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Insights

SINGLE SEX SPACES IN PEGGIE/FIFE HEALTH BOARD AND EMPLOYMENT NEWS ROUNDUP

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SUMMARY

Our January 2026 employment law update looks at the tribunal case of Peggie v Fife Health Board, which explores the regulation of single sex spaces in light of the judgment in For Women Scotland. We also include a news round-up including developments in implementing the Employment Rights Act 2025 and the latest on Employment Tribunals, including use of AI and listing delays.

PEGGIE V FIFE HEALTH BOARD – SINGLE SEX SPACES IN THE WORKPLACE

Although this recent tribunal case covered a good deal of legal ground, we focus on the implications for employers navigating the tricky legal issue of access to single-sex spaces in the workplace.

Following the Supreme Court's ruling in *For Women Scotland* (FWS), it appeared that legal issues about single sex spaces would be, at least on paper, straightforward. This decision shows they are anything but.

FWS DOES NOT RESOLVE WORKPLACE ISSUES

A central issue was whether a trans woman, Dr Beth Upton, could lawfully use a female changing room. The tribunal acknowledged the FWS conclusion that "sex" in the Equality Act 2010 (EqA) refers to biological sex. However, it held that the FWS judgment addressed single sex spaces in the context of public services, and that its conclusions were not directly applicable to workplaces. In the tribunal's view, Parliament intended that changing rooms, toilets and other single-sex spaces should be treated differently in an employment context. FWS might apply to facilities at employers' premises for clients and customers, but not employees.

The tribunal declined to address arguments that the Workplace (Health, Safety and Welfare) Regulations 1992 required the employer to provide facilities on the basis of biological sex, noting that breaches of those regulations constitute criminal offences, which fall outside its jurisdiction.

A BALANCING EXERCISE FOR EMPLOYERS

Recognising that the EqA provides no ready-made mechanism to resolve conflicts about single-sex spaces between two employees whose protected characteristics clashed, the tribunal turned to the proportionality test established in by the Supreme Court in the 2011 case of *Bank Mellat*. This four-part test requires an employer to show:

- its objective is sufficiently important;
- the measures used to achieve that objective are rationally connected to the objective;
- whether a less intrusive measure could achieve the same result; and
- whether the impact on those affected is proportionate.

Applying this test, the tribunal found the employer's objectives of protecting Dr Upton's rights and promoting inclusion were legitimate and connected to the decision to grant access to a female changing room. However, once Ms Peggie raised concerns, the employer failed until much later to consider alternatives, such as other available facilities or adjusting rotas. During that intervening period, the tribunal concluded that the employer had harassed Ms Peggie by allowing Dr Upton to continue using the single-sex female changing room without reassessing the position.

OTHER ISSUES

Beyond single-sex spaces, the tribunal rejected Ms Peggie's direct discrimination, indirect discrimination and victimisation claims, but upheld several harassment complaints, including criticism of the unreasonable length of and excessive delays in its investigation, which lasted well over six months.

The decision also highlights the vacuum created by the delay in the Equality and Human Rights Commission (EHRC) publishing its full guidance following the judgment in FWS, advising employers and service providers on practical steps to be taken regarding public services and workplaces. There is apparently a 300-page document waiting for government approval but, until that is published, it is left to tribunals to wrestle with these tricky issues. The case may well be appealed, and the sooner guidance is provided, the better.

NEWS ROUNDUP

EMPLOYMENT RIGHTS ACT 2025 (ERA) PROGRESSES

Following receipt of Royal Assent on 18 December 2025, earlier this month the government published enabling provisions, which authorise it, through statutory instruments, to introduce the ERA in accordance with its implementation roadmap. Despite delays late last year, the government seems insistent that its timetable will be adhered to.

The enabling provisions cover wide areas of the ERA, including collective redundancies, non-disclosure agreements, zero-hours contracts, fire and re-hire and family related leave. The best reference document for this is the government's factsheet dated 21 January 2026, which sets out the areas to be covered.

As a taste of things to come, April 2026 will see the collective redundancy protective award double to a maximum period of 180 days, the introduction of "day one" paternity leave and unpaid parental leave, the removal of the lower earnings limit and waiting period for statutory sick pay and, possibly most significantly, the addition of sexual harassment as a "whistleblow" under section 43B of the 1996 Employment Rights Act.

EMPLOYMENT TRIBUNALS

The minutes of the October 2025 employment tribunal user group meeting, published earlier this month, reveal some interesting developments including:

- AI has impacted the tribunal process, enabling litigants in person to draft complex claims, responses to claims and applications which, according to Employment Judges, has led to more applications for interim relief and reconsiderations. This could be a contributory factor to tribunals becoming even more overwhelmed (see below) with factually and legally complicated claims;
- Tribunal claims are at their highest level since the pandemic. Whistleblowing and discrimination actions, arguably the most complex, account for 60% of claims and there are currently 45,000 claims outstanding overall. In some tribunals, delays in listing hearings have increased significantly, with London South seeing cases being listed (as at October 2025) for the second half of 2027;
- ACAS Early Conciliation has also been busier, with a year-on-year increase of 26%; and
- There are proposals to recruit a further 36 salaried Employment Judges in London and the South-East.

It is worth noting that the user group meeting was held in October 2025, before any new measures in ERA 2025 come into force. It is widely predicted that these measures will lead to a further increase in tribunal claims. An increase in Judges might cope with the current backlog but, moving forward, the tribunals may have to look to more recruitment of salaried Judges.

If you have any questions about the tribunal decision, the ERA 2025 rollout, or upcoming changes in employment law, please contact a member of our Employment team or the author of this update, Katherine Pope.

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