



Employment Tribunal, Scotland

Case Number: 4104864/2024

**Mrs Sandie Peggie
(Claimant)**

-v-

**Fife Health Board
(First respondent)**

and

**Dr Beth Upton
(Second respondent)**

PRESS SUMMARY

Status of this summary

1. This document is intended to assist the media and public to understand the Tribunal's judgment. It does not form any part of the reasons for the Tribunal's decision. The Judgment issued by the Tribunal is the only authoritative record of the reasons for it.
2. The decision has been issued after evidence was heard over two periods in February and July 2025, and after both written and oral submissions were made on 1 and 2 September 2025, after which the Tribunal held five deliberation days. The decision of the three members of the Tribunal was unanimous.

The claims

3. The claimant Mrs Peggie alleged breaches of the Equality Act 2010 in relation to direct discrimination, indirect discrimination, harassment (including sexual

harassment and harassment by rejection of harassment) and victimisation. The claims were made both against her employer Fife Health Board, the first respondent, and Dr Upton, a trans woman, who is the second respondent. The claims related to the use by Dr Upton of a female changing room at Victoria Hospital, Kirkcaldy where they both worked, after the Board granted permission to do so. The case focused on whether the permission was lawful under the Act, what happened during a meeting between Mrs Peggie and Dr Upton in the changing room around midnight on Christmas Eve 2023 and then how the Board had dealt with a complaint made by Dr Upton about what Mrs Peggie said at that meeting.

3. The decision

The Tribunal found that the Board had harassed Mrs Peggie by:

- (a) failing to revoke the grant of permission to Dr Upton on an interim basis after Mrs Peggie complained, for the period until different work rotas took effect so that they would not work together, as a result of which Dr Upton was in the changing room when the claimant was present on two occasions;
- (b) taking an unreasonable length of time to investigate the allegations against her;
- (c) making reference to patient care allegations against her on 28 March 2024; and
- (d) giving an instruction to her not to discuss the case, until a further message a little over two weeks later which confirmed that that applied only to the investigation.

The Tribunal otherwise dismissed all of the allegations against the Board. It dismissed the claim against Dr Upton.

In reaching its decision the Tribunal considered the effect of the Supreme Court decision in the case of *For Women Scotland v Scottish Ministers [2025] ICR 899*. It concluded that that decision did not result in it being inherently unlawful for a trans female, who is biologically male under the Act, to be given permission to use a female changing room at work, but also that having the protected characteristic of gender reassignment did not mean that permission to use the changing room was necessarily lawful. The Tribunal judgment noted the different provisions which apply to the workplace in the Act to those applying to public services, and did not consider that the Code of Practice as to Public Services issued by the EHRC was relevant to the case. It did not consider that the Workplace (Health, Safety and Welfare) Regulations 1992, which has provisions as to toilets and changing rooms at work and is a criminal law statute, assisted in construing the Act.

The Tribunal noted that the Act did not provide a test to apply where there was a conflict between different protected characteristics held by two employees in such circumstances. It held that in order to make the Act workable a test was required to enable an employer to make a decision on use of single sex spaces that was lawful. The test the Tribunal concluded should be applied was one of objective justification, derived from the Supreme Court decision in ***Bank Mellat v HM Treasury (No. 2)*** [2014] AC 700.

It considered that a number of factors required to be weighed in the balance including the options that were available to the employer, the extent to which the trans person had changed physiological attributes of sex, how the trans person appeared to others, the extent to which there were complaints from other staff, what the employer knew or ought to have known, and what the options for use of facilities were. It held that initially it had been lawful for the first respondent to grant permission as there had not been an indication of complaint about it, but that once a complaint was made by Mrs Peggie alternatives should have been addressed and the permission should have been revoked on an interim basis. The permission became lawful when a solution was later found, which meant that the claimant and second respondent were not at work together and not therefore using the changing room at the same time, and as no other staff made any complaint about the use of the changing room by the second respondent.

The Tribunal considered what had happened when Mrs Peggie and Dr Upton met on Christmas Eve 2023. It held that the evidence of Dr Upton should be preferred and that Dr Upton had not falsely claimed that Mrs Peggie had been guilty of harassment, as Mrs Peggie had in some of her remarks impermissibly manifested her gender critical beliefs. The Tribunal held that the Board had not established that the claimant's impermissible manifestation of her beliefs was the reason for three detriments related to its investigation of the complaint, but otherwise that it had done so. The claimant therefore succeeded with part of her claims of harassment against the first respondent.

Next steps

The hearing addressed liability only. A separate hearing to assess what remedy should be granted to Mrs Peggie for the harassment that has been found will be fixed for a later date.

The Tribunal has also stated that the parties can apply for reconsideration of the decision for matters raised within it which they had not addressed in their written or oral submissions. It requires to be made within 14 days under the Rules if it is to be sought.