



Maria Kelly v Leonardo UK

First-instance judgment finds that employer did not breach the law with “trans inclusive” toilets policy

Jurisdiction: Employment Tribunal

Cause of action: Direct discrimination, Harassment, Indirect discrimination

Sector: Aerospace

Legal representation: Katy Wedderburn at Gunnercooke (solicitor), Naomi Cunningham (counsel)

Updates: [Live tweeting of tribunal from Tribunal Tweets](#), [Judgment](#)

Summary of events

Maria Kelly is an engineer employed by Leonardo UK, a defence and security company, in Edinburgh. In September 2022 she became aware of three trans-identifying men in her workplace. Concerned about the loss of female-only facilities, in 2023 she asked her line manager about the company’s policy. He said he did not know and neither did his line manager. After more than a year of following up, she was told by HR:

“We consider it is appropriate, and an inclusive approach, that anyone who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purposes of reassigning their gender should use the toilets which is aligned to the gender to which they identify.”

They said that this was an obligation under Equality Act 2010, and was based on Government Equalities Office guidance for the recruitment and retention of transgender staff 2015 and ACAS guidance on gender reassignment discrimination from 2017.

Kelly challenged the policy and eventually brought a grievance and appeal, and was told (emphasis added):

“Advice from our external legal counsel makes it very clear that **any attempt by the company to refuse individuals access to use the toilets of their affirmed gender would be unlawful.**”

She then brought a claim for sex discrimination and harassment in relation to the policy. It was heard in Edinburgh in October 2025 – after the Supreme Court had clarified that the protected characteristic of sex in the Equality Act means biological sex.

Findings by the tribunal

The judgment did not uphold Kelly’s claims, dismissing her arguments that women are less favourably treated by the policy, or that they suffer unjustifiably, or that she herself had experienced a hostile, humiliating, or degrading environment as a woman.

It found that she had not suffered humiliating or degrading treatment by being forced to share the women's toilets with three men, that she did not complain hard or quickly enough, that not enough women complained and that women had nothing to worry about as Leonardo staff were security-vetted.

The judge concluded that "a toilet access policy of permitting access based upon asserted gender rather than sex was an appropriate means to achieve the aim of an inclusive workplace environment".

She rejected the Supreme Court's reasoning that "man" and "woman" must refer to coherent groups defined by sex, saying that applying an analogous approach to workplace toilets – that is, seeking to create two coherent groups – would result not in biological categories, but in groups she referred to as "putative" men and women: people who pass as men and women, respectively:

"The SC in FWS found that a gender certified interpretation creates heterogenous groupings (women would mean biological women (without a GRC) and also biological men (with a GRC)) rendering the protected characteristic of sex incoherent. In the context of the 1992 Regs, a biological interpretation also creates heterogenous groupings in practice such that women would mean putative women (biological women and biological men perceived to be female) rendering the distinction unworkable." [paragraph 229]

The judgment dismissed Kelly's claim that in her experience "trans women" are "readily discernible as men", saying she did so because Kelly had said she understood that these men believe they have a gender identity:

"The claimant is aware that trans women believe their gender identity is at variance to their sex and whereas non-trans men (including transvestites) do not."

"The claimant is aware that trans women often undergo a process for the purpose of reassigning their gender identity (or their belief in it) which may entail medical advice, hormonal treatment, and/or endeavouring to live permanently as a female including modifying their appearance and presentation. The claimant is aware that a transvestite i.e. crossdresser does not undergo such a process and is merely engaged in a temporary modification of their appearance."

"It is not therefore accepted that the claimant believes that trans women are indistinguishable from men in practice." [paragraphs 285–287]

What happens next?

The surprising judgment, which is only at first instance, is not a finding that this policy could never result in sex discrimination or harassment but only that, based on the specific facts and circumstances of this case, the tribunal did not believe that Kelly's experience supports the claims.

This judgment is likely to be appealed, and other employers should remain wary of following Leonardo's lead and adopting policies that allow men to use women's facilities. Employers must be confident that their own policies are lawful.

Further reading: see sex-matters.org/case-briefings