

RESERVED REMEDIES JUDGMENT



EMPLOYMENT TRIBUNALS

Claimant: LS
Respondent: NHS England

Heard at: Leeds Employment Tribunal

On: 6 and 7 August 2025

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

Representation

For the Claimant: Ms N Cunningham (Counsel)

For the Respondent: Mr S Cheetham KC (Counsel)

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- (1) The Tribunal has not made any recommendations under s124 of the Equality Act 2010. The Tribunal has therefore rejected the claimant's draft recommendations (as set out at page 64 of the remedies file).
- (2) The respondent is order to pay to the claimant the sum of £15,000 for injury to feelings, together with interest of £4688.22 (calculated at 4 September 2026, based on a start date of 10 October 2022). The total payment ordered for injury to feelings and interest is therefore £19,688.22.
- (3) The claimant's claims for aggravated damages and for exemplary damages are rejected.

REASONS

The proceedings

1. The final hearing took place from 16 to 20 March 2026 (in public) and on 23 and 31 March (in chambers). The Reserved Judgment from the liability hearing dated 8 May 2026, was sent to the parties on 13 May 2026. This judgment should be read in conjunction with the Reserved Judgment.

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2. The Tribunal upheld the allegations of discrimination set out in the conclusions to the Reserved Judgment:

“Conclusions

1. *The claimant’s complaint of indirect discrimination under section 19 of the Equality Act 2010 in relation to sex succeeds and is upheld.*
2. *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.*
3. *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:*
 - 3.1 *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;*
 - 3.2 *in relation to the second allegation (the respondent’s Trans Equality Procedure), we concluded that:*
 - 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.”*

The remedies hearing

3. The claimant and Ms Zinnia Kingston (the respondent’s Head of HR, Policy and Partnerships) gave evidence at the remedies hearing. The respondent provided a remedies file and the claimant provided two supplemental files. We had the benefit of oral and written submissions from both parties.
4. The Tribunal also had access to the hearing file and witness statements from the liability hearing.

Additional findings of fact

5. This part of the judgment should be read in conjunction with the Tribunal’s findings of fact on liability set out in the Reserved Judgment.
6. The parties agreed that the claimant’s injury to feelings started on 10 October 2022, when the claimant received an email from Dr Ursula Montgomery regarding Person X’s transition.

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The claimant's description of their injury

7. The claimant was diagnosed with Post Traumatic Stress Disorder (“PTSD”) in 2021, having suffered from PTSD since 2009. The claimant's disability impact statement (prepared for the purposes of the liability hearing) contained the following description of her PTSD.

“1. ...My PTSD causes emotional flashbacks and results from serious sexual trauma. When I have a bad episode, I find myself submerged in the trauma nearly all of the time. Emotional flashbacks can last for hours, where I only get drawn out by external stimuli, like another person arriving. I feel sick to my stomach most of the time. I cry all the time, throughout the day and night, including at work, on a train, walking etc. This can last for weeks on end, sometimes months. It is incredibly debilitating.

2. My general symptoms include feeling on edge, intense alarm and distress when triggered, avoidance of certain places and people, sleeping difficulties and headaches, being ‘lost’ in distressing thoughts unable to come out of it, crying, shaking and low mood and sometimes visual flashbacks, too. Being constantly stressed upsets my stomach, which causes some urgency in bowel movements. The effect of PTSD on my daily activities is fundamental and persistent. It cuts across all aspects of life, relationships, sleep, activities, and who I am. I cannot see my PTSD ending and it is exhausting.

...

Formal diagnosis

14. Around 2019 I had a bad visual flashback by my desk at work which prompted me to seek help through the employee assistance programme (EAP), which connected me with a mental health care coordinator. I did not find it any help because the service does not offer counselling for PTSD. By 2021, I felt I could no longer work, so I emailed my line manager, got the EAP to send a letter to my GP (I could not bring myself to do it) and finally spoke with midwife (I was pregnant at the time), both of whom made referrals for mental health services.

15. I was clinically assessed and diagnosed with PTSD by an NHS Trust in 2021. My PTSD was found to be severe enough for me to be fast-tracked for Cognitive Behaviour Therapy (CBT), which I undertook over autumn 2021 and completed it in January 2022 whilst I was on maternity leave with my first child. The purpose of CBT was not to stop PTSD but to learn to live with it and develop coping mechanisms.

16. I have never signed off sick because of my PTSD because I refuse to give that power to it, although with hindsight this would have probably been wise on several occasions throughout my employment.

Therapy

17. Therapy has helped me live with PTSD. I self-harmed a couple of times and thought about death all the time during the early years of my PTSD. CBT in 2021-2022 was helpful in that it improved my self-perception, lifted feelings of guilt and shame... Therapy has given me confidence that I will not self-harm even if the PTSD might get worse again....

Current impact

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18. Despite therapy, I have PTSD long-term, which causes time periods of great difficulty. Even during better, 'milder' periods, my PTSD currently causes avoidance of certain places, difficulty discussing my PTSD and trauma, avoidance of non-consensual situations like sharing toilets, showering and changing facilities with men. Because of my PTSD, I feel more sensitive to what is being said in policy and training sessions and am acutely aware of certain things that [others] may not even have noticed (changes to single sex spaces, trans inclusion policy)."

8. The claimant described triggers for her PTSD in her statement, including:
 - 8.1 Paragraph 7 – being concerned that she might see the perpetrator of her sexual assault in town;
 - 8.2 Paragraph 12 – not saying certain words because she finds them too 'psychologically difficult';
 - 8.3 Paragraphs 6 and 19 – not being able to visit her old university town or to attend lectures at her old university in March 2023 and June 2024;
 - 8.4 Paragraph 20 – not being able to watch films or reading newspaper articles about sexual assault.
9. The claimant stated at paragraph 5 of her remedies witness statement that the respondent's stance in single-sex facilities exacerbated her PTSD because it:

"...has directly caused me to suffer emotional flashbacks, panic attacks and emotional instability. My pre-existing PTSD has been repeatedly triggered over the last 4 years. The Respondent's actions (and inaction) in respect of the Policy have been at the forefront of my mind and caused me untold stress and anxiety. My PTSD has been triggered on multiple occasions and the Respondent's conduct caused me to have to disclose my condition to managers where I would never have chosen to do so. My vulnerability was heightened and I was forced to relay personal information about myself that is both private and distressing."
10. The claimant also stated that she had short term problems with sleeping in February/March 2026 (in the lead up to the liability hearing) and in the month leading up to the remedy hearing of this claim. The claimant's GP prescribed her 10mg promethazine hydrochloride to be taken nightly to help with sleep (a short acting antihistamine with sedative side effects). The GP also provided a fit note for the claimant's sick leave in February/March 2026.
11. The claimant stated in her evidence that the investigation report into her grievance dismissed her PTSD. Her representative asked us to read the report and the claimant's response to the report.
12. The investigating officer's report noted that the claimant stated that she was formally diagnosed with PTSD in 2021 and had undertaken 12 weeks' CBT. The report also noted that the claimant had experienced PTSD for 10 years previously. The report stated that:

"1.7.3 PTSD is not one of the conditions that is automatically categorised as a disability under the Equality Act (2010) (the Act) and the Investigating Officer found insufficient evidence that [LS'] PTSD was preventing her from undertaking her normal day to day activities, such that it amounts to a disability under the Equality Act 2010 (however this is a legal rather than a medical question)."

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1.7.4 Taking [LS'] concerns at their highest and considering if her PTSD does amount to a disability for the purposes of the Equality Act, this investigation did not find any evidence that the Policy directly or indirectly discriminates against individuals with PTSD or mental health conditions.

1.7.5 The Investigating Officer was content that the individual single sex toilet facilities in Quarry House provide an environment that met [LS'] needs. In addition, the move of all NHS England staff from Quarry House to the new Leeds office at Wellington Place by January 2024, will provide with more choice of secure single occupancy toilet and showering facilities."

13. We note that the claimant stated in her summary response to the report prepared shortly after she received it:

"Report does not comment on the indirect discrimination that other PTSD and trauma survivors are quite likely to experience in mixed-sex facilities."

14. The claimant also stated in her longer commentary as part of that response that she did not discuss the full extent of her PTSD with the investigating officer, but that:

"I simply said it's difficult to live with PTSD and then, when asked if I got help for it, gave an example of one particular flashback in the office that had finally tipped me over to seek professional help."

She also gave further examples of her PTSD symptoms in her response.

15. We note that LS (understandably) did not wish to discuss her PTSD in detail with the investigating officer. In those circumstances, the investigating officer reached a conclusion based on the limited information that LS provided. We concluded that if LS had provided the more details information regarding her PTSD set out in her response to the report, then the investigating officer may have reached a different conclusion.
16. The claimant did not raise any complaints relating to the manner in which the later stages of the grievance and grievance appeal were managed (as set out at paragraphs 94 to 103 of the Reserved Judgment).
17. We concluded that the claimant's existing PTSD had been exacerbated by events since 10 October 2022. However, we concluded that:
- 17.1 the claimant's description of her PTSD suggests that she would have continued to suffer from the symptoms of her PTSD on a long term basis, regardless of the respondent's conduct. In particular, we note that many of the triggers listed by the claimant did not relate to her employment from 10 October 2022 onwards;
 - 17.2 the claimant took around one month's sick leave in 2026 and has taken medication for short periods to assist with her sleep in the run up to the liability and remedy hearings of this claim. We note that she did not take any other sick leave or medication to manage her symptoms;
 - 17.3 the claimant was able to continue working throughout this period (although we note that she was on maternity leave for part of the time) and engaged in the grievance and grievance appeal process. We accept that the claimant found this process emotional and difficult, particularly because she was forced to disclose details of her PTSD to her line manager and grievance managers;

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- 17.4 we accept that the claimant was unhappy with the investigation report. This was in part because the investigator's conclusions reflected the limited information that the claimant (understandably) felt able to disclose regarding her PTSD during the investigation. We also note that the claimant accepted in her oral evidence at the liability hearing that the grievance and grievance appeal managers treated her politely. She did not raise any legal complaints regarding the investigation, grievance or the grievance appeal process as part of these Tribunal proceedings.

The duration of the consequences

18. We accept the claimant's undisputed evidence that the exacerbation of the claimant's PTSD set out above continued as at the date of the remedies hearing.

The effect on past, current and future work

19. The claimant continued to attend work from 10 October 2022, save for one month's sickness absence in February/March 2026 (in the lead up to the liability hearing of this claim).
20. We accept that the claimant did not attend the office as frequently as she would have wished to for a number of reasons, including caring responsibilities for her young children following her return from two periods of maternity leave in 2022 and in 2024 and team members working remotely (as set out at paragraphs 73 to 75 of the Reserved Judgment).
21. However, we also found that one of the reasons that the claimant did not attend the office as frequently as she might have was due to her concerns regarding potential access by trans women of single-sex facilities (as set out at paragraph 76 of the Reserved Judgment). As a result, the claimant had reduced opportunities to meet colleagues on a face to face basis.
22. We also accept the claimant's evidence that she felt 'isolated' and 'ostracised' following the Trans Awareness Training session, following which she raised the concerns to Mr Gunce described at paragraphs 84 to 93 of the Reserved Judgment. For example, the claimant stated that she kept her camera turned off during larger Primary Care Group calls as a result of the discussions during the Trans Awareness Session.

The effect on personal life or quality-of-life

23. In addition to the matters set out above, the claimant reported that she had worked through holidays when preparing for these Tribunal proceedings. She also stated that her second maternity leave (in 2023/2024) had been affected by her ongoing grievance and Tribunal claim.

Events during 13 May to 6 August 2026

24. The claimant seeks aggravated damages relating to the period starting on 13 May 2026 (when the Reserved Judgment was sent to parties) to 6 August 2026 (the first day of the remedies hearing of this claim).

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25. We note that EHRC prepared an updated Code of Practice for services, which was laid before Parliament on 21 May 2026. That updated Code came into force on 5 August 2026 (which was the day before the first day of the remedies hearing of this claim).
26. By way of background, Section 4.11 of the respondent's Trans Equality Policy and Procedure ("**TEPP**") stated prior to July 2026:

"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."

27. The respondent sought legal advice on the Reserved Judgment and the EHRC's updated Code of Practice. The respondent's Executive Group discussed these matters. The respondent then prepared a draft announcement of the changes to the TEPP. The respondent sent the draft wording to its union representatives on or around 29 June 2026. The email stated:

"Following on from discussions at PF Exec and with [Ms Kingston], I wanted to confirm that the Exec Group have agreed to remove Section 4.11 (Single Sex Facilities) from the Trans Equality Policy and Procedure (TEP), along with wording to support the decision.

We wanted to share this with you ahead of sharing with PSG members later today, to keep them appropriately informed of this development. This follows recent internal discussions on the proposed approach and wording, and is intended to ensure clarity, consistency and transparency in how we communicate this change more widely.

For awareness, the EDI team are also planning to inform the relevant staff networks today, so that key stakeholders receive aligned messaging across all channels.

Please see the agreed wording below for your reference and where it will sit in the live version.

Policy Search Page

We have withdrawn section 4.11 (Facilities) from our Trans Equality Policy and Procedure while we address legal and regulatory developments governing single-sex facilities. We will launch a consultation over the summer to support the revision of the Policy, in partnership with our trade union colleagues.

[screenshot of extract from the draft Trans Equality Policy page on the staff intranet]

Policy Rationale

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We have made interim changes to our NHS England Trans Equality Policy and Procedure, to ensure the policy remains legally accurate, up to date, and aligned with the legal and regulatory framework governing single-sex facilities.

Recent developments have significantly clarified the legal position:

☐ *The UK Supreme Court ruling on 16 April 2025 confirmed that, for the purposes of the Equality Act 2010, the terms “sex”, “man” and “woman” refer to biological sex.*

☐ *The ruling affects single-sex spaces and services, including toilets, changing facilities and other sex-separated environments provided to service users. Following the UK Supreme Court judgment, there have been further legal developments which have confirmed that for employees, single sex facilities should be provided on the basis of biological sex and as such trans employees may not use facilities designated as single-sex for their affirmed gender.*

☐ *The Equality and Human Rights Commission (EHRC), as the statutory regulator, has since updated its guidance for services and developed a revised Code of Practice (laid before Parliament on 21 May 2026) to reflect this clarification. The EHRC also intends to update its Employment Code of Practice.*

The updated Code applies to health and care service providers, and we have considered what this means for NHS England as an employer. As a result of the recent developments set out above, we have removed section 4.11: Single Sex Facilities from our Trans Equality Policy and Procedure to comply with the law and guidance. We are currently working with our estates teams to ensure that adequate facilities are provided for all colleagues.

We will review our Trans Equality Policy and Procedure within the context of the latest legal position and our integration into the Department of Health and Social Care. This will include engagement with key stakeholders before making any further updates to our policy.

We recognise that these developments may be a concern for some colleagues, particularly those who are directly affected. If you have any concerns, you can speak to your line manager, HR Business Partner or trade union representative, so that the appropriate support can be provided, and we can answer any queries you may have about access to and use of colleague facilities. Support is also available through our Employee Assistance Programme.

We remain committed to creating an inclusive workplace where all colleagues are respected, supported and treated with dignity. Thank you for continuing to treat each other with professionalism and mutual respect.”

28. The respondent sent a similar email to the chairs of its staff networks on 1 July 2026. The respondent's staff networks at that time included the Women's network, the Menopause network, the LGBT+ network, the Muslim network and the Disability network.

29. The email to staff network chairs stated:

“I am writing to you in your capacity as Chair of a network identified as a key stakeholder for direct engagement in the development of a replacement for our existing Trans Equality Policy and Procedure (TEPP). This email is to inform you of a forthcoming change to the current policy.

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This change has been made to ensure that the policy remains legally accurate and aligned with the current legal and regulatory framework. Recent developments, including the UK Supreme Court ruling on the interpretation of “sex” within the Equality Act 2010, alongside updated guidance and the revised Code of Practice issued by the Equality and Human Rights Commission (EHRC), have clarified the legal position in relation to single-sex facilities. As a result, the existing wording within Section 4.11 (Single Sex Facilities) is no longer consistent with this framework and has therefore been withdrawn.

This approach forms part of a wider, considered response to ensure compliance with legal requirements while maintaining our commitment to supporting all colleagues.

I will be reaching out shortly to arrange a dedicated engagement session for your network to provide feedback on the proposed new policy, which will replace the existing TEPP in due course. Engagement on the new policy will be undertaken collaboratively with trade union colleagues, alongside input from other key stakeholders, and will offer an opportunity to review and consider the proposals.

Further details on the network engagement sessions and next steps will follow shortly. In the meantime, please note we are tentatively planning to hold these sessions between 13 and 22 July.

Please see the agreed wording below for your reference and where it will sit in the live version.

...

30. The respondent discussed the draft wording with various representatives at a National Partnership Forum on 2 July 2026. We note that respondent’s unions that normally attended the forum included:

- 30.1 Managers in Partnership – NHS & Health Care Managers Union;
- 30.2 Unison;
- 30.3 Unite the Union
- 30.4 the British Medical Association;
- 30.5 the Public and Commercial Services Union;
- 30.6 the Royal College of Nursing;
- 30.7 the Royal College of Midwives;
- 30.8 the British Dental Association;
- 30.9 the Chartered Society of Physiotherapy; and
- 30.10 Prospect.

31. The notes of that meeting record that:

“Trans Equality Policy update

Following the Supreme Court ruling on 16 April 2025, and the publication of the draft Equality and Human Rights Commission (EHRC) Code of Practice on 21 May 2026, we intend to start a review of our Trans Equality Policy and Procedure in view of the legal position. We will be arranging an extraordinary Policy Subgroup meeting to start this review with our trade union colleagues.”

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32. Unison's London representative emailed Ms Kingston on 7 July 2026, raising concerns regarding the removal of paragraph 4.11 of the TEPP.
33. The respondent then issued an email announcement to all staff on 17 July 2026 in similar terms to those set out in its email of 29 June 2026.
34. The respondent's staff networks have communicated with their staff members regarding the changes. For example, the LGBT+ Network posted the following threads:

"The proposed amendment removes section 4.11 of the current policy, which relates to the facilities colleagues use...The effect of this amendment is that colleagues would be expected to use facilities aligned to their sex assigned at birth rather than their gender identity."

.....

"Trans Inclusion Policy Review – anonymous feedback form

In addition to the Listening Circle...we welcome feedback on the policy review from all colleagues and members – you can find the form using this link [omitted]

The form will close on 18 August at 2pm.

Your feedback will be captured anonymously and summarised to help inform the EQIA and decision-making process for the policy review."

Claimant's concerns re May 2026 training

35. The claimant raised concerns regarding the respondent's May 2026 training with Mr Peter McCurry (the respondent's then Director of HR Business Partnering, Employee Relations and Policy and a witness at the liability hearing of this claim). The claimant emailed Mr McCurry (copied to SEEN in Health's outlook email address) on 22 May 2026, complaining that the respondent's new training 'Equality Diversity and Human Rights' introduced the concept of 'gender critical belief' in a manner which was inappropriate and contained an inaccurate quote from the EAT's conclusions on the *Forstater* claim. The claimant maintained that:

"Although large parts may be technically correct...GC beliefs are oddly and negatively highlighted in comparison to other [Protected Characteristics]."

36. Mr McCurry responded on the same day, stating that he had copied the claimant's email to his colleagues and asked them to direct her to the team that had developed the course. A member of the TEL Education Content team responded on 10 June 2026 stating:

"Thank-you very much for reaching out with your valuable feedback. We will review with our national subject matter expert for EDI in due course. As you might be aware, we are also working on the Statutory and Mandatory reform EDI content and so this will form part of that process as well. And thanks for your offer to help, leave this with us in the first instance, but we may well reach out if we need any further clarification."

37. Ms Kingston confirmed in evidence that the training was developed by an externally facing team within the respondent, who were responsible for

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developing training for the NHS as a whole (rather than solely for the respondent itself).

Respondent's organisational changes

38. The respondent is undergoing a significant period of organisational change at present. We accepted the respondent's evidence that:
- 38.1 the respondent merged with NHS Digital and with Health Education England in 2023 (the "2023 Merger");
 - 38.2 the respondent was still in the process of integrating the three organisations' policies when the government announced in March 2025 that respondent would be disbanded by 31 March 2027;
 - 38.3 it is envisaged that the majority of the respondent's organisation will be absorbed into the Department of Health and Social Care, following consultation on the new organisational structure (including redundancy consultation);
 - 38.4 a significant number of staff in the respondent's organisation have left and are not being replaced. For example, Mr McCurry (the respondent's Director of HR and a witness at the liability hearing of this claim) left the respondent in mid-July 2026 and no replacement Director of HR will be appointed.
39. We also accept Ms Kingston's evidence that the respondent has to consider the views of the Department for Health and Social Care (who in turn liaise with the Cabinet Office) when introducing any changes to its policies or procedures because the respondent's organisation will be absorbed into that department by 31 March 2027.
40. In addition, we note that the claimant's claim related to the respondent's previous Leeds office (part of the DWP's Quarry House) and its current Leeds office (part of HMRC's leased site at Wellington Place). We accept Ms Kingston's evidence that:
- 40.1 the respondent operates across 37 sites nationally;
 - 40.2 the sites vary considerably in terms of their toilet and shower provision. Not all of those sites have single gender neutral lockable toilets (as is the case at Wellington Place), although all sites have accessible toilets as well as single-sex male and female toilets.

Relevant law

41. The Tribunal's remedies powers in discrimination claims are set out in s124 of the Equality Act 2010 (the "EqA"):

"124 Remedies: general

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The tribunal may—

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(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

(b) order the respondent to pay compensation to the complainant;

(c) make an appropriate recommendation.

(3) *An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate*”

42. We note that the Tribunal in a case involving findings of ‘unintentional’ indirect discrimination is required to first consider recommendations before moving on to consider any award for injury to feelings or other damages (s124(4) and (5) of the EqA 2010). However, they do not preclude a Tribunal from making an award of compensation where there was no intention to discriminate – *Wisbey v Commissioner of the City of London Police* [2021] ICR 1485.

Recommendations

43. The Tribunal’s power to make recommendations in discrimination claims is set out at section 124 of the EqA. Section 124(2)(c) EqA states that an employment tribunal ‘*may... make an appropriate recommendation*’. An appropriate recommendation is defined at s124(3) as:

‘a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate’

44. If a respondent fails, without reasonable excuse, to comply with a recommendation, a tribunal may, if an order for the respondent to pay compensation was made under S.124(2)(b) EqA, increase the amount of compensation to be paid or, if no such order for the payment of compensation was made, the tribunal can decide to make one (S.124(7) EqA).

45. The guidance on recommendations is limited. The Tribunal must consider the following key questions:

45.1 What adverse effect on the claimant is the recommendation intended to address?

45.2 Is the adverse effect a matter to which the proceedings relate?

45.3 Do the steps set out in the recommendation have the purpose of (a) obviating or (b) reducing the adverse effect on the claimant?

45.4 Are the steps set out in the recommendation ‘specific’ – both in terms of:

45.4.1 the steps that must be taken by the respondent; and

45.4.2 the time period in which those steps must be taken?

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46. The legislation that pre-dated the EqA 2010 on recommendations contained a requirement that recommendations made had to be 'practicable'. The EAT in *Lycée Français Charles De Gaulle v Delambre* UKEAT/0563/10, [2011] EqLR 948 conducted a wide review of the authorities concerning recommendations under the previous legislation and stated:

"21 ... A recommendation under regulation 38 [of the Age regulations 2006] gives a Tribunal extremely wide discretion (see *Chief Constable of West Yorkshire Police v Vento* (No 2) [2002] IRLR 177 at 49.1 per Wall J on behalf of the EAT).

22 The requirement of practicability is met when the Tribunal focuses upon what is practicable in terms of its effect on the complainant (see *Fasuyi v London Borough of Greenwich* UKEAT/1078/99 at paragraph 24).

23 The practicability of a recommendation has to be also seen from the perspective of an employer. Only a recommendation which is completely impracticable would constitute an error of law (see *Leeds Rhinos Rugby Club v Sterling* UKEAT/0267/01 at 6.1).

24 A recommendation which is generally ameliorative, that is applying across the board, may be justified if the effect of it will obviate or reduce the adverse effect of discrimination on the complainant, who is a person within the general application (see *Fasuyi* at paragraph 24).

25 Tribunals have a wide range of discretion in the recommendations they make so that, for example, a letter being sent to all parents of a school was approved, subject to some minor drafting on appeal, in *The Governing Body of St Andrews Catholic Primary School v Blundell* UKEAT/0330/09, and good practice will require senior managers within an employer which has been found guilty of discrimination to face up to findings made by reference to a Judgment in an Employment Tribunal (see *Vento* at paragraph 4.49). A requirement to undertake formal equality and diversity training may be appropriate (see *London Borough of Southwark v Ayton* 18 September 2003 unreported EAT at paragraphs 26 to 28)."

47. The parties did not draw our attention to any reported appellate decisions on whether or not any recommendations under the EqA have to be 'practicable'. However, this Tribunal considers that it would not be appropriate to make any recommendation that was not practicable, both in terms of obviating or reducing the adverse effect on the claimant and in terms of the respondent's compliance with such recommendation.

Injury to feelings

48. Compensation must be calculated in the same way as damages in tort (see s124(6) Equality Act 2010, read with s119(2)(a) and s119(3)(a) Equality Act 2010). The EAT stated in *Ministry of Defence v Cannock and ors* [1994] EAT ICR 918 that the aim of such compensation is that:

"..as best as money can do it, the applicant must be put into the position she would have been in but for the unlawful conduct."

49. The purpose of injury to feelings awards is compensatory, not punitive. The tribunal must focus on the effect of the discriminatory act upon the particular

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claimant because it is required to compensate for the injury suffered, not the manner of the discrimination.

50. The Tribunal has considered in detail the recent decision of the EAT in Eddie Stobart Limited v Miss Caitlin Graham [2025] EAT 14, at paragraphs 30 to 52, which provides comprehensive guidance regarding injury to feelings (ITF) awards.
51. The Claim Form (ET1) was issued on 14 April 2024. The relevant Vento bands for claims submitted after 6 April 2024 but before 6 April 2025 are:
 - 51.1 a lower band of £1,100 to £11,700 (less serious cases);
 - 51.2 a middle band of £11,700 to £35,200 (cases that do not merit an award in the upper band); and
 - 51.3 an upper band of £35,200 to £58,700 (the most serious cases), with the most exceptional cases capable of exceeding £56,200.
52. Interest on injury to feelings awards is calculated starting on the date of the act of discrimination complained of and ending on the day on which the employment tribunal calculates interest. The applicable interest rate is 8%.

Aggravated damages

53. The purpose of aggravated damages is to compensate a claimant for additional distress caused by the actions of the respondent, including (but not limited to) any conduct that post-dates the period relating to the claim – Commissioner of the Police of the Metropolis v Shaw [2012] ICR 464. The Tribunal must therefore be wary of making overlapping awards for injury to feelings and aggravated damages.
54. The claimant's representative noted that a failure to apologise may be one factor that a Tribunal can consider when deciding whether to award aggravated damages and referred us to Base Childresnwear Ltd v Otshudi [2019] UKEAT/0267/18/JOJ. We note that this claim involved Tribunal findings that:
 - 54.1 the claimant had been dismissed 'out of the blue' for a false reason, having 'invested time and money into her career' and having expected to remain in that job for the foreseeable future;
 - 54.2 the respondent failed to deal with the claimant's grievance and appeal;
 - 54.3 the respondent belatedly presented a substantially altered defence, alleging that the claimant was dismissed due to theft.

Exemplary damages

55. The purpose of exemplary damages is to punish conduct by public servants that is "*oppressive, arbitrary or unconstitutional*" – Rookes v Barnard and ors [1964] AC 1129. The respondent accepted that it was a 'public servant' for the purposes of any potential award for exemplary damages.
56. Exemplary damages must only be awarded if:
 - 56.1 any other awards otherwise payable would not provide a sufficient deterrent; and

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- 56.2 a respondent has acted in an oppressive, arbitrary or unconstitutional manner.

Parties' position on remedies

57. The claimant claimed:

- 57.1 £25,000 injury to feelings plus interest of approximately £5000;
- 57.2 £15,000 aggravated damages; and
- 57.3 £5,000 exemplary damages.

58. The claimant also asked the Tribunal to make the recommendations set out below.

"1. That R should announce forthwith to its entire workforce and publicly that its single-sex facilities are available to staff on the basis of biological sex, and that use of opposite-sex facilities will be treated as a disciplinary matter.

2. That R should announce forthwith to its entire workforce that it will be conducting a review of all of its relevant policies, guidance, training materials and similar to ensure that none of them perpetuates the claim that staff with cross-sex identities are entitled to use facilities provided for the opposite sex, and invite staff to assist in identifying relevant documents requiring review.

3. That R should within 20 working days commence and within 60 working days complete the review referred to at ¶2 above.

4. That in conducting any equality impact assessments required by the review of its policies, R should engage among others with SEEN in Health (the NHS Sex Equality and Equity Network).

5. That R should conduct a general review its EDI training to ensure that it is consistent with the Nolan principles of objectivity and honesty and engaging with both SEEN in Health and the human rights charity Sex Matters in the process.

6. That all internal EDI training modules/documents (e.g. MAST Equality, Diversity and Human Rights offline document and e-learning launched in May 2026) remove any adverse inference/reference to gender critical beliefs and ensure they are referred to neutrally in the same way as any other protected characteristic/protected belief."

59. The respondent denied that any of the recommendations sought by the claimant were appropriate. The respondent submitted that the Tribunal should make an award for injury to feelings only at the top end of the lower *Vento* band (i.e. £10,000-£12,000).
60. Both parties made helpful written and oral submissions on remedies. We have taken these into account when reaching our conclusions, although they have not been reproduced in full in the interests of brevity.

Conclusions

61. We applied the law to our findings of fact and reached the conclusions set out below.

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Recommendations

62. We first considered whether the Tribunal should make the draft recommendations requested by the claimant.

Recommendation 1

63. The first recommendation that the claimant sought was as follows:

1. That R should announce forthwith to its entire workforce and publicly that its single-sex facilities are available to staff on the basis of biological sex, and that use of opposite-sex facilities will be treated as a disciplinary matter.

64. We concluded that the respondent has announced to its workforce that single-sex facilities are available on the basis of biological sex when it announced the Policy Rationale for the withdrawal of paragraph 4.11 of the TEPP. In particular, the Policy Rationale stated that the Supreme Court's decision in April 2025 and 'further legal developments':

"...have confirmed that for employees, single sex facilities should be provided on the basis of biological sex and as such trans employees may not use facilities designated as single-sex for their affirmed gender."

65. We note that the emails in the hearing file from the staff networks and trade unions demonstrate that they understood that the impact of the respondent's announcement was that the use of single-sex facilities would be based on biological sex. For example, the LGBT+ Network posted a thread stating:

"The effect of this amendment [to the TEPP] is that colleagues would be expected to use facilities aligned to their sex assigned at birth rather than their gender identity."

66. We concluded that it would not be appropriate to make a recommendation that the respondent announce that the use of single-sex facilities of an employee's affirmed gender would or may be treated as a disciplinary matter. The claimant submitted that the warning of disciplinary proceedings was required to ensure that the change to the TEPP was enforced, rather than a 'paper change' only. The claimant submitted that the respondent had changed the TEPP unwillingly and in a 'foot-dragging manner' after the Reserved Judgment was promulgated.

67. In reaching our conclusion we noted that:

67.1 the claimant was very clear in her evidence at the liability hearing that her complaints did not relate to any specific conduct by X (who left the respondent's organisation in 2023) or any other individual trans member of staff;

67.2 the claimant has not complained of a 'confrontation' situation, for example where she has seen a trans woman enter the women's toilets. She has not stated that the Chairs of the SEEN in Health or the Women's Network were aware of any such situations either.

67.3 the pre-July 2025 version of the TEPP did not contain a disciplinary warning stating that anyone who challenged a trans member of staff

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using the toilets of their affirmed gender may be subject to disciplinary action. The TEPP contained wording stating that a refusal to work with trans staff may lead to disciplinary action;

- 67.4 the Tribunal is aware from its industrial experience that disciplinary policies are not required to provide specific details of all matters that may be regarded as misconduct or gross misconduct.

Recommendations 2 and 3

68. The second and third recommendations that the claimant sought were as follows:

2. That R should announce forthwith to its entire workforce that it will be conducting a review of all its relevant policies, guidance, training materials and similar to ensure that none of them perpetuates the claim that staff with cross-sex identities are entitled to use facilities provided for the opposite sex, and invite staff to assist in identifying relevant documents requiring review.

3. That R should within 20 working days commence and within 60 working days complete the review referred to at ¶2 above.

69. We note that the respondent has already announced to its unions, staff networks and workforce that it is going to review its TEPP. We note that any recommendation on timescales has to 'obviate or reduce' the adverse effect on the claimant and has to be practicable.

70. The claimant did not dispute that the respondent's removal of paragraph 4.11 of the TEPP is sufficient for it to comply with the law and the current EHRC guidance on single-sex facilities. The 'adverse effect' that the claimant submits in relation to any additional review appears to relate to her view that the respondent:

70.1 removed that paragraph reluctantly, after the Tribunal's Reserved Judgment was promulgated;

70.2 has not done enough to communicate the change to its policy.

71. We would have made a recommendation about the timescale for the review of the TEPP if the respondent were in different circumstances. However, we concluded that it was not appropriate to do so because of the particular circumstances of this respondent, including:

71.1 Ms Kingston accepted under cross-examination that 12 weeks was sufficient to complete a review of training materials, but she did not accept that this was sufficient time to complete a review of the TEPP or any other policy documents that require consultation with trade unions and staff networks;

71.2 the respondent is obliged to comply with the public sector equality duty in relation to policy changes which are not mandated by law;

71.3 as a matter of practicability, the respondent is required to consider the views of the Cabinet Office before making any policy changes, given the respondent's disbandment and absorption into the Department of Health and Social Care in March 2027; and

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- 71.4 the outcome of any review that we recommend as at the date of this Judgment is likely to be overtaken by events, given the respondent's disbandment by 31 March 2027. The adverse effect on the claimant would not, in practice, be obviated or reduced to any substantial degree by a change in the TEPP or other documents which are rendered obsolete by the respondent's disbandment.
72. We note that the claimant is also seeking a wider review of other "*relevant policies, guidance, training materials and similar*", not just the TEPP. The claimant says that the purpose of that review would be to ensure that none of those documents "*perpetuates the claim*" set out in the recommendation. The claimant submitted that all of the respondent's staff could assist with that review. The respondent submitted that the purpose of any review would be to ensure that the respondent complies with the law and statutory guidance; not as set out in the recommendation sought by the claimant.
73. We note that:
- 73.1 the respondent is a large organisation, albeit that its staff population is reducing in the run up to the disbandment of the respondent by 31 March 2027;
- 73.2 the claimant already feels able to raise concerns regarding specific documents, as evidenced by her emails to Mr McCurry (then Director of HR) regarding the May 2026 EDI training. However, the claimant's concern regarding that material related to her view that it presented gender critical beliefs in a negative light, rather than it 'perpetuated' any claim regarding the use of single-sex facilities;
- 73.3 the claimant did not suggest that the Chairs of the Staff Networks or any other representatives felt unable to raise concerns directly with the respondent's HR team outside of any review, for example by direct email to HR.
74. We concluded that it was not clear what 'adverse effect' the claimant is contending would be obviated or reduced by ordering a wider review of other "*relevant policies, guidance, training materials and similar*". The claimant has not identified any such other documents that she says are 'perpetuating the claim' set out in the recommendation. In any event, the claimant is able to raise any concerns regarding documents directly with the respondent's HR team or via staff networks.

Recommendations 4, 5 and 6

75. The fourth, fifth and sixth recommendations that the claimant sought were as follows:
4. *That in conducting any equality impact assessments required by the review of its policies, R should engage among others with SEEN in Health (the NHS Sex Equality and Equity Network).*
5. *That R should conduct a general review its EDI training to ensure that it is consistent with the Nolan principles of objectivity and honesty and engaging*

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with both SEEN in Health and the human rights charity Sex Matters in the process.

6. That all internal EDI training modules/documents (e.g. MAST Equality, Diversity and Human Rights offline document and e-learning launched in May 2026) remove any adverse inference/reference to gender critical beliefs and ensure they are referred to neutrally in the same way as any other protected characteristic/protected belief.

76. These recommendations relate to the claimant's view that gender critical beliefs are not represented adequately in the respondent's consultation process on documents including equality impact assessments and Equality, Diversity and Inclusions training materials.
77. The first question we have to consider is the adverse effect that the claimant states that these recommendations would obviate or reduce. We note that:
- 77.1 the claimant's indirect discrimination claim relating to the respondent's policy of permitting trans staff to use the facilities that did not correspond to their biological sex was brought on the basis of sex and other protected characteristics, not on the basis of gender critical belief;
 - 77.2 the claimant's harassment complaints relating to both: (a) the respondent's policy of permitting trans women to use female only facilities and (b) the wording of the TEPP itself succeeded (in part) on the basis of sex and of gender critical belief; and
 - 77.3 recommendations under the EqA do not have to relate only to the claimant, but can also relate to 'any matter to which the proceedings relate' provided that the claimant is also affected by that matter.

Recommendation 4 – equality impact assessments and SEEN in Health

78. We note that "SEEN in Health (Sex Equality and Equity Network)" is a group formed on 11 April 2024. We were not referred by the parties to SEEN in Health's website. However, as matter of judicial notice, we note that SEEN in Health's website (as at August 2026) contains a section titled "About us" which states:

"Our mission is to offer support to staff through a workplace network that works in partnership with NHS and other healthcare organisations. We want to create an environment where staff can:

- discuss issues related to the protected characteristic of sex...

...Our members include staff across all grades in clinical and non-clinical roles, in NHS settings across the United Kingdom."

79. The identities of SEEN in Health's Co-Chairs are anonymous. The respondent does not know the identities of its Co-Chairs or members. The respondent also does not know whether any members (including the Co-Chairs) are employed by the respondent itself, other NHS organisations or by external unrelated organisations. SEEN in Health communicates with the respondent's management via a group email Microsoft Outlook address. SEEN in Health

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previously applied to be a staff network of the respondent, but withdrew its application.

80. We have concluded that it would not be appropriate to recommend that the respondent consults with SEEN in Health on any equality impact assessments. The key reasons for our decision are:
- 80.1 the respondent's normal approach is to consult with staff networks and its recognised trade unions regarding equality impact assessments and training materials;
 - 80.2 SEEN in Health had the opportunity to apply for staff network status with the respondent, but chose not to do so. Its Co-Chairs and members are anonymous and the respondent is unable to ascertain with whom it would be dealing.

Recommendation 5 – review of all EDI training materials – SEEN in Health and Sex Matters

81. The claimant's representative noted that "Sex Matters" is a registered charity, whose Chair and Trustees are recorded on the Charity Commission's online register. We have taken judicial notice of the description of Sex Matters' activities on the Charity Commission's website as follows: "We campaign for clarity on sex in law and policy to protect everyone's human rights". The claimant's representative also noted that Sex Matters was permitted by the courts to intervene in the case of For Women Scotland.
82. The claimants' representative submitted that:
- 82.1 the respondent had previously consulted with Stonewall regarding the introduction of the TEPP in 2017;
 - 82.2 Mr McCurry accepted in his evidence during the liability hearing that the respondent could consult with Sex Matters.
83. We have concluded that it is not appropriate to recommend that the respondent reviews all of its EDI training materials for the reasons set out in our conclusions on Recommendations 2 and 3 earlier in this judgment. However, even if we had been minded to recommend a review, we have concluded that any such recommendation would not be appropriate because:
- 83.1 we are not clear how it would be possible to conclude definitively whether or not any such review had been undertaken in a manner which was "*consistent with the Nolan principles of objectivity and honesty*". Such a review, would not meet the 'specific steps' requirement for recommendations;
 - 83.2 we would not have recommended that the respondent consult with Seen in Health for the reasons set out under Recommendation 4 above; and
 - 83.3 we would not have recommended that the respondent consult with Sex Matters because Sex Matters is an external organisation. We appreciate that the respondent previously consulted with Stonewall in 2017 (when drafting the original TEPP). However, they did not consult with Stonewall

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or other external organisations when commencing a review of the TEPP in 2022 or later.

Recommendation 6 – May 2026 EDI Training

84. The claimant described the impact of the discussions during the Trans Awareness session that she attended on 9 November 2022 during the liability hearing. Our conclusions on that session are set out at paragraphs 84 to 86 of the Reserved Judgment. We note that the claimant did not raise concerns about any other training materials as part of her evidence for the liability hearing, save for the online learning module which she completed shortly after her return from maternity leave in August 2022 (see paragraphs 78 and 79 of the Reserved Judgment).
85. The legal complaints raised by the claimant that led to the Tribunal's determinations in the Reserved Judgment related to the respondent's policy and practice of permitting trans staff (particularly trans women) to use the single-sex facilities of their affirmed gender. The claimant did not raise any legal complaints that she had been subject to any specific detriments because the respondent had a 'negative perception' of employees with gender critical views.
86. We have considered whether the claimant's submission that the respondent's 'adverse inference/reference' in the May 2026 training documents (and possibly others) of gender critical views are a matter to which these proceedings relate.
87. The claimant's representative set out the background to the provisions on recommendations in the EqA in detail. She submitted at paragraph 25 of her written submissions that in the claimant's case:
- "...the temporal scope of the specific acts of discrimination which the tribunal has found proved is bounded at the start by Dr Montgomery's email of 10 October 2022 and at the end by C's ET1 of 14 April 2024; but the effects of the matters of which she complains continues. Her evidence was that she still confines herself to single-occupancy unisex toilets at QH because R's interim guidance was only issued a couple of weeks ago, because there has been a lack of accompanying supportive messaging from R (indeed all the supportive messaging has been concerned with offering support to trans-identifying staff); and because of the widespread public resistance to complying with the law as clarified by the Supreme Court in For Women Scotland."*
88. We concluded that the respondent's perception of gender critical beliefs (whether adverse or otherwise) was not a matter to which these Tribunal proceedings related. The claimant was very clear in her Amended Grounds of Claim and her witness statement that the matters to which her claim related were based on the claimant's concerns *"at the prospect of encountering males in the specific setting of what she considers should be female-only environments"*. The claimant's representative pointed out that women who do not hold gender critical beliefs may also have similar concerns.

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89. However, if we are incorrect in our conclusion that this is not a matter to which these Tribunal proceedings relate, then we would still have rejected that the claimant's suggested Recommendation 6. As stated in relation to the claimant's suggested Recommendations 2 and 3, we note that:
- 89.1 the respondent is a large organisation, albeit that its staff population is reducing in the run up to the disbandment of the respondent in March 2027;
 - 89.2 the claimant already feels able to raise concerns regarding specific documents, as evidenced by her emails to Mr McCurry (then Director of HR) regarding the May 2026 EDI training. She has not identified concerns relating to any other current training documents;
 - 89.3 the claimant did not suggest that the Chairs of the Staff Networks or any other representatives felt unable to raise concerns directly with the respondent's HR team outside of any review, for example by direct email to HR.
90. Recommendation 6, as drafted by the claimant, also presents further difficulties. The Tribunal must consider whether or not any recommendation that it makes is practicable. We note that the wording of any document may be open to many different (and often conflicting) interpretations. One person may read wording as being 'neutral', whilst another may view it as adverse, depending on the circumstances and their own views and beliefs. We concluded that Recommendation 6 does not contain specific steps that would be practicable for the respondent to take.

Injury to feelings

91. We have taken into account in full the guidance set out in the extract from the Graham case in Annex A. Before arriving at our conclusions about the appropriate level of the injury to feelings in this case, we remind ourselves in particular that:
- 91.1 such awards are compensatory not punitive;
 - 91.2 we have to do our best on the available material to make a sensible assessment of the hurt feelings suffered by the claimant arising from the acts of discrimination found to have occurred, which are summarised above;
 - 91.3 the applicable Presidential Guidance is that set out in the relevant update to the Vento guidelines covering the period April 2024 to April 2025;
 - 91.4 we are required to compensate for the injury suffered, not the manner of the discrimination, although the manner of discrimination can in certain circumstances provide a benchmark for assessing severity of injury;
 - 91.5 there must be evidence of injury;
 - 91.6 it may be useful to consider the claimant's description of their injury, the duration of the consequences, the effect on past, current and future work and the effect on personal life or quality-of-life.

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92. We have concluded that an award in the middle band for injury to feelings is appropriate in these circumstances. We note that:
- 92.1 the key facts relating to the claimant's claim were not a one off event, but rather a situation that continued throughout the period of the claim. These facts did not arise from any 'confrontation' between the claimant and another member of staff. Instead, they related to the claimant's concerns after receiving the email from Dr Montgomery in October 2022. These concerns were exacerbated by the discussions during the Trans Awareness Session in November 2022;
 - 92.2 the claimant's initial concerns were not dealt with in a timely manner. The claimant then submitted a formal grievance and the respondent accepts that the grievance process was delayed unduly;
 - 92.3 the claimant had flexibility as to when (and for how many days per week) she attended the office. We note that the claimant had a number of reasons for working from home, including caring for her young children, that affected her office attendance. However, we accept that the claimant would have attended the office more frequently if she had felt comfortable using the women's single-sex facilities;
 - 92.4 the claimant accepted that as at November 2023, the provision of gender neutral lockable toilets and shower rooms at Wellington Place was far superior to the provision at the respondent's previous offices in Quarry House;
 - 92.5 we accept that the situation impacted on the claimant's enjoyment of her second period of maternity leave in 2023/2024 and that she has spent holiday periods preparing for these proceedings;
 - 92.6 the claimant's symptoms of her pre-existing condition of PTSD were exacerbated by the events set out in this claim. However, the claimant continued working for the respondent throughout. She has not had any sick leave, save for a short period of absence prior to the final hearing of her claim.
93. We have also taken into account that there will be a significant amount of interest payable on any award of injury to feelings that we make, due to the length of time that has passed and the applicable interest rate of 8%.
94. We have therefore concluded that an award of injury to feelings of £15,000, plus interest payable at the rate of 8% per annum from 10 October 2022 to the date of this judgment, would be appropriate in the circumstances set out above.

Aggravated damages

95. The key aggravating factors that the claimant identified were:
- 95.1 the respondent's delay in announcing the removal of paragraph 4.11 of the TEPP to staff on 17 July 2026;
 - 95.2 the claimant's submission that the removal of paragraph 4.11 of the TEPP was not sufficient on its own – the claimant contends that the respondent should ensure that there is a practical means of enforcing this change:

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“36. Without communication from NHSE to the effect that this new policy will be enforced and instruction on how employees might make complaints for breach of it, C has felt unable to return to using single-sex facilities.”

- 95.3 the claimant's submission that the respondent is using stakeholder engagement and equality impact assessment as 'excuses' not to implement its changed policy;
- 95.4 the respondent's failure to apologise to the claimant for the discrimination complaints that the Tribunal upheld.
- 96. The claimant set out the ongoing harm that she states she suffered at paragraphs 77 to 82 of her remedies witness statement. The key harms that she identified relating to the period from 13 May to 6 August 2026:
 - 96.1 the length of time that the respondent took to announce that it was removing paragraph 4.11 of the TEPP; and
 - 96.2 that she is “still having to self-exclude” from the single-sex facilities. The claimant stated that this: *“impacts my ability to work in the office and means I can never just freely attend without considering what may happen and what facilities I can reasonably and safely use”*;
 - 96.3 that she does not feel comfortable or safe using the Wellington Place showers because the mirror and hairdryer area are in a shared area, next to the unisex lockable shower cubicles. The claimant says that the 6th floor disabled shower facilities are not sufficient for the reasons set out at paragraph 80 of her remedies witness statement.
- 97. We concluded that:
 - 97.1 this is not a claim where the Tribunal has found that the respondent intended to discriminate against the claimant, either as part of her indirect discrimination or her harassment complaints. We note that the TEPP was in place from the start of the claimant's employment. She only became aware of the TEPP following the email from Dr Montgomery on 10 October 2022. This is very different to the *Base Childrenswear* case set out in the section above on Relevant Law, which the EAT reported involved dismissal 'out of the blue' for a false reason, an employer who ignored the claimant's grievance and appeal and a belated changing of the respondent's defence to allegations of theft;
 - 97.2 the respondent did not act with undue delay in announcing the removal of paragraph 4.11 of the TEPP for the reasons set out above;
 - 97.3 the “Policy Rationale” sets out clear instructions to staff. We have seen correspondence in the hearing file from unions and staff network that make it clear that they understood what the removal of paragraph 4.11 of the TEPP meant;
- 98. We do not accept the claimant's submission that a warning of potential disciplinary action is required in these circumstances:
 - 98.1 the claimant was very clear in her evidence at the liability hearing that her complaints did not relate to any specific conduct by X (who left the respondent's organisation in 2023) or any other trans member of staff;

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- 98.2 the claimant has not complained of a 'confrontation' situation, for example where she has seen a trans woman enter the women's toilets. She has not stated that the Chairs of the SEEN in Health or the Women's Network were aware of any such situations either.
 - 98.3 the pre-July 2025 version of the TEPP did not contain a disciplinary warning stating that anyone who challenged a trans member of staff using the toilets of their affirmed gender may be subject to disciplinary action. The TEPP contained wording stating that a refusal to work with trans staff may lead to disciplinary action;
 - 98.4 the Tribunal is aware from its industrial experience that disciplinary policies are not required to provide specific details of all matters that may be regarded as misconduct or gross misconduct.
99. We concluded that it would not be appropriate to make an award for aggravated damages in these circumstances.

Exemplary damages

100. The respondent accepted that it is a 'public servant' for the purposes of any potential exemplary damages award. The claimant did not suggest that the respondent had acted in an 'unconstitutional' manner.
101. The claimant's representative submitted that any award for injury to feelings and/or aggravated damages would not be a sufficient award for punishment or deterrence, in the context of what she termed 'widespread denial and defiance' of the law, as clarified by the *For Women Scotland* judgment. The claimant's representative stated that the Tribunal would inevitably not be awarding the claimant 'huge sums' because she still works for the respondent and that any award would therefore not amount to a significant deterrent to the respondent.
102. The claimant's representative also said that the making of an exemplary damages award, regardless of the size of that award, was needed in these circumstances to ensure that the respondent's Board pays attention to the findings in the Reserved Judgment.
103. The claimant submitted that the respondent should have made changes to the TEPP after the *For Women Scotland* judgment. The claimant also submitted that the respondent should have removed paragraph 4.11 of the TEPP promptly after receiving the Reserved Judgment.
104. The respondent submitted that the claimant was 'naïve' to suggest that the respondent should have been able to make immediate changes to the TEPP, without consultation with its recognised unions and other stakeholders. The respondent also submitted that even if the Tribunal concluded that the respondent should have acted more quickly, this was not sufficient to meet the test of acting in an 'oppressive or arbitrary' manner.
105. We concluded that the respondent had not acted in an oppressive or arbitrary manner in relation to its actions following the Tribunal's judgment. The key reasons for our conclusion were:
- 105.1 the respondent's Board are more than likely to have been aware of the Reserved Judgment because Mr McCurry (the then HR Director) was a witness to these proceedings. We also note that Mr McCurry responded

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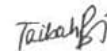
promptly to the claimant's concerns raised after the Reserved Judgment was issued regarding the May 2026 training;

- 105.2 there was no evidence to suggest that the respondent was acting in an oppressive or arbitrary manner. The Reserved Judgment was sent to the parties on 13 May 2026. The respondent informed its unions and staff networks in June and early July 2026 of the removal of paragraph 4.11 of the TEPP. This was then communicated to all staff on 17 July 2026. We accept that the respondent needed time to take legal advice and notify its unions and staff networks before announcing the change to the TEPP.

Employment Judge Deeley

Dated 4 September 2026

Sent to the parties on:



Taibah Bi

FOR THE TRIBUNAL OFFICE

Date: 7 September 2026

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