



Bethany Hutchison and others v County Durham and Darlington NHS Foundation Trust

Public sector: Darlington nurses won harassment and discrimination claim against their NHS Trust

Date: 16th January 2026

Jurisdiction: Employment Tribunal

Sector: Health, Public sector

Cause of action: Harassment, Indirect sex discrimination, Victimisation

Legal representation: Niazi Fetto KC (counsel)

Supporting organisation: Christian Legal Centre

Decisions: [Judgment](#)

Find out more: [Updates from Christian Concern](#), [Expert witness report by Professor Jo Phoenix](#)

Overview

This was a high-profile Employment Tribunal case in which a group of eight nurses working at Darlington Memorial Hospital, widely known as the Darlington nurses, successfully sued their employer, County Durham and Darlington NHS Foundation Trust, for sexual harassment and sex discrimination.

The nurses argued that the trust allowing their male colleague Rose Henderson, who identified as a woman, to use the female changing room alongside them and other women was a form of harassment, as it created a hostile environment for the women. The tribunal agreed:

“By requiring the Claimants to share a changing room with a biological male trans woman ... the Respondent engaged in unwanted conduct related to sex and gender reassignment which had the effect of violating the dignity of the Claimants and creating for the Claimants a hostile, humiliating and degrading environment.” [paragraph 1.1]

The tribunal also ruled that letting a man access the female changing room amounted to sex discrimination, and was a failure to provide single-sex changing facilities as the trust was legally required to do.

Employment Tribunal hearing

A full hearing took place at Newcastle Employment Tribunal from 20th October to 11th November 2025. The cases for seven out of the eight claimants were heard, with the case for Joanne Bradbury being stayed (put on hold) until further notice. The other seven claimants all gave evidence, as did Henderson.

The NHS trust's request in January 2025 for an order to anonymise the identity of "Rose" and restrict reporting had been rejected at a preliminary hearing on the grounds that the evidence provided was "unsupported by anything concrete" and that "derogations from open justice require exceptional circumstances". At the full hearing, it was agreed that the tribunal "would refer to Rose by first name and would use the neutral pronoun of 'they'".

The tribunal heard that under the trust's uniform policy, staff who wore uniforms had to change on the hospital premises for health and safety reasons. They therefore had no option but to use changing facilities. The claimants used the female changing room on the floor where they worked.

Henderson, described by the tribunal as "a biological male who identifies as female and has the protected characteristic of gender reassignment" worked on the same floor. Henderson was allowed to change in the female changing room – used by around 300 nurses – under the trust's *Transitioning in the Workplace* policy, which states that an employee is regarded as transgender "the moment a person informs us they are Trans or intends to transition", and are then "legally allowed to use any toilet facility they prefer and the choice should be theirs".

The Darlington nurses first brought up the issue of Henderson using the female changing room in August 2023. They said having to undress in front of a man was degrading, and they had concerns about cultural sensitivities and previous experiences of sexual abuse among staff. They expressed fears of potential abuse or exploitation of inclusivity policies by bad actors.

The nurses gave evidence during the hearing that they had felt especially uncomfortable because Henderson had not undergone any physical or hormonal transition, nor expressed an intention to do so, and had an obviously male appearance. Henderson had also made it known that he was trying to conceive a baby with his partner, so it was clear that he was a sexually active man with full male genitalia. Several of the nurses claimed that Henderson had attempted to intimidate them both inside and outside the changing room, on occasion walking around the changing room wearing only boxer shorts.

The trust's HR department, along with senior staff, dismissed the nurses' concerns, stating that they should "broaden their mindset" and "be educated". When the nurses continued to raise their concerns, the trust told them that if they felt uncomfortable changing with Henderson, they could change in a different space: a former office room that was neither large enough nor compliant with fire safety regulations. There was no suggestion that Henderson should change somewhere else.

The nurses then sought assistance from the Christian Legal Centre and went to the press. In October 2024 they formed the Darlington Nurses Union, founded on gender-critical principles that a person's biological sex is unchangeable and sometimes more relevant than their gender identity.

After a great deal of media attention, and following the April 2025 Supreme Court ruling in *For Women Scotland*, alternative changing facilities were found for Henderson in July 2025. The claimants, and other women who had chosen to use the alternative facilities, returned to using the female-only changing room, and the trust confirmed that this could no longer be used by Henderson or any other trans-identifying man.

Jo Phoenix, a professor of criminology at the University of Reading (and a member of Sex Matters' advisory group) gave expert evidence on whether women are more likely than men to suffer fear, distress and humiliation if made to undress in front of a person of the opposite sex.

Judgment was handed down on 16th January 2026 and the nurses were successful in their main claims of harassment and indirect sex discrimination against the trust.

Tribunal findings

- The trust incorrectly allowed staff to access the single-sex changing room of their choice based on that staff member's own self-declared "gender identity".
- The *Transitioning in the Workplace* policy had been drafted without properly assessing the impact on women in particular, despite the fact that around 80% of the trust's workforce is female.
- Under the Equality Act 2010, services or facilities that are described as being single sex are for people of that biological sex only, and not to be used by anyone of the opposite sex who is trans-identifying. The tribunal was clear that this had been the law since the Equality Act came into effect, even before it was confirmed in April 2025 by the Supreme Court in the case of *For Women Scotland*.
- The Workplace (Health, Safety and Welfare) Regulations 1992 state that suitable changing facilities must be provided for staff who must wear special clothing for work, and that the workplace must provide "separate facilities for, or separate use of facilities by, men and women". The tribunal said that these definitions of "men" and "women" meant biological sex.
- The hospital's HR department never spoke directly to the nurses who had complained and made no attempt to understand why they felt uncomfortable with Henderson using the female changing room.
- Trust staff were wrong to try to "educate" the nurses into accepting Henderson, or any other trans-identifying man, in the female changing room.
- The hospital was wrong to make the nurses change elsewhere, in a room that was not a proper changing room and did not meet fire-safety standards, instead of making Henderson change in a different location.
- The tribunal accepted Professor Phoenix's evidence:

"We accept that, as a general rule, considerably more women than men feel or would likely feel personal insecurity, distress and fear if required to change clothes in a communal changing room shared with a member of the opposite sex." [paragraph 266]

- Women are more likely than men to have periods of time when they are particularly sensitive about their bodies and require more privacy, such as menstruation, pregnancy and menopause.
- The tribunal was "satisfied" that one of the hospital theatre managers "had deduced that women from a 'non-western country/culture' (as 'international nurses' were described to us) would have even greater concerns about changing in the same space as a biological male".
- Women are more likely than men to have experienced sex-based harassment and sex-based violence.

"Depending on the circumstances, a woman might experience fear and distrust in the presence of a man even though, objectively, as a matter of fact, the man is an entirely innocent actor. We take an example that we can all recognise, of a woman walking alone on a street at night, whereupon she notices an approaching male. She crosses the road to avoid the man, holding her keys in her hands in the event she needs to defend herself or she phones someone or pretends to do so. The approaching male is a perfectly decent and innocent person with no intention to harm anyone and is oblivious to the woman on the street. He would feel offended at the thought that someone might regard

him as potentially harmful. But it is not the individual's character that dictates the reaction in the woman. It is not the man himself but the fact that he is a man. The difficulty for the woman in this example is that she is unable to police the character or the intent or motivations of the approaching male." [paragraph 270]

The judgment

The tribunal ruled that the trust had subjected the nurses to harassment and indirect sex discrimination and so the nurses won their claim on these grounds because:

- the trust allowing Henderson to change in the female changing room was harassment against the nurses
- the trust further subjected the nurses to harassment by not taking their complaints seriously and not addressing them
- the trust's policy of allowing trans-identifying people to use the changing room of the opposite biological sex adversely affected more women than men, and so was found to be indirect sex discrimination.

The tribunal did not uphold the nurses' claims that Henderson's conduct on certain occasions, both inside and outside the changing room, amounted to harassment, noting that:

- the tribunal had deliberately made a distinction between the trust wrongly allowing Henderson to use the changing room and Henderson actually using it: since the trust had expressly allowed Henderson to use the changing room, doing so did not amount to harassment by Henderson as an individual.

The tribunal accepted that Henderson's conduct in the changing room on a specific occasion was found by one of the complainants to be "distressing", but said that this had not been Henderson's intention.

"Rose Henderson did not see themselves as a threat to any colleague and was simply getting changed when someone else arrived in the changing room, went to their locker yet did not start to get changed. It may be that Rose lacked insight generally into the effect of their presence in that environment on some colleagues. This lack of insight is partly explained, we infer, from Rose's inherent belief that the right place for Rose to change was the female changing room; from the fact that Rose had been using the changing room for some time without complaint – or without being aware of any complaints – and from the fact that Rose was doing no more than exercising the choice provided under the TIW policy." [paragraph 216]

The tribunal did not uphold the nurses' claim of victimisation, finding that the nurses were not victimised by the tribunal for having gone to the press.

Next steps

The tribunal ruled that the seven claimants whose cases were heard (the eighth claimant's case being put on hold) were entitled to remedy, and recommended that the parties try and resolve this between themselves. The remedy awarded to each claimant is likely to involve financial compensation.

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