that:

(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of--

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

134. There are three elements to the test of whether conduct amounts to harassment under the Act:

134.1 the **conduct must be 'unwanted'**;

134.2 the conduct must have the **purpose or effect** of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment; and

134.3 that the **conduct must be related to a relevant protected characteristic**: see Richmond Pharmacology v Dhaliwal [2009] IRLR 336, as updated by reference to the EQA provisions in Reverend Canon Pemberton v Right Reverend Inwood [2018] EWCA Civ 564.

135. Paragraph 7.18 of the EHRC Employment Code 2011 provides examples of the 'other circumstances of the case' that can be taken into account under s26(4)(b). These include: the claimant's health (including mental health), mental capacity; cultural norms, previous experience of harassment and the environment in which the conduct takes place. Whether or not the conduct was carried out in accordance with official guidance or statutory authority is also relevant (see, for example, *Pemberton*).

136. We note that:

136.1 a claimant cannot complain of harassment if they are unaware of the unwanted conduct because they cannot meet the perception requirement under s26(4)(a) of the Act (Greasley-Adams v Royal Mail Group Ltd EAT 2023 86);

136.2 a claimant only has to show that the conduct had the purpose of either violating dignity or creating the Proscribed Environment – there is no requirement to show both;

136.3 if a claimant alleges that the unwanted conduct had the purpose of creating the relevant effect, the Tribunal will need to examine the perpetrator's intentions and mya need to draw inferences form the surrounding circumstances.

136.4 conduct that is intended to have the relevant effect will amount to harassment, even if it does not in fact have that effect or it is not reasonable for the conduct to have that effect (e.g. because the claimant is 'hypersensitive' (*Dhaliwal*); and

136.5 conduct that does have the relevant effect will amount to harassment, even if it was not intended to have that effect. The Employment Appeal Tribunal's stated in Carozzi v University of Hertfordshire and anor [2024] EAT 169 at paragraph 24 that:

"There is no requirement for a mental element equivalent to that in a claim of direct discrimination for conduct to be related to a protected characteristic. Treatment may be related to a protected characteristic where it is "because of" the protected characteristic, but that is not the only way conduct can be related to a protected characteristic, and there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser."

137. In considering whether the conduct had the specified effect under s26(1)(b) of the Act, the Tribunal must consider:

137.1 the actual perception of the complainant (the "**subjective**" element of the test);

137.2 the other circumstances of the case; and

137.3 whether it was reasonable for the conduct to have that effect on the complainant (the "**objective**" element of the test).

The complainant's perception on its own is not sufficient (see, for example, *Ali v Heathrow Express and Redline Assured Security Ltd* [2022[EAT 54).)

138. In *Dhaliwal*, the EAT considered the question of whether unwanted conduct violated a claimant's dignity and held at paragraph 22 that:

"while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct…it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase…if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question."

139. The EAT in *Weeks v Newham College of Further Education* (UKEAT/0630/11) held that an environment mans a 'state of affairs':

"…although we would entirely accept that a single act or single passage of actions may be so significant that its effect was to create a proscribed working environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding.…An 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the workplace."

140. At paragraph 88 of Pemberton v Inwood 2018 ICR 1291, CA, Lord Justice Underhill gave the following guidance to Tribunals when considering the question of whether or not it was reasonable for conduct to be regarded as having the relevant effect:

"The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

BURDEN OF PROOF

141. The burden of proof is set out at section 136 of the Act for all provisions of the Act, as follows:

136 Burden of proof

…

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

…

(6) A reference to the court includes a reference to -

(a) an employment tribunal;

…

WORKPLACE REGULATIONS 1992 AND INTERACTION WITH THE EQUALITY ACT 2010

142. The Workplace (Health, Safety and Welfare) Regulations 1992 (the "**Workplace Regulations**"), which were made under the Health and Safety at Work etc. Act 1974, are relevant to the context of this claim.

143. **Regulation 20** of the Workplace Regulations states:

Sanitary conveniences

20.—(1) Suitable and sufficient sanitary conveniences shall be provided at readily accessible places.

(2) Without prejudice to the generality of paragraph (1), sanitary conveniences shall not be suitable unless—

…

(c) separate rooms containing conveniences are provided for men and women except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside.

…

144. Regulation 20 (Sanitary Conveniences) does not relate to changing rooms or shower facilities. These matters are dealt with by separate provisions in the Regulations:

144.1 **Regulation 21 - washing facilities** – this applies where washing facilities (including showers) are required by the nature of the work or for health reasons;

144.2 **Regulation 24 - changing rooms** – this applies where individuals are required to wear special clothing for the purpose of work.

145. Regulations 21 and 24 do not apply to this case because the claimant's role was office based. By way of contrast, Regulations 21 and 24 are likely to apply to a clinical role requiring a member of staff to change into scrubs before entering a ward.

146. Paragraph 2 of Schedule 22 of the Equality Act 2010 (the "**EQA**") provides that:

2(1) A person (P) does not contravene a specified provision only by doing in relation to a woman (W) anything P is required to do to comply with—

…

(b)a relevant statutory provision (within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974) if it is done for the purpose of the protection of W (or a description of women which includes W);

…

(4)These are the specified provisions—
(a)Part 5 (work);

…

147. The Supreme Court in the case of For Women Scotland Ltd v Scottish Ministers [2025] I.C.R. 899 considered the definition of 'women' under section 212(1) of the Act and concluded that:

"A person who is a biological man, i.e. who was at birth of the male sex, but who has the protected characteristic of gender reassignment is described as a 'trans woman'. Similarly, a person who is a biological woman, i.e. who was at birth of the female sex, but who has the protected characteristic of gender reassignment is described as a 'trans man'."

148. The Supreme Court did not decide whether or not that same definition of 'men' and 'women' applies to the Workplace Regulations. However, this issue was considered by the High Court case of R on the application of the Good Law Project and others v EHRC [2026] EWHC 279 (Admin). In that case, the claimants sought judicial review of the legality of the EHRC's guidance (first published on EHRC's website on 25 April 2025 as part of an interim update and later removed from the website on 15 October 2025) (the "**Interim Update**"). The Interim Update concerned the Supreme Court's judgment in For Women Scotland that was handed down on 16 April 2025.

149. Mr Justice Swift concluded at paragraph 45 of his judgment that:

"Given the conclusion reached by the Supreme Court in For Women Scotland on the meaning of "woman" and "man" in the EA 2010 [the Equality Act 2010]*, any contrary reading of the same words in the 1992 Workplace Regulations would make the application of paragraph 2 of schedule 22 to the EA 2010 certainly less coherent, and likely impossible."*

150. Mr Justice Swift noted in relation to the Act and the Workplace Regulations:

"26. It is wrong to believe that either the EA 2010 or the 1992 Workplace Regulations provides a comprehensive code on when or in what form lavatories or other facilities must be provided or who may or must use them. The parts of the EA 2010 considered in the Interim Update concerned when it would be permissible for a service provider to make a single-sex provision. It does not exclude or prohibit other provision. Similarly, although the 1992 Workplace Regulations do prescribe a requirement for "suitable and sufficient" lavatories, and also make express provision for what will amount to "suitable" by reference to separate provision for men and women, they do not prohibit additional provision beyond what is "sufficient".

27. Each set of statutory provisions considered in the Interim Update provides a floor for provision of facilities. But neither provides a ceiling. It is fanciful to believe that these laws seek to regulate every possibility that can arise, day-to-day, and in circumstances that are too numerous to anticipate. Some public discourse is stated in terms of whether a person has a "right" to use a particular lavatory. If that is intended to refer to legal right, it is a bizarre turn of phrase. Those who provide facilities whether to the public or to their employees should comply with the law but also be guided by common sense and benevolence rather than allow themselves to be blinkered by unyielding ideologies."

151. Mr Justice Swift went on to state that an employer would comply with Regulation 20 of the Workplace Regulations if they adopted and applied a policy that female lavatories were available only to 'biological women' (and a similar policy regarding male lavatories being available only to 'biological men'):

"40. If the obligation under regulation 20 is as I have concluded, an employer who provides the lavatories required in the rooms required, and who in good faith adopted and applied a policy that the female lavatories were available only to biological women and the male ones only available to biological men, would do what is required by the Regulations. The employees concerned would know what was expected of them. Contrary to the Claimants' submission, this is not to say that an employer's compliance with regulation 20 will depend on the "minutia" of how the use of lavatories is managed. The notion that an employer or anyone else is required to "police" the use of a lavatory, person by person and day by day, reveals the application of a "logic" so strict that it is divorced from reality and from any sensible model of human behaviour.

EQUALITY ACT 2010 – GENDER REASSIGNMENT AS A PROTECTED CHARACTERISTIC

152. We note that Part 2 of the Act provides the same protections to those with the protected characteristic of gender reassignment, as to other protected characteristics (e.g. the right to bring complaints of direct discrimination, indirect discrimination and harassment). Section 7 of the Act defines the protected characteristic of gender reassignment as follows:

(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

153. An individual does not have to complete any gender reassignment process to obtain protection under section 7. Paragraph 2.25 of the EHRC Code provides the following example:

"A person born physically male lets her friends know that she intends to reassign her sex. She attends counselling sessions to start the process. However, she decides to go no further. She is protected under the law because she has undergone part of the process of reassigning her sex."

154. A trans person who is 18 years or older can apply for a gender recognition certificate to provide legal recognition of their "acquired gender" under section 1 of the Gender Recognition Act 2004. However, the protection under the Act is not subject to any requirement to hold a gender recognition certificate.

155. Mr Justice Swift in R on the application of the Good Law Project and others v EHRC considered employers' obligations under Part 5 of the Act. He noted that employers must also make appropriate provision that is not discriminatory on the ground of gender reassignment, in addition to complying with Regulation 20 of the Workplace Regulations :

"42. One important matter to have in mind is that my conclusions above concern only what is required to comply with regulation 20 of the 1992 Workplace

Regulations. All employers have to comply with that regulation but they must also comply with their obligations under Part 5 of the EA 2010 , including the obligation not to discriminate directly or indirectly by reason of the protected characteristic of gender reassignment. Thus, where an employer provides lavatories as required by regulation 20 the consequence will not be that a transsexual person is required to use the lavatory that corresponds to biological sex. Rather, and in addition to complying with the requirement under the 1992 Workplace Regulations for "sufficient" and "suitable" lavatories the employer must also ensure that the lavatory provision he makes is not discriminatory on the ground of gender reassignment."

APPLYING THE LAW TO THE FACTS

156. We will now apply the law to the facts found by the Tribunal in this case to reach our conclusions on each complaint.

INDIRECT DISCRIMINATION

157. The claimant complains of indirect discrimination on the basis of her protected characteristics of sex, religious belief and disability only. The claimant has not complained of indirect discrimination on the basis of her gender critical belief.

158. The respondent accepted that it applied the following PCPs to the claimant as an individual and to the three groups pleaded by the claimant consisting of (a) women, (b) Muslim women and (c) women with PTSD relating to male sexual violence:

    158.1 **PCP1**: allowing trans women to access female only facilities; and

    158.2 **PCP2**: permitting trans staff to access single-sex facilities provided for the opposite sex.

159. The respondent also accepted that:

    159.1 that women, Muslim women and women with PTSD relating to male sexual violence were (as a group) placed at a particular disadvantage compared with others who do not share those protected characteristics as a result of those PCPs; and

    159.2 the claimant was put at that disadvantage as a result of those PCPs.

160. The disadvantage caused by PCP1 and PCP2 overlap in this case. This is because the disadvantage caused by both PCPs of which the claimant complains (and the respondent accepts) is that the women's single sex facilities could be used by trans women. Our conclusions on the indirect discrimination complaints apply to both PCPs.

161. The first question for the Tribunal is whether all of the aims on which the respondent relies are 'legitimate' for the purposes of the indirect discrimination complaints.

Legitimate aims

162. The claimant stated in the list of issues that she accepted that the following aims of the respondent were legitimate:

162.1 **Aim (a):** Sensitively, balancing the competing rights of its employees and visitors;

162.2 **Aim (b):** Respecting the gender identity of its employees and visitors;

162.3 **Aim (c):** Adhering to the Equality Act 2010; and

162.4 **Aim (e):** Allowing access to appropriate single-sex and gender neutral toileting, showering, washing and changing facilities, as far as reasonably possible within the confines of the Respondent's estate and/or lease.

163. The claimant's representative stated in her written closing submissions that the claimant did not accept that Aim (b) was a legitimate aim. However, the claimant's representative did not apply to withdraw the claimant's previous concession that Aim (b) was a legitimate aim. We note that the claimant has been represented throughout these proceedings by her current solicitors and that her representative at this hearing attended the Preliminary Hearing at which the list of issues was agreed. We have therefore concluded that the claimant's position remained that she accepted that Aim (b) was a legitimate aim, but the respondent was not able to objectively justify the PCPs by reliance on Aim (b).

164. The claimant stated in the list of issues that she did not accept that the following aims of the respondent were legitimate:

164.1 **Aim (d):** Adhering to guidance or published good practice advice in relation to provision of single-sex facilities; and

164.2 **Aim (f):** Adhering to the provisions of the respondent's lease.

165. We note that for an aim to be 'legitimate':

165.1 it must be legal, not discriminatory in itself and must represent a real objective consideration; and

165.2 the aim must be directly linked to the need of the employer.

166. We concluded that on the face of it that Aim (d) was a legitimate aim. This is because adhering to guidance and published good practice advice is legal and not discriminatory in itself, provided that such guidance and good practice advice aligns with the law. Adhering to such guidance is also directly linked to the need of the employer to comply with its legal obligations in relation to the provision of single-sex facilities. We accept that this aim is expressed in broad terms, but this does not mean it cannot be a legitimate aim.

167. We concluded that Aim (f) was also a legitimate aim. This aim is legal and not discriminatory in itself, provided that the provisions of the lease align with the law. It is clearly linked directly to the need of the respondent, which would otherwise be in breach of the terms of its lease. Arguably it is already encompassed by the aim to provide appropriate facilities as far as reasonably possible within the confines of the respondent's estate and/or lease.

Objective justification - was either PCP1 or PCP2 a proportionate means of achieving any legitimate aim or aims?

168. We have grouped together the respondent's aims when considering this question into: (i) aims relating to adhering to and/or balancing legal and other rights; and (ii) aims relating to the respondent's lease.

Aim (a): Sensitively balancing the competing rights of its employees and visitors

Aim (b) Respecting the gender identity of its employees and visitors

Aim (c): Adhering to the Equality Act 2010

Aim (d): adhering to guidance/published good practice advice in relation to provision of single-sex facilities

169. The respondent relies on Aim (c) of adhering to the Act and Aim (d) of adhering to guidance/published good practice advice in relation to provision of single-sex facilities.

170. The respondent's representative submitted that the respondent, along with many other employers, was applying the Act as it understood it at that time. Ms Hodgskiss gave evidence that the respondent relied on the advice of external bodies, including Stonewall, UNISON and other trade unions, in addition to feedback from its staff network. Paragraph 7 of the respondent's TEP contains links to documents provided by GIRES, Stonewall and UNISON.

171. However, reliance on contemporaneous guidance or good practice advice cannot justify an incorrect interpretation of the law. Employers must seek their own legal advice and ensure that they are applying the law correctly.

172. We note that adhering to the Equality Act 2010 and guidance/published good practice advice are legitimate aims. However, there is no express legal right for a transgender person to use the single-sex facilities of their gender identity under the Act or under the Workplace Regulations. The key reasons why we reached this conclusion are:

    172.1 the Workplace Regulations do not contain any definition of 'men' or of 'women';

    172.2 the Supreme Court in *For Women Scotland* in April 2025 held that the words 'sex', 'woman' and 'man' in sections 11 and 212(1) of the Act refer to 'biological sex', a 'biological woman' and a 'biological man'. The Supreme Court's decision in April 2025 clarified the words used by the Act as it has always applied; it is not limited to events that take place after the Supreme Court's decision was made in April 2025;

    172.3 the provisions of the Act do not override Regulation 20 of the Workplace Regulations. The Act contains a prohibition against gender reassignment discrimination. However, the Act does not provide for an express legal right for transgender employees to access the single sex toilets or shower facilities that correspond to their gender identity;

    172.4 Mr Justice Swift in R on the application of the Good Law Project concluded that an employer would comply with Regulation 20 of the Workplace Regulations if they adopted and applied a policy that female lavatories were available only to 'biological women' (and a similar policy regarding male lavatories being available only to 'biological men').

173. We then turn to Aim (a) sensitively balancing the competing rights of employees and visitors and Aim (b) respecting the gender identity of its employees and visitors. These are both laudable aims. However, the question we have to consider is whether the respondent carried out the balancing exercise required to meet the test of objective justification when applying PCP1 and PCP2.

174. We concluded that the respondent does not meet the test of objective justification in relation to PCP1 or PCP2. The key reasons why we reached this conclusion are:

    174.1 the respondent refers to balancing 'competing rights' of its employees and visitors. We accept that Person X is likely to have had (and other employees and visitors of the respondent may have had) the protected characteristic of gender reassignment. However, the respondent has not identified expressly the legal rights of employees who had the protected characteristic of gender reassignment that were 'competing' with those who had the protected characteristics of sex, religious belief or disability in this claim. Each individual who has one or more protected characteristics set out in the Act may benefit from the protections set out in the Act. But this does not mean that they have 'competing rights';

    174.2 as we have explained above, the Act does not provide for an express legal right for transgender employees or visitors to access the single sex toilets or shower facilities that correspond to their gender identity. There is also no such express right set out in the Workplace Regulations. The Act contains protections for employees with the protected characteristic of gender reassignment (as defined in the Act). We understand the respondent's concern that a trans woman who was not permitted to use women's single-sex facilities may seek to bring claims under the Act against the respondent, such as claims of direct discrimination and/or harassment. However, we note that:

        174.2.1 a claim of direct discrimination on this basis would fail if the reason for the trans woman's exclusion from those facilities was their biological sex (assuming that there were alternative unisex facilities available). This is because a male comparator (who did not have the protected characteristic of gender reassignment) would also be excluded from the women's single-sex facilities;

        174.2.2 the legal test for harassment complaints does not require a comparator. However, any harassment complaint is likely to turn on whether or not it would be 'reasonable' for the refusal to permit trans women who wished to use the women's single-sex facilities to have the effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. This would be a question of fact for the Tribunal to decide on the circumstances of each individual case, taking into account the caselaw that we have set out above;

    174.3 Ms Hodgskiss did not recall the respondent considering expressly any practical issues faced by their female staff (including women who were Muslim and/or suffered from PTSD as a result of male sexual violence) as a result of its policy of permitting trans women to use women's single-sex facilities. The respondent stated in evidence that they did not consult with

staff networks representing women and/or Muslim women before issuing the TEP, although they did consult with their staff disability network. This is because they did not have a dedicated women's staff network or any networks for people of faith around the time that the TEP was drafted in 2017. The respondent was due to review the TEP in 2020, but that review did not start until 2022 (due to the merger of the respondent's predecessors);

174.4 the partial review of the TEP that commenced in 2022 stated that consultation would take place with the LGBT staff network. It did not refer to consultation with any networks representing women and/or Muslim women, perhaps because the review appears to have been abandoned in late 2022. We note that no further steps were taken to review the policy of permitting transgender employees to access the single-sex facilities of their gender identity during the time of the events relating to this claim;

174.5 Ms Hodgskiss' evidence was that the respondent did not consider expressly the practical issues faced by their female staff when drafting and introducing the TEP. In particular, the respondent did not consider its obligations under Regulation 20 of the Workplace Regulations or the impact of female staff using the shower facilities at Quarry House in 2017.

175. In any event, we note that an alternative (lesser) measure was available to the respondent to achieve its aims: i.e. permitting the respondent's transgender staff to use alternative facilities (e.g. gender neutral toilets) if they did not wish to use the toilets of their biological sex. We note that the statistics provided by the respondent suggest that the number of trans women who might seek to use the female single-sex facilities less than five in total, against an overall workforce of around 16,000 – 19,500 employees during the period from October 2022 to April 2024. The respondent stated that:

175.1 of its overall employee population around 63% were female and around 7% were Muslim;

175.2 twenty-four of its employees across all of its offices were transgender, of whom less than five were trans women. Assuming similar ratios applied to its Leeds offices, around 5-6 of its Leeds based employees were transgender of whom around one or two were trans women.

176. The respondent did not hold data on the number of staff who suffer from PTSD as a result of male sexual violence. Professor Phoenix's report did not assist us with any estimate as to the number of staff who fell within that population.

177. Given the overall profile of the workforce, we concluded that it is likely that the number of staff who fall into the categories of women and/or Muslim women was significantly higher than those who were transgender. Permitting the respondent's transgender staff to use alternative toilet facilities would have been an alternative measure that the respondent could have taken that would have had a lesser impact on its female staff or female Muslim staff.

178. Both representatives referred to the difficulties that disabled employees may face if disabled toilets were used by other groups of employees. This was more likely to cause a problem at Quarry House because of the smaller proportion of accessible toilets at that office. In practical terms, permitting transgender

employees to use the disabled or gender neutral toilets would have caused far less delays for disabled employees accessing disabled toilets than permitting those toilets to be used by women or by any particular group of women.

179. We appreciate that at Quarry House, there were no unisex shower facilities. However, we note that as part of the claimant's grievance appeal outcome the respondent stated that if they were still based at Quarry House, they could have considered alternative measures such as exploring if and how access could be provided to secure, single occupancy showering facilities or considering possibilities such as:

    179.1 if it would be possible for the claimant to use the showers at certain times on their own;

    179.2 whether it was possible to install locks to make a shower area private; or

    179.3 if there were any arrangements that could have been made with the Leisure Centre.

180. If these measures could have been considered for the disadvantaged groups with whom the claimant shared protected characteristics, then they could have also been considered for the respondent's trans staff as an alternate measure to permitting trans staff to use the women's single-sex shower facilities.

Aim (e): Allowing access to appropriate single-sex and gender neutral toileting, showering, washing and changing facilities, as far as reasonably possible within the confines of the Respondent's estate and/or lease

Aim (f): Adhering to the provisions of the respondent's lease

181. We accept that the respondent could not carry out building works to Quarry House or Wellington Place because they were neither the landlord nor the leaseholder of either building. However, we consider that (as stated in relation to the other aims) an alternative (lesser) measure was available to the respondent to achieve its aims, i.e. permitting the respondent's trans staff to use alternative facilities (e.g. gender neutral toilets) if they did not wish to use the toilets of their biological sex.

182. We note that no gender neutral showering facilities were available at Quarry House, unlike at Wellington Place. However, we concluded that the respondent could have considered the measures referred to at paragraphs 179 and 180 above for the respondent's trans staff as an alternate measure to permitting trans staff to use the women's single-sex shower facilities.

Conclusion on indirect discrimination

183. We have concluded that the respondent's PCPs were <u>not</u> a proportionate means of achieving the respondent's legitimate aims in relation to the claimant's sex. The claimant's complaint of indirect discrimination in relation to sex therefore succeeds.

184. The success of the claimant's complaint of indirect discrimination in relation to sex means that we do not need to proceed to consider her complaints of indirect discrimination on the basis of religious belief and/or disability. This is because we have concluded that the respondent indirectly discriminated against all women by applying the two PCPs (including women who were Muslim and women with PTSD as a result of male sexual violence).

185. However, if we are wrong in that conclusion, then we would have concluded that the indirect discrimination complaints on the basis of religious belief and/or disability would have failed. We note that the respondent conceded both individual and group disadvantage for women who were Muslim and women with PTSD as a result of male sexual violence for the purposes of the agreed List of Issues. However, the Tribunal must still consider whether the indirect discrimination complaints relating to religion and disability were capable, as a matter of law, of succeeding independently of the claimant's sex.

186. We concluded that any complaint of indirect discrimination on the basis of religious belief and/or disability would have failed. The key reasons for this conclusion are:

    186.1 the Act does not contain any enforceable provisions relating to discrimination on the basis of a combination of two or more protected characteristics. There are provisions under section 14 of the Act that relate to combined direct discrimination only (not to combined indirect discrimination, harassment or any other complaints under the Act), however these have never been brought into force;

    186.2 the claimant's indirect discrimination complaint relating to religious belief was pleaded originally on the basis of Muslims as a group (which would include Muslim men). The claimant's representative stated at the start of the hearing that the claimant did not wish to make a formal amendment application but clarified that her indirect discrimination complaint related to female Muslims only. The respondent conceded group disadvantage to women who were Muslims, but not to Muslims as a whole. The claimant did not provide any evidence that male Muslims (as well as female Muslims) were disadvantaged by the application of the PCPs. We note, for example, that the claimant stated in evidence that male Muslims were able to use facilities in the men's area of the prayer room at Quarry House to perform religious ablutions but that no equivalent facilities were available in the women's area of the prayer room. Male Muslims would therefore not have suffered the same disadvantage relating to shower facilities as female Muslims;

    186.3 the claimant's indirect discrimination complaint relating to disability was pleaded on the basis of women who experienced PTSD as a result of male sexual violence, rather than individuals (both male and female) who experienced PTSD as a result of male sexual violence. The respondent conceded group disadvantage on this basis and not on the basis of both men and women suffering from PTSD as a result of male sexual violence. We were not provided with any statistics on the proportion of men and women suffering from PTSD as a result of male sexual violence. In addition, Professor Phoenix's report did not identify the gender of the perpetrators of sexual offences reported by the police or in the crime survey statistics that she summarised;

    186.4 the Tribunal invited the parties to make submissions on the issue of whether the claimant's indirect discrimination complaints involved a complaint of combined discrimination and referred them to the case of Ministry of Defence v DeBique 2010 IRLR 471, EAT (brought under the Sex Discrimination Act 1975 and the Race Relations Act 1976, i.e. the legislation dealing with sex discrimination and race discrimination before

the Equality Act 2010). Both sides declined to make submissions on the basis that group disadvantage had been conceded;

186.5 we would have concluded that the claimant's complaints of indirect discrimination in relation to religious belief and in relation to disability amount to complaints of combined indirect discrimination, that are not protected under the Act. We note that the indirect discrimination complaints in DeBique were brought under the previous sex discrimination and race discrimination legislation, neither of which expressly excluded complaints brought on the basis of a combination of both protected characteristics;

186.6 section 14 of the Act is not in force. However, it is clear from the drafting of section 14 of the Act that Parliament intended that complaints of combined discrimination would (when in force) be limited to those of combined direct discrimination only. This is because the drafting of section 14(1) contains the same test for direct discrimination under section 13 of the Act, save that it applies the test to a combination of two relevant protected characteristics;

186.7 in addition, the Explanatory Notes to the Act state at paragraph 68:

"68.Previous legislation only allowed for claims alleging discrimination because of a single protected characteristic. This section allows those who have experienced less favourable treatment because of a combination of two relevant protected characteristics to bring a direct discrimination claim, such as where the single-strand approach may not succeed."

HARASSMENT

187. The legal test for harassment is different to that for indirect discrimination under the Act. We have set out the test for harassment in more detail in the section of this Judgment headed 'Relevant Law'. In summary, the Tribunal must decide:

187.1 Was the conduct unwanted?

187.2 Did conduct must have (i) the purpose (if pleaded) or (ii) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment? When answering this question, the Tribunal must consider both:

187.2.1 the actual perception of the complainant (the "**subjective**" element of the test); and

187.2.2 whether it was reasonable for the conduct to have that effect on the complainant (the "**objective**" element of the test).

187.3 Was the conduct related to a protected characteristic (i.e. sex and/or gender critical belief in relation to Allegation 1; gender critical belief only in relation to Allegation 2)?

188. We note that the claimant has not brought any harassment complaints relating to her religious belief or her disability. The claimant could have presented such complaints to the Tribunal, if she had wished to do so.

Allegation 1: policy of permitting trans women to use female only facilities (effect only)

189. The claimant complains of harassment under Allegation 1 on the basis of (i) her sex and/or (ii) her gender critical belief.

190. The respondent has already accepted:

    190.1 that their policy of permitting trans women to use female only facilities amounted to unwanted conduct for the claimant;

    190.2 that this policy had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading or offensive environment for her (the "**Proscribed Environment**") – the subjective element of the test.

191. The sole question for the Tribunal in relation to Allegation 1 is therefore whether or not it was reasonable for the policy to have the effect of violating the claimant's dignity or creating the Proscribed Environment for the claimant – the objective element of the test.

192. In order to decide that question, the Tribunal has to consider the circumstances of the case. We note that:

    192.1 the claimant does not object to working with, socialising with or sharing what she describes as 'non-intimate space' with trans individuals;

    192.2 the claimant is a Muslim woman. She also suffers from PTSD as a result of male sexual violence. Although the claimant has not brought complaints of harassment relating to religious belief or disability, these are still relevant circumstances when considering her harassment complaints;

    192.3 the claimant was concerned from 10 October 2022 (when she received Dr Montgomery's email re Person X and read the TEP) that she may encounter Person X or another trans woman if she used the female only facilities. She therefore used gender neutral or accessible toilets throughout that period;

    192.4 the claimant attended Quarry House on six or seven occasions from late August 2022 (when she returned from maternity leave) until her team moved to Wellington Place on 7 November 2023. The claimant could have worked from Wellington Place from July 2023 onwards, had she wished to do so, although her team would have remained based at Quarry House. The claimant had a tour of the Wellington Place building on 7 November 2023 and attended a team day at Wellington Place before going on her second maternity leave on 29 November 2023. The claimant did not attend Wellington Place between 29 November 2023 and presenting her Tribunal claim on 14 April 2024;

    192.5 we accepted the claimant's evidence that she would have attended the office more regularly during 2023 if she had felt able to use the female only facilities. (The claimant stated that she struggled with her new working pattern and child care responsibilities in late 2022, resulting in her working from home in part due to a lack of sleep. However, she said that this was only a temporary issue and that she intended to work from the office more frequently when this resolved);

192.6 the respondent's staff's attendance in Quarry House was low during the period from August 2022 to November 2023, with around 75 people on site at any one time in a total floorspace that would normally accommodate 556 desks (reducing to 401 desks by November 2023). We have outlined Mr Goodfellow's evidence regarding the provision for gender neutral and accessible toilets earlier in this Judgment. We note that the claimant was not aware of the three gender neutral lockable toilets on the fifth floor at Quarry House until she received the grievance investigation report produced in September 2023;

192.7 we were not provided with figures regarding the footfall in the respondent's areas at Wellington Place during November 2023 (the claimant took her second maternity leave at the end of November 2023 and did not return to work during the period relevant to this claim). However, we note that there were four gender neutral toilet accessible from the lift area on each floor at Wellington Place that anyone working in the building could use (regardless of whether they worked for HMRC, the respondent or any other tenant). On each floor, two of these gender neutral toilets were in a corridor opposite the women's single-sex toilets, with the other two located in a corridor opposite the men's single-sex toilets;

192.8 the claimant had stated during the grievance process that she regarded the shower facilities at Wellington Place as an 'improved offer' because this involved individual lockable unisex rooms. However, she was still unhappy that she had to use the gender neutral toilets to avoid using the possibility of women's single-sex toilets at the same time as a trans woman;

192.9 the claimant was not aware of the arrangements relating to the respondent's estate, either between the respondent and the DWP at Quarry House or between the respondent and HMRC at Wellington Place. However, she was aware that other tenants' staff used the facilities in both buildings and that members of the public used the leisure centre facilities on the ground floor of Quarry House;

192.10 other tenants and the leisure centre may have had policies that permitted trans women (whether staff, gym users or members of the public) to use the female only shower facilities in the dryside changing rooms at Quarry House. We were not provided with any evidence as to whether HMRC had a policy that permitted trans women to use the female only toilets at Wellington Place (which could be accessed by anyone entering the building because they are in the lift area). However, the respondent could not have prevented access to facilities in communal areas by the staff, visitors or other building users;

192.11 the claimant first raised concerns regarding the respondent's policy of permitting trans women to use female only facilities at the Trans Awareness session on 9 November 2022 and by email to Mr Gunce later that day;

192.12 she sent further emails to the respondent but received limited responses. She then raised a grievance with the respondent on 13 April 2023. The respondent delayed in investigating the grievance and the grievance

outcome was not issued until 23 January 2024 (with the claimant's appeal outcome being provided on 24 May 2024);

192.13 we were provided with evidence that one other employee raised concerns similar to those raised by the claimant during late 2024, which was after the date on which this claim was presented. However, no concerns were raised regarding the respondent's policy regarding trans women's access to female only facilities from the issue of the TEP in October 2017 until the claimant raised her concerns. We note that the respondent had various methods for employees to feedback on policies, including anonymously via their intranet and the Freedom to Speak Up process;

192.14 Person X left the respondent's employment in January 2023, but the claimant was not aware of that they had done so until sometime later;

192.15 the claimant stated that her reading of the TEP suggested that employees raising concerns (whether on religious grounds or otherwise) about trans individuals accessing single sex facilities on could lead to disciplinary action. She also received a letter purporting to place her at risk of redundancy on 9 February 2023, which she accepts was sent to her by mistake. She was reassured by both Mr Briggs (her line manager) and by HR that this was an administrative error. However, the claimant accepts that the respondent carried out detailed investigations into her concerns and she does not complain of the conduct of her grievance or grievance appeal.

193. We also note in terms of the legal background that:

193.1 there is no requirement in harassment complaints for a protected characteristic to form the motivation for any harassment (Carozzi v University of Hertfordshire and anor);

193.2 Regulation 20 of the Workplace Regulations requires the provision of sufficient sanitary conveniences at a workplace. Regulation 20(c) states that:

"(c) separate rooms containing conveniences are provided for men and women except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside";

193.3 the Workplace Regulations do not require the provision of washing facilities (such as showers) if they are not required for the nature of the work performed by the staff or for health reasons. The Regulations also do not require the provision of changing rooms, unless individuals are required to wear special clothing for the purposes of work (e.g. scrubs for a clinical role);

193.4 the Supreme Court in For Women Scotland considered the definitions of 'women' and 'men' under the Act and concluded that it related to their biological sex. This was contrary to the view that many employers, including many public bodies, had previously taken;

193.5 Mr Justice Swift in R on the application of the Good Law Project concluded that the Supreme Court's definitions of 'women' and 'men' under the Act also applies to the Workplace Regulations.

194. We concluded that it was reasonable for Allegation 1 to have the Proscribed Effect on the claimant both because of her sex and because of her gender critical belief. The key reasons for our decision are:

194.1 the Supreme Court's decision in For Women Scotland clarified the definitions of 'men' and 'women' in the Act and in the Workplace Regulations (as interpreted by Mr Justice Swift in R on the application of the Good Law Project) as referring to their biological sex. Both of those decisions are binding on this Tribunal. The result of this caselaw is that an employer who permits trans women to use the women's toilets in effect no longer provides single sex facilities for women as defined Regulation 20(c) of the Workplace Regulations. The employer would then have to show that they provided sufficient lockable facilities in separate rooms;

194.2 the claimant's role was office-based. The respondent was not required to provide showers or changing room facilities for her under the Regulations 21 and 24 of the Workplace Regulations because her role did not fall into the categories of work set out in those Regulations. However, the provisions of the Act may still apply because the respondent's staff were permitted to access the single-sex communal showers in the dryside changing rooms at Quarry House under the terms of the respondent's lease. The claimant had not raised any concerns regarding the provision of showers at Wellington Place as part of this claim because the showers were contained in individual lockable rooms, which she had not attempted to use at the time she presented this claim;

194.3 the claimant has made it clear throughout these proceedings that her concerns did not relate to any particular individual. She used the accessible and/or gender neutral toilets because she did not wish to share single-sex facilities with trans women. She stated that this was because of a combination of her sex, her gender critical belief and her other protected characteristics. In particular, the claimant stated in her witness statement that:

194.3.1 "I had never agreed to share single-sex facilities with biological males, no matter how they identified. As a woman, I had never wanted to do that in the past because of safety, privacy and dignity from the opposite sex…Lastly, I believe that biological sex is real and immutable. I do not believe that trans-women are women. These are gender critical beliefs that clearly could not be expressed under the Policy.";

194.3.2 as part of her gender critical belief, she is of the view that trans women should not *"be allowed access to women's spaces…their exclusion is the reasonable middle ground for the reasons of safety, dignity and the comfort of women"*;

194.4 the claimant's summarises her reasons for not wishing to share female only facilities with trans women due to her sex as 'safety, privacy and dignity from the opposite sex'. We note that in terms of safety, the claimant has a diagnosis of PTSD arising from male sexual violence. In addition, Professor Phoenix's report shows that women are more likely than men to

be the subject of sexual offences. The claimant's unchallenged evidence on this issue was that:

"16. The Claimant fears that, if she put herself into an intimate environment, such as a bathroom or changing facility, where a male may be present, she would be putting herself at risk of being sexually assaulted by that male. She addresses this by avoiding that situation and only using such facilities where they are either female only or entirely private i.e. nobody else can enter when she is inside."

194.5 the claimant raised concerns about the respondent's policy shortly after receiving Dr Montgomery's email and attending the Trans Awareness session. The claimant attended the office on a limited number of occasions after receiving Dr Montgomery's email. However, we accepted the claimant's evidence that she would have attended the office more frequently if it were not for her concerns regarding the sharing of single-sex facilities with trans women. She did not use the shower facilities at Quarry House after receiving Dr Montgomery's email and performed her religious ablutions in the accessible toilets;

194.6 the respondent admitted that it was slow to respond to the claimant's concerns and there was a period of significant delay in dealing with the claimant's grievance and grievance appeal;

194.7 the claimant remained unhappy after the move to Wellington Place that she had to use the gender neutral toilets to avoid using the possibility of women's single-sex toilets at the same time as a trans woman. The fact that there were more gender neutral toilets at Wellington Place than at Quarry House did not alter the claimant's view that she could not use the women's toilets without being concerned by the potentially of sharing those facilities with a trans woman;

194.8 the respondent submitted that it would not be possible to guarantee use of single-sex toilets by women only because there was no practical way of enforcing such a rule. They also noted that the toilets at Wellington Place could be accessed by employees and visitors of other building tenants, who would not be subject to the respondent's policies. The respondent submitted that the only way for the claimant to ensure that she did not share facilities with a trans woman would be to use the gender neutral toilets (which were single lockable rooms). We accept that it would not be possible for the respondent to guarantee that the single-sex toilets would only be accessed by women. However, this does not mean that the respondent could not take reasonable steps to ensure that such a policy was complied with by its employees and visitors, for example by making it a disciplinary offence to breach any employee policy or by requiring visitors to comply with appropriate policies;

194.9 the respondent concluded in its grievance appeal outcome that if its office had remained at Quarry House, they would have worked with the claimant and the landlord of Quarry House to explore if and how they were able to provide the claimant with access to secure, single occupancy showering facilities. They referred to possibilities including whether it would be possible for the claimant to use the showers at certain times on her own;

or whether it was possible to install locks so we could make a shower area private; or consider if there were any arrangements that could have been made with the Leisure Centre. If the grievance had been dealt with more swiftly, these conclusions could have been actioned whilst the claimant was still working at Quarry House;

194.10 harassment complaints require the violation of dignity or the creation of the Prescribed Environment. We remind ourselves again of the guidance provided by the EAT in Dhaliwal and in Weeks that:

194.10.1 it is *"important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"*; and

194.10.2 *"An 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the workplace."*

194.11 the claimant's concerns do not suggest that she was 'hypersensitive' or otherwise unreasonably prone to take offence given the circumstances of this case. We accept that other women (and potentially, although less likely, those with gender critical views) may well take a different view to that of the claimant and may be willing to share toilets and/or shower facilities with trans women. However, we have to reach a conclusion on the harassment complaint in relation to this claimant's circumstances, not those of women (or those with gender critical beliefs) as a whole;

194.12 we cannot conclude that the claimant was 'hypersensitive', given her circumstances set out above. The claimant raised her concerns via the appropriate channels, first by contacting Mr Gunce after the Trans Awareness session and then by raising a formal grievance. The claimant's diagnosis of PTSD relating to male sexual violence was particularly salient in reaching this conclusion.

195. We therefore concluded that it was reasonable for the respondent's policy of permitting trans women to use female single sex facilities (i.e. (i) the toilets at Quarry House and Wellington Place and (b) the shower facilities at Quarry House only) to have the effect on the claimant of creating the Proscribed Environment. The claimant's harassment complaint under Allegation 1 in relation to sex and in relation to gender critical belief therefore succeeds.

Allegation 2: the Trans Equality Policy and Procedure

196. The claimant has alleged that the wording of the TEP had both:

196.1 the **purpose** of violating her dignity or creating an intimidating, hostile, degrading or offensive environment for her; and

196.2 the **effect** of violating her dignity or creating such environment;

in relation to her gender critical belief. (The claimant has not alleged that the wording of the TEP was harassment in relation to any other protected characteristic, including her sex).

197. The respondent has already accepted:

    197.1 that the wording of the TEP amounted to unwanted conduct for the claimant;

    197.2 that the TEP had the effect (but not the purpose) of violating the claimant's dignity or creating an intimidating, hostile, degrading or offensive environment for her (the "**Proscribed Environment**").

198. The question for the Tribunal in relation to Allegation 2 is therefore whether or not:

    198.1 the TEP had the purpose of violating the claimant's dignity or creating the Proscribed Environment; and

    198.2 if the TEP did not have that purpose, whether it was reasonable for the TEP to have the effect of violating the claimant's dignity or creating the Proscribed Environment for the claimant.

199. We have already summarised some of the key circumstances that are part of the context to this complaint under Harassment Allegation 1. We also note that:

    199.1 the claimant started working for the respondent on the same date as the TEP was issued;

    199.2 the respondent consulted with staff networks (including its LGBT, disability and BAME networks) on the drafting of the TEP, which was issued in October 2017 (around the same time that the claimant started working for the respondent). The respondent did not have a dedicated women's staff network or a network for employees of faith at that time;

    199.3 the respondent also sought advice from Stonewall, Unison and a number of other trade unions regarding the contents of the TEP. Ms Hodgskiss stated that Stonewall provided a template policy, which the respondent amended and consulted on internally;

    199.4 paragraph 7 of the TEP contains links to what it described as 'supplementary guidance documentation' for individuals who are trans or transitioning and for key stakeholders involved in offering support. This included a link to the GIRES Guide. We concluded that the claimant did not read the GIRES Guide at the time of the events that are relevant to this claim because she did not refer to it in either her witness statement or in her oral evidence to the Tribunal;

    199.5 the respondent did not receive any adverse feedback during the first few years after the policy was issued, including any anonymous feedback via its portal or via its Freedom to Speak Up Guardian;

    199.6 the respondent started a review of the TEP in 2022, but this was never completed. No updates were made to the TEP in 2022;

    199.7 the claimant's representative cross-examined the respondent's witnesses on the current status of the TEP and any review. However, later events can only provide limited assistance to the Tribunal when discerning the purpose of the TEP issued in October 2017. In particular, we note that Mr McCurry holds overall responsibility for the respondent's current employment policies, but he did not join the respondent until 2024;

199.8 we accepted Ms Hodgskiss' evidence that the purpose of respecting the gender identity of trans colleagues and promoting inclusion in the workplace was at the forefront of the minds of those involved in drafting the TEP. We observe that this was a laudable purpose and that all employers should endeavour to ensure that all of their staff are treated with respect;

199.9 we also concluded that Ms Hodgskiss and those involved in preparing the policy had not considered the practical effect of the policy on colleagues who held gender critical beliefs when considering the provisions regarding sharing single-sex facilities;

199.10 the claimant's representative's submissions referred to Mr Gunce's emails with colleagues relating to the questions raised by the claimant as a result of the Trans Awareness session on 9 November 2022. However, we concluded that Mr Gunce was not involved in the drafting of the TEP. We note that Mr Gunce had to ask his HR colleagues (Ms Kingston and Ms Fisher) what consultation was carried out before the TEP was issued on 1 October 2017. If he had been involved in that process, then this would have been reflected in those emails. We also note that the claimant did not see Mr Gunce's emails to his colleagues until after these proceedings started;

199.11 the claimant's representative also referred in submissions on the GIRES Guide that was available as a link in the TEP, including the definition of the term 'transgender', the photograph of an individual named "GrrlAlex", the provisions regarding dress and appearance code, use of single sex facilities and religion or belief. She submitted that the wording of the TEP regarding flexibility in relation to gender presentation for trans colleagues taken with: "*the warning that it is "unacceptable" to insist that a trans person uses accessible facilities, the exhortation to make every effort to use the "right" gender pronouns at ¶6.2, the warning about potential disciplinary action at ¶6.4 immediately followed by the warning at 6.5 about the limited rights of those who have protected beliefs, and the implication that refusing to share facilities with a trans person (which those with protected beliefs may "claim" that they are entitled to do; the clear implication of "claim" is that it is an unfounded claim).*" Ms Hodgskiss accepted during cross-examination that the respondent had referred to GIRES Guide via a link to the TEP as a 'source of guidance', even though she was 'surprised by the content' of the GIRES Guide. Ms Hodgskiss also stated that respondent relied on advice from the LGBT staff network, Stonewall and the UNISON National Officer when drafting the definition of 'trans';

199.12 we note that the wording of the Unison factsheet and Stonewall document (also included as links in the TEP) were similar to the wording of the TEP itself. We concluded that although the GIRES Guide was referred to in the document links in the TEP, Ms Hodgskiss (in her role as chairing the policy committee) and the committee as a whole did not place a significant degree of reliance on the GIRES Guide when drafting the TEP. Instead, we concluded that the respondent relied on the information provided by Unison and Stonewall.

200. We concluded that the purpose of the TEP itself was not to violate the claimant's dignity or create the Proscribed Environment in relation to her gender critical belief. Rather, the purpose of the TEP was to respect the gender identity of trans colleagues and promote inclusion in the workplace. The key reasons for our conclusion are:

    200.1 we accepted Ms Hodgskiss' evidence that the purpose of respecting the gender identity of trans colleagues and promoting inclusion in the workplace was at the forefront of the minds of those involved in drafting the TEP. Mr Gunce was not involved in drafting the TEP and his emails do not cast light on the purpose of the TEP that was issued five years before the internal emails exchanged in November 2022;

    200.2 we concluded that Ms Hodgskiss and those involved in drafting the TEP did not consider expressly the practical effect of the policy on colleagues who held gender critical beliefs when considering the provisions regarding sharing single-sex facilities. However, a failure to consider practical issues raised is not the same as having the 'purpose' of violating an individual's dignity or the purpose of creating a Proscribed Environment.

201. We then turn to the question of whether it was reasonable for the TEP itself to have the effect of violating the claimant's dignity or creating the proscribed environment in relation to her gender critical belief. The respondent accepted that the claimant believed that the TEP violated her dignity or created the Proscribed Environment. However, the respondent submitted that it was not reasonable for the TEP itself to have that effect on the claimant.

202. We concluded that it was reasonable for the wording of the TEP itself to have that effect on the claimant. The key reasons for our conclusion are:

    202.1 the claimant coincidentally started working for the respondent on the same day that the respondent issued the TEP, i.e. 1 October 2017. She did not state in evidence whether or not she read the TEP when she joined the respondent. In any event, she did not raise any concerns regarding the TEP until after she had seen Dr Montgomery's email announcing Person X's transition dated 10 October 2023;

    202.2 the claimant's evidence is that it was a combination of the contents of Dr Montgomery's email (which included a link to the TEP), the online training module question in August 2022 and the wording of the TEP that caused her to feel "a mixture of horror, shock and alarm". Dr Montgomery's email was the reason why the claimant read the TEP and formed a key part of the context to her complaint;

    202.3 the wording of Dr Montgomery's email refers to certain provisions of the TEP but does not go into the same level of detail as the wording of the TEP. For example, Dr Montgomery's email refers to the respondent's commitment to trans people using the single sex facilities they wish. The TEP qualifies this by stating that facilities *"should be accessed according to the full-time presentation of the employee in the new gender role".* The wording of the TEP permitted trans women to use single sex female facilities;

202.4 the claimant's reading of the TEP was that she could face disciplinary action if she raised concerns (on religious or other grounds) regarding sharing facilities with a trans woman. We concluded that this does not reflect the wording of the TEP. We also note that the claimant did not face any disciplinary action on raising her concerns from 9 November 2022 onwards;

202.5 the claimant has not pursued any complaints regarding the conduct of her grievance and grievance appeal relating to her concerns regarding the TEP, other than the delay in hearing her grievance. The main concern that she highlighted during her oral evidence related to the respondent mistakenly providing the claimant with an 'at risk of redundancy letter' shortly after she raised concerns. However, the claimant was reassured by Mr Briggs and HR that this was an administrative error and she accepted that this was a mistake;

202.6 however, it is not necessary for disciplinary action to be threatened in order for a complaint of harassment to succeed. The wording of the legislation refers to the violation of dignity or the creation of the Prescribed Environment. We remind ourselves again of the guidance provided by the EAT in Dhaliwal and in Weeks that:

202.6.1 it is *"important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"*; and

202.6.2 *"An 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the workplace."*

202.7 the TEP, viewed in the context of Dr Montgomery's email, the Trans Awareness session and the respondent's handling of the claimant's concerns after that event amounted to an 'environment' rather than a one-off incident. There was no evidence to suggest that the claimant was 'hypersensitive' or was otherwise unreasonably prone to take offence. We accept that, although it appears unlikely, other individuals who hold gender critical beliefs may well take a different view to that of the claimant and may be willing to share toilets and/or shower facilities with trans women. However, we have to reach a conclusion on the harassment complaint in relation to this claimant's circumstances;

202.8 we cannot conclude that the claimant was 'hypersensitive', given her circumstances set out above. The claimant raised her concerns via the appropriate channels, first by contacting Mr Gunce after the Trans Awareness session and then by raising a formal grievance. Her concerns were raised in a clear and measured way. We also concluded that the claimant's diagnosis of PTSD relating to male sexual violence was salient in reaching this conclusion for the same reasons as it was salient in relation to Allegation 1.

203. The claimant's harassment complaint under Allegation 2 therefore succeeds in relation to the extent that we concluded that the TEP had the effect of violating the claimant's dignity or creating the Prescribed Environment on the grounds of her

gender critical belief. However, we concluded that the TEP did not have the purpose of violating her dignity or creating the Proscribed Environment.

CONCLUSIONS

204. The claimant's complaint of indirect discrimination under section 19 of the Equality Act 2010 in relation to sex succeeds and is upheld.

205. The claimant's complaints of indirect discrimination under section 19 of the Equality Act 2010 were pleaded on the basis of a combination of discrimination in relation to sex and in relation to (1) religious belief and (2) disability. The claimant succeeds on these complaints insofar as they relate to indirect discrimination on the basis of sex only.

206. The claimant's complaints of harassment under section 26 of the Equality Act 2010 consisted of two separate factual allegations relating to different protected characteristics. We concluded that:

    206.1 in relation to the first allegation of harassment (the respondent's policy of permitting trans women to use female only facilities), the claimant's complaint of harassment related to sex and to gender critical belief succeeds and is upheld;

    206.2 in relation to the second allegation (the respondent's Trans Equality Procedure), we concluded that:

        206.2.1 the claimant's complaint that the Trans Equality Procedure had the purpose of violating her dignity or creating the Proscribed Environment on the grounds of her gender critical belief fails and is dismissed;

        206.2.2 the claimant's complaint that the Trans Equality Procedure had the effect of violating her dignity or creating the Proscribed Environment on the grounds of her gender critical belief succeeds and is upheld.

Approved by Employment Judge Deeley
8 May 2026

JUDGMENT SENT TO THE PARTIES ON

13 May 2026
FOR THE TRIBUNAL OFFICE
Paige Carr